Khashiyev v Russia (No. 57942/00), Akayeva v Russia (No. 57945/00); Isayeva v Russia (No. 57947/00), Yusupova v Russia (No. 57948/00), Bazayeva v Russia (No. 57949/00); Isayeva v Russia (No. 57950/00) – Judgments of February 24 2005.

APPLICANTS' SUBMISSIONS REGARDING COMPLIANCE WITH THE JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS
(Rule 6 of the Committee of Ministers' Rules)

Introduction

1. This document sets out the applicants' submissions as to the measures which it is necessary for the Russian Federation to take in order to comply with the judgments of the European Court of Human Rights of 24 February 2005. As a result of the decision of the panel of judges not to refer the chamber judgments to the Grand Chamber following the request of the Russian Federation pursuant to Article 43 of the European Convention on Human Rights, these judgments became final on 6 July 2005 (Article 44(2)(c)).

2. These submissions are being made to the Committee of Ministers in accordance with Rule 6 of the Committee of Ministers' Rules[1], with a copy to the Department for the Execution of Judgments of the European Court of Human Rights. They are also being sent to the Monitoring Department of the Council of Europe, the Commissioner for Human Rights of the Council of Europe and the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe.

3. Within Russia, these submissions are being sent to Ella Pamfilova, Chair of the Presidential Human Rights Commission and to Vladimir Lukin, Human Rights Ombudsman.

[1] Rules Adopted by the Committee of Ministers for the Application of Article 46, Paragraph 2 of the European Convention on Human Rights, 10 January 2001.

Payment of Damages and Costs

4. The judgments required the Russian Federation to pay the specified sums by way of damages and costs within three months of the judgments becoming final, that is, by 6 October 2005.

5. Those payments were made by the respondent Government to the applicants on 15 September 2005.

Further measures necessitated by the judgments of the European Court

6. Judgments of the European Court are binding as a matter of international law, by virtue of Article 46(1) of the Convention, according to which the states "undertake to abide by the final judgment of the Court in any case to which they are parties". It is recalled that it has often been said by the Court that the effect of a judgment in which the Court has found a violation of the Convention is to impose a legal obligation on the respondent state to put an end to the breach and to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*)[2].

7. The Court has further stated that:

> "A judgment in which the Court finds a breach imposes on the respondent state a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects"[3].

8. It is also recalled that the Committee of Ministers has recently sought to improve its process for the supervision of the enforcement of judgments, by urging the Ministers' Deputies to:

> "…take specific and effective measures to improve and accelerate the execution of the Court's judgments, notably those revealing an underlying systemic problem."[4]

9. One member of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly has recently suggested that "the binding nature of the Court's judgments, with the Committee of Ministers' acting as the guarantor of their

[2] See, e.g., *Brumarescu v Romania*, No. 28342/95, 23.1.01, (2001) 33 E.H.R.R. 36, para. 19; *Vasiliu v Romania*, No. 29407/95, 21.5.02; *Hodos and others v Romania*, No. 29968/96, 21.5.02.
[3] See, e.g., *Scozzari and Giunta v Italy*, Nos. 39221/98 and 41963/98, 13.7.00, (2002) 35 E.H.R.R. 12, para. 249.
[4] *Ensuring the effectiveness of the implementation of the European Convention on Human Rights at national and European levels*, Declaration of the Committee of Ministers, 12 May 2004.

proper execution by states, is the main pillar of the ECHR's system and its effectiveness"[5].

10. It is also recalled that in its Resolution of 10 October 2003[6], the Plenum of the Supreme Court of the Russian Federation stated as follows (paragraph 11)

> "The Convention on Human Rights and Fundamental Freedoms has a mechanism of its own which includes a compulsory jurisdiction of the European Court on Human Rights and a systematic monitoring over the execution of the decisions of the Court by the Committee of Ministers of the Council of Europe. In accordance with paragraph 1 of Article 46 of the Convention these decisions with regard to the Russian Federation adopted finally shall be binding on all State bodies of the Russian Federation including the courts. The implementation of the decisions related to the Russian Federation presumes, if necessary, the obligation on the part of the State to take measures of a private nature aimed at eliminating violation of human rights stipulated by the Convention and the impact of these violations on the applicant as well as measures of a general nature to prevent repetition of such violations. The courts within their scope of competence should act so as to ensure the implementation of obligations of the State stemming from the participation of the Russian Federation in the Convention on Protection of Human Rights and Fundamental Freedoms."

11. The judgments in these cases are the very first cases which the European Court has had to adjudicate upon arising from the conflict in Chechnya. There are already a significant number of other cases arising from the conflict in Chechnya pending before the European Court, and further cases from the region are being lodged with the European Court on a regular basis.

12. The present cases concern, *inter alia*, allegations of violations of Articles 2 and 3 of the European Convention perpetrated by the Russian armed forces and/or security forces in the Chechen region. Parallels can clearly be drawn with the cases before the European Court concerning the actions of the security forces in Turkey. The Turkish cases have required a long and drawn out supervision process. For example, the latest Committee of Ministers' Interim Resolution (ResDH(2005)43, June 7, 2005) refers to 74 such judgments against Turkey. The recent report submitted by Mr Erik Jurgens to the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe highlighting judgments which have not been fully implemented more than five years after their delivery, or which otherwise raise important implementation questions, identifies 111 such judgments concerning Turkey[7]. The Jurgens report notes that the Committee of Ministers has been closely

[5] See *Implementation of judgments of the European Court of Human Rights*, Introductory Memorandum, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 35, 20 June 2005, para. 1.
[6] English translation at http://www.supcourt.ru/EN/resolution.htm
[7] See *Implementation of judgments of the European Court of Human Rights – Court judgments pending before the Committee of Ministers for control of execution for more than five years or otherwise raising important issues*, Working Paper, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 32, 9 June 2005, p. 27-28.

monitoring the question of Turkey's compliance with European Court judgments since 1996. Mr Jurgens describes the problems which have been evident in Turkey in terms which, the applicants submit, equally apply to the situation in Chechnya:

> "Since the very beginning of the Committee of Minister's examination of these cases, it has been noted that the violations found are due to a number of structural problems: general attitudes and practices of the security forces, their education and training system, the legal framework of their activities and, most importantly, serious shortcomings in establishing at the domestic level administrative, civil and criminal liability for abuses"[8].

13. The Committee of Ministers has itself stated that it "has consistently emphasized that Turkey's compliance with them must entail *inter alia* the adoption of general measures so as to prevent new violations similar to those found in these cases" (see, e.g., Res DH(2002)98).

14. The present cases represent the first opportunity for the Committee of Ministers to begin to monitor the compliance of the Russian Federation vis-à-vis its actions in Chechnya. The applicants accordingly submit that in the light of the experience in the Turkish cases, **the Committee of Ministers should, as a priority from the outset, adopt a very rigorous and comprehensive approach to the question of compliance in respect of Chechnya**. Not only is such an approach required, the applicants submit, by virtue of Article 46(2) of the European Convention, but also it will make an important contribution to the continuing effectiveness of the Court, a matter which was highlighted in the Heads of State and Government's Warsaw Declaration earlier this year[9].

15. The applicants accordingly respectfully submit that the individual and general measures set out below must follow from the judgments in the present cases:

    (a) Dissemination of the judgments;

    (b) Investigations and the re-opening of domestic proceedings;

    (c) Changes in legislation, regulations and practice;

    (d) Training of the armed forces, security forces, law enforcement agencies, prosecutors and judges as to respect for the standards set down by the European Convention on Human Rights.

    Each of these points is addressed in detail below.

[8] *Ibid*.
[9] See, for example, *Implementation of judgments of the European Court of Human Rights,* Introductory Memorandum, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 35, 20 June 2005, para. 6.

(a) Dissemination of the judgments.

16. This should include both wide dissemination of translations of the full judgments themselves, as well as summaries and explanatory notes which highlight, and provide context to, the key findings.

17. More specifically, the Government should be obliged to send copies of the judgments (with summaries and explanatory notes) to:

    (a) **all** courts and prosecutors' offices (including those of military jurisdiction) in Chechnya, Ingushetia and Dagestan and the other regions making up the Southern Federal Circuit[10];

    (b) senior military staff (including ground and air force planners) in the North Caucasus military circuit and in the North Caucasus interior troops circuit[11];

    (c) the principal military academies, in particular, to the Military Academy of the Headquarters of the Ministry of Defence and to the Combined Armed Services Military Academy;

    (d) the Chief Department of the Commander of the Air Forces of the Ministry of Defence, the Chief Department of the Commander of the Interior Forces of the Ministry of Interior, and commanders of special police regiments (OMON); and

    (e) all institutions of higher education teaching students of law.

18. Translations of the judgments should be published in both the national press (e.g., in *Rossiyskaya Gazeta*, as was the case with the *Burdov*, *Kalashnikov* and *Posokhov* judgments) and in the regional press (including the Official Bulletin of the Chechen Republic).

19. It is submitted that the President (or a Vice-President) of the Supreme Court should inform the lower courts (at both regional and district levels) of the implications of these judgments by means of a circular letter. It is also suggested that the President of the Federal Bar Chamber should inform Regional Bar Chambers about the judgments.

20. It is further suggested that the Plenum of the Supreme Court of the Russian Federation should consider the issues of applicability of the judgments at the national

[10] The Southern Federal Circuit comprises the Republic of Adygeya, the Republic of Dagestan, the Republic of Ingushetia, the Kabardino-Balkar Republic, the Republic of Kalmykiya, the Karachayevo-Cherkess Republic, the Republic of Northern Ossetiya – Alaniya, the Chechen Republic, Krasnodar region (*krai*), Stavropol region (*krai*) Astrakhan region (*oblast*), Volgograd region (*oblast*) and Rostov region (*oblast*).

[11] The North Caucasus Military Circuit comprises the same regions as the Southern Federal Circuit.

level and adopt a resolution to that end (cf. the Resolution of the Plenum of the Supreme Court of 10 October 2003 on application of international law by Russian courts – see above).

(b) Investigations and the re-opening of domestic proceedings.

21. It is recalled that the Committee of Ministers has consistently urged states to re-assess the effectiveness of its domestic remedies, and in particular to:

> "review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court."[12]

22. In the context of the present cases, there are two key aspects to effectively re-opening domestic proceedings. There must, firstly, be an effective *investigation* of the incidents in question, and, secondly, where there is evidence to justify it, there must be effective *prosecution* proceedings (see, e.g., Interim Resolution ResDH(99)434).

Effective Investigations

23. The necessity for effective investigations in the context of Article 2 cases was emphasized by the Grand Chamber in the first judgment in *Acar v Turkey*[13], in which the Grand Chamber reviewed the decision of the chamber to strike out the case as a result of the Turkish government's unilateral declaration. The Grand Chamber reasoned that:

> "…in cases concerning persons who have disappeared or have been killed by unknown perpetrators and where there is prima facie evidence in the case-file supporting allegations that the domestic investigation fell short of what is necessary under the Convention, a unilateral declaration should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers in the context of the latter's duties under Article 46(2) of the Convention, an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous similar cases"[14].

24. Furthermore, in respect of cases concerning the actions of the UK security forces in Northern Ireland, the Committee of Ministers has stated that the obligation to take

[12] Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, 12 May 2004. See also Recommendation Rec(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, 12 May 2004.
[13] No. 26307/95, 6.5.03, (2004) 38 E.H.R.R. 2.
[14] *Ibid*., para. 84.

necessary measures is "all the more pressing…where procedural safeguards surrounding investigations into cases raising issues under Article 2 of the Convention are concerned" (Interim Resolution ResDH(2005)20, 23 February 2005). The Committee of Ministers has also emphasized the obligation on states to conduct an investigation "that is effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified" (Interim Resolution ResDH(2005)20, 23 February 2005). Finally, the Committee of Ministers has noted its "consistent position" that there is a "**continuing obligation** to conduct such investigations inasmuch as procedural violations of Article 2 were found"[15].

25. The applicants therefore submit that effective, independent investigations, fully in compliance with the procedural obligations laid down under Article 2, should be instigated by the Russian Federation forthwith into each of the incidents which were the subject of the judgments in the present cases. Such investigations must include careful consideration of the proportionality of the use of force.

Independent Inquiry

26. The applicants submit that there is overwhelming evidence of the **systemic failure** to investigate allegations of serious human rights violations in Chechnya, as is reflected, for example, in successive Council of Europe monitoring reports, Parliamentary Assembly resolutions and NGO reports. In its 2003 Public Statement, the CPT found there was "continued resort to torture and other forms of ill-treatment by members of the law enforcement agencies and federal forces operating in the Chechen Republic and that the action taken to bring to justice those responsible is slow and – in many cases – ultimately ineffective"[16]. The Commissioner for Human Rights has recently reported that "the overwhelming majority" of investigations into disappearances in Chechnya have been "put on hold", a situation which he describes as "unacceptable"[17]. Furthermore, Parliamentary Assembly Resolution 1403 (2004) concluded that a climate of impunity continued to prevail in the Chechen Republic due to the fact that the Chechen and Federal law enforcement authorities were either unwilling or unable to hold accountable for their actions the vast majority of perpetrators of serious human rights violations[18]. A recent PACE monitoring report described a prevailing climate of impunity for crimes in Chechnya and concluded that "Russia has yet to meet its specific commitment to bring to justice those found

[15] Interim Resolution ResDH(2005)20, 23 February 2005 - emphasis added. See also Interim Resolution ResDH(2005)44, 7 June 2005 (re *Cyprus v Turkey*).
[16] CPT/Inf (2003) 33, 10 July 2003.
[17] *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visits to the Russian Federation*, CommDH(2005)2, 20 April 2005, para. 354.
[18] See, in particular, paras. 10-14. See also previous reports and resolutions, including the following: Document 8127, 2 June 1998, paras. 37-39; Resolution 1227 (2000), paras. 9, 10(i), 11 (ii); Resolution 1240 (2001), paras. 7-9; Document 9396, 26 March 2002, para. 8(i); Resolution 1270 (2002), paras. 15-17; Resolution 1277 (2002), para. 8(i).

responsible for human rights violations in relation to events in Chechnya (Opinion No. 193 (1996), 7vii)"[19].

27. In the light of such evidence, the applicants submit that there must be a **full and thorough independent inquiry** into the manner in which investigations into such allegations have been, and are being, carried out, together with a review of the availability of effective domestic remedies. This should include in particular a review of investigations in respect of the involvement of each branch of the security forces. Such an inquiry was carried out, for example, in respect of the ill-treatment of detainees in prisons in Italy[20] and the Turkish authorities have been required, inter alia, to provide the Committee of Ministers with statistics regarding the number of investigations, acquittals and convictions into alleged abuses by the security forces[21].

Criminal Prosecutions

28. It is noted that Judge Kovler in his dissenting opinion in *Khashiyev & Akayeva*, refers to the possibility of the applicants, who had been granted 'victim status', invoking (former) Articles 208 and 209 of the criminal procedure code (Article 125 of the criminal procedure code which came into force on 1.7.02) in order to obtain a more effective criminal investigation. He also refers to the possibility of invoking Article 413 of the Code of Criminal Procedure after the European Court has found a violation of the applicants' rights.

29. Article 413 of the Code of Criminal Procedure, insofar as relevant, reads as follows:

> "1. A court sentence, ruling or resolution, which has come into legal force, may be dismissed and the proceedings on a criminal case may be re-opened because of a new or of the newly revealed circumstances.
>
> […]
>
> 4. The new circumstances shall be:
>
> […]
>
> 2) a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, established by the European Court on Human Rights, during the examination of the criminal case by a court of the Russian Federation, caused by:
>
> a) an application of the federal law violating the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;

[19] *Honouring of obligations and commitments by the Russian Federation,* Monitoring Committee Report, David Atkinson and Rudolf Bindig, Doc. 10568, 3 June 2005, para. 269.
[20] *Implementation of judgments of the European Court of Human Rights – Court judgments pending before the Committee of Ministers for control of execution for more than five years or otherwise raising important issues*, Working Paper, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 32, 9 June 2005, p. 14 (referring to *Labita v Italy*, 6.4.00 and *Indelicato Rosario v Italy*, 18.10.01).
[21] *Ibid*., p. 28.

b) other violations of the Convention for the Protection of Human Rights and Fundamental Freedoms".

30. Article 413 of the Code of Criminal Procedure applies only to those criminal proceedings which had been terminated either by a sentence or by a prosecutor's ruling before the European Court of Human Rights gave its judgment. Hence, it is applicable to two of the cases in issue: *Isayeva, Yusupova and Bazayeva v. Russia* and *Isayeva v. Russia*. In the case of *Khashiyev and Akayeva v. Russia* the criminal proceedings were suspended and, thus, a prosecutor's order on renewal of the criminal investigation will suffice.

31. On 9 September 2005 the Human Rights Centre "Memorial" wrote to the Prosecutor-General of the Russian Federation requesting the re-opening of proceedings in the cases of *Isayeva, Yusupova and Bazayeva* and *Isayeva* under Article 413 of the Code of Criminal Procedure and that criminal charges be brought against the persons identified as "Ivanov", "Petrov" and "Sidorov" in the first case and against Mr. Shamanov and Mr. Nedobitko in the second case (see further below). The letter also requested the re-opening of the suspended criminal investigation in the case of *Khashiyev and Akayeva*. However, no reply has been received to date.

32. In all such proceedings, it is imperative that the system of prosecution of members of the armed forces is modified to ensure that prosecutors have the necessary powers, means and independence[22] to conduct effective criminal investigations with a view to identifying and punishing those responsible for abuses (see, e.g., Interim Resolution ResDH(2002)98).

33. It is further submitted that the principle of command responsibility under Russian domestic law should be strengthened. Whilst it is possible to prosecute commanding officers for failure to train/brief/equip military personnel under Article 293 of the Criminal Code ("Neglect of Duty"), since its provisions are wide enough, it is submitted that confirmation of this should be given by the Plenum of the Supreme Court of the Russian Federation by way of a resolution on application of Article 293 of the Criminal Code.

34. In such proceedings it is also submitted that the State should be required to provide full disclosure to the applicants and/or their representatives of all relevant documentation. It is recalled, for example, that the Turkish Code of Criminal Procedure has been amended to permit the right of victims to have access to the investigation file (see Interim Resolution ResDH(2005)43, June 7, 2005). Furthermore, the State should be required to disclose, in particular, those documents which the European Court has identified as being missing (*Khashiyev and Akayeva*, § 136; *Isayeva, Yusupova and Bazayeva*, § 175; *Isayeva*, § 182). It is also submitted

[22] A recent PACE report suggests that the prosecutor's office handling of cases of torture and ill-treatment is problematic because of problems related to impartiality and inadequate technical and human resources – see *Honouring of obligations and commitments by the Russian Federation*, Monitoring Committee Report, David Atkinson and Rudolf Bindig, Doc. 10568, 3 June 2005, para. 288.

that Article 42(2)(12) of the Code of Criminal Procedure, which permits disclosure of documents contained in the case-file only after the investigation has been concluded, should be amended also to permit disclosure to the victim after the investigation has been suspended on the ground of failure to establish the person(s) responsible.

35. Furthermore, any such proceedings should be backed by sufficient powers of sentencing, including terms of imprisonment (see, e.g., (see, e.g., Interim Resolution ResDH(99)434 & Interim Resolution ResDH(2002)98). It is noted, for example, that in Turkey the accountability of the security forces has been enhanced by the adoption of provisions introducing minimum prison sentences for crimes of ill-treatment and torture committed by the security forces, and which may not be converted into fines or suspended (Interim Resolution ResDH(2005)43, June 7, 2005).

Major-General Vladimir Shamanov and Major-General Yakov Nedobitko

36. It is recalled that in its judgment in *Isayeva v Russia*, the European Court identified two senior officers in the armed forces as having responsibility for, or control over, the armed forces involved in the incidents in question. Major-General Vladimir Shamanov and Major-General Yakov Nedobitko are named by the Court in its judgment in *Isayeva*. Shamanov headed the operations centre of the Western Zone Alignment in Chechnya, which had included the Achkhoy-Martan district[23]. Nedobitko was identified as the commander of the operation at Katyr-Yurt[24]. An expert report found as a fact that the decision to employ aviation and artillery was taken by Major-General Nedobitko[25]. One air-ground controller stated that Nedobitko ordered him to call in fighter jets with bombs, without specifying the type of bomb[26]. A number of witnesses specifically stated that Major-General Shamanov gave an order not to let anyone out of the village[27]. This was denied by Shamanov[28], but the Court found that the declaration of a corridor "became known to the residents only after several hours of bombardment by the military using heavy and indiscriminate weapons, which had already put the residents' lives at great risk"[29].

37. The European Court found that the military operation in Katyr-Yurt was not spontaneous, but that it was planned some time in advance[30]. The Court also stated as follows:

> "The Court regards it as evident that when the military considered the deployment of aviation equipped with heavy combat weapons within the boundaries of a populated area, they also should have considered the dangers that such methods invariably entail. There is however no evidence to conclude that such

[23] *Isayeva v Russia*, No. 57950/00, 24.2.05, para. 66.
[24] *Ibid*., para. 36.
[25] *Ibid*., para. 96.
[26] *Ibid*., para. 88.
[27] *Ibid*., paras. 54, 55, 56, 59, 110, 220.
[28] *Ibid*., para. 73.
[29] *Ibid*., para. 193.
[30] *Ibid*., para. 188.

considerations played a significant place in the planning. In his statement Major-General Nedobitko mentioned that the operational plan, reviewed with Major-General Vladimir Shamanov in the evening on 3 February 2000, referred to the presence of refugees. This mere reference cannot substitute for comprehensive evaluation of the limits of and constraints on the use of indiscriminate weapons within a populated area. According to various estimates, the population of Katyr-Yurt at the material time constituted between 18,000 and 25,000 persons. There is no evidence that at the planning stage of the operation any serious calculations were made about the evacuation of civilians, such as ensuring that they were informed of the attack beforehand, how long such an evacuation would take, what routes evacuees were supposed to take, what kind of precautions were in place to ensure safety, what steps were to be taken to assist the vulnerable and infirm etc."[31].

The Court also found that:

> "Major-General Nedobitko called in fighter jets, without specifying what load they should carry. The planes, apparently by default, carried heavy free-falling high-explosion aviation bombs FAB-250 and FAB-500 with a damage radius exceeding 1,000 metres."[32].

38. The Court concluded as follows:

> "The Court considers 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… 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"[33].

In spite of the evidence that the military became aware that civilians were attempting to leave the village to escape from the fighting, the European Court found that "no document or statement by the military refers to an order to stop the attack or to reduce its intensity"[34]. It also rejected the finding of the military experts' report of 11 February 2002 that the actions of the operational command corps were legitimate and proportionate to the situation[35].

39. Accordingly, these two officers were found to have been responsible for a military operation which involved the "massive use of indiscriminate weapons" and which led, *inter alia*, to the loss of civilian lives and which has been found to have violated

[31] *Ibid*., para. 189.
[32] *Ibid*., para. 190.
[33] *Ibid*., para. 191.
[34] *Ibid*., para. 196.
[35] *Ibid*., para. 198.

Article 2 of the European Convention on Human Rights. The applicants submit that in the light of the Court's findings (as summarized above), criminal proceedings should be opened in respect of both of them.

40. For the same reasons, the applicants submit that disciplinary proceedings should also be opened in respect of Mr. Nedobitko, who has been appointed Deputy to the Commander of forces of North Caucasus Circuit of Interior Forces. Mr. Shamanov, who is now Head of the Presidential Commission on Interned Persons, Abducted and Disappeared Persons, should be suspended from his office for the period of investigation.

The case of Isayeva, Yusupova and Bazayeva

41. The military pilots "Ivanov" and "Petrov" and their air-traffic controller "Sidorov" were identified in the judgment in *Isayeva, Yusupova and Bazayeva*[36]. They were responsible for the use of combat weapons fired from two military SU-25 aeroplanes which caused the heavy loss of civilian lives near the village of Shaami-Yurt on 29 October 1999.

42. In relation to the aerial attack, the Court found that "there was no reference to assessing and preventing possible harm to the civilians who might have been present on the road or elsewhere in the vicinity of what the military could have perceived as legitimate targets"[37]. The Court concluded that it could "not accept that the operation near the village of Shaami-Yurt was planned and executed with the requisite care for the lives of the civilian population"[38].

43. Accordingly, the applicants submit that there is sufficient evidence to prosecute these three individuals.

44. The applicants also submit that a further investigation must identify those in command of these three officers, with a view to their prosecution.

(c) Changes in legislation, regulations and practice

45. Numerous European Court judgments have resulted in legislative and constitutional amendments, including in the context of violations by the security forces in Turkey (see, e.g., Interim Resolution DH(99)434, 9 June 1999, Interim Resolution ResDH(2002)98, 10 July 2002 & Interim Resolution ResDH(2005)43, 7 June 2005).

46. Erik Jurgens has recently sought to emphasise the importance of making swift legislative changes:

[36] *Isayeva, Yusupova and Bazayeva* v Russia, Nos. 57947-9/00, 24.2.05, paras. 28, 38, 78-84.
[37] *Ibid*., para. 175.
[38] *Ibid*., para. 199.

"…rapid compliance with judgments, especially those requiring legislative action…helps the Strasbourg Court cope with the avalanche of applications by attacking the root causes for repetitive applications"[39].

47. The applicants submit that the judgments in the present cases highlight a number of fundamental flaws in relevant domestic legislation, rules and/or practice which must be addressed in the course of the supervision of the enforcement of these judgments.

(i) Legislation relating to the use of force by the armed forces or security forces

48. In its judgments, the Court notes "the Government's failure to invoke the provisions of any domestic legislation governing the use of force by the army or security forces in situations such as the present one" (see *Isayeva*, para. 199; *Isayeva, Yusupova & Bazeyeva*, para. 198).

49. It is recalled that the Russian Constitutional Court judgment of 31 July 1995[40] recognized the applicability of Additional Protocol II of the Geneva Conventions (relating to the protection of victims of non-international armed conflicts) with respect to the armed conflict in Chechnya, but noted that the Protocol was not duly respected because insufficient measures had been taken for the national implementation of its provisions. The Constitutional Court held, inter alia, that:

"The Federal Assembly of the Russian Federation shall regularize the legislation on the use of the armed forces of the Russian Federation, as well as the regulation of other matters which can arise in extraordinary situations or during conflicts, including those resulting from the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the protection of the victims of non-international armed conflicts".

50. The applicants accordingly submit that the terms of Additional Protocol II should be translated into military law and practice, through the Rules of Engagement (applying to each branch of the armed forces), and through appropriate amendments to all other relevant legislation, for example on states of emergency.

---

[39] See *Implementation of judgments of the European Court of Human Rights*, Introductory Memorandum, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 35, 20 June 2005, para. 6.

[40] Постановление Конституционного Суда Российской Федерации от 31.07.2005 г. № 10-П по делу о проверке конституционности Указа Президента Российской Федерации от 30 ноября 1994 года № 2137 «О мероприятиях по восстановлению конституционной законности и правопорядка на территории Чеченской Республики», Указа Президента Российской Федерации от 9 декабря 1994 года № 2166 «О мерах по пресечению деятельности незаконных вооруженных формирований на территории Чеченской Республики и в зоне осетино-ингушского конфликта», постановления Правительства Российской Федерации от 9 декабря 1994 года № 1360 «Об обеспечении государственной безопасности и территориальной целостности Российской Федерации, законности, прав и свобод граждан, разоружения незаконных вооруженных формирований на территории Чеченской Республики и прилегающих к ней регионов Северного Кавказа», Указа Президента Российской Федерации от 2 ноября 1993 года № 1833 «Об основных положениях военной доктрины Российской Федерации».

51. The Court's judgment in *Isayeva* (para. 97) notes that an expert report of the Combined Armed Services Military Academy in Moscow found that the use of force at Katyr-Yurt on 4-6 February 2000 was in conformity with (1) the Army Field Manual and (2) the Internal Troops Field Manual. Reliance was placed, inter alia, on article 19 of the Army Field Manual which states:

> "The commanding officer's resolve to defeat the enemy should be firm and should be accomplished without hesitation. Shame on the commander who, fearing responsibility, fails to act and does not involve all forces, measures and possibilities for achieving victory in a battle" (*Isayeva*, para. 97).

In view of the European Court's findings as to the disproportionality of the use of force, the applicants submit that there must be a fundamental overhaul of the Army Field Manual and the Internal Troops Field Manual (and the equivalent manuals for other branches of the armed forces) to ensure compliance, inter alia, with the European Convention on Human Rights, and in particular the principle of proportionality[41].

52. Such a review must encompass all relevant military laws and regulations. It is recalled that the expert report of the Combined Armed Services Military Academy relied on six legal acts, the titles of which were not disclosed to the European Court (*Isayeva*, para. 96). The Government should be required to disclose the full text of these and any other relevant provisions, in order to ensure that a comprehensive review takes place.

(ii) The Law on the Suppression of Terrorism

53. The applicants submitted in the course of the proceedings in these cases that the anti-terrorist operation in Chechnya, run by agents of the State, was based on the provisions of the Law on the Suppression of Terrorism and was officially sanctioned at the highest level of State power. It is submitted that Article 21 of the Law on the Suppression of Terrorism, dealing with the limitation of responsibility of forces conducting anti-terrorist operations, should be repealed.

54. Article 21 of the Law reads as follows:

> "Exemption from liability for damage
>
> In accordance with and within the limits established by the legislation, damage may be caused to the life, health and property of terrorists, as well as to other legally-protected interests, in the course of conducting an anti-terrorist operation.

[41] A similar requirement has been laid down in respect of the proportionality of restrictions on freedom of expression in Turkish law: see *Implementation of judgments of the European Court of Human Rights – Court judgments pending before the Committee of Ministers for control of execution for more than five years or otherwise raising important issues*, Working Paper, Committee on Legal Affairs and Human Rights, Mr Erik Jurgens, AS/Jur (2005) 32, 9 June 2005, p. 31.

However, servicemen, experts and other persons engaged in the suppression of terrorism shall be exempted from liability for such damage, in accordance with the legislation of the Russian Federation."

This Law allows anti-terrorist units to interfere with a number of fundamental rights, without setting clear limits on the extent to which such rights may be restricted and without providing remedies for victims of violations. Nor does it contain provisions regarding the responsibility of officials for possible abuses of power.

55. The *Consolidated Report* containing an analysis of the correspondence between the Secretary General of the Council of Europe and the Russian Federation under Article 52 of the European Convention on Human Rights stated that "(the Law's) provisions are not specific and detailed enough in order to provide sufficient safeguards against any abuse, it is difficult to see what effective remedies are guaranteed in case of excessive application of the law and the fact that the law does not contain any proportionality requirement may result in massive interferences with these rights even in circumstances where this is not warranted." The *Consolidated Report* further stated that the Law "even appears to encourage them to overstep the necessity threshold…"[42].

(d) Training of the armed forces, security forces, law enforcement agencies, prosecutors and judges as to respect for the standards set down by the European Convention on Human Rights.

56. The applicants submit that, in the light of these three judgments, a wide-ranging review and overhaul of the human rights training of public officials needs to be carried out.

57. It is suggested that it is essential that steps are taken to mainstream human rights into the initial and in-service training of the military, security forces, prosecutors and judges (see e.g. Interim Resolution ResDH(2005)43, 7 June 2005). Accordingly, these judgments, as well as other relevant case-law of the European Court of Human Rights and international criminal tribunals, should be included in the curricula of the universities and institutes which are involved in the education of the army, officers of the security forces and the interior forces, as well as investigators, prosecutors and judges.

(i) the reorganization of the education and training of members of the armed forces and security forces to ensure respect for human rights in the performance of their duties.

[42] *Consolidated report containing an analysis of the correspondence between the Secretary General of the Council of Europe and the Russian Federation under Article 52 of the European Convention on Human Rights*, June 26, 2000, SG/Inf(2000)24, footnote 6.

58. Training of this nature has previously been made a requirement for compliance in the Turkish cases (see, e.g., Interim Resolution DH(99)434, 9 June 1999 & Interim Resolution ResDH(2005)43, 7 June 2005).

(ii) training of prosecutors and law enforcement agencies to ensure respect for human rights in the performance of their duties, and in particular as to their obligations to investigate alleged human rights violations.

59. This should include both training and the dissemination of information as to the requirements laid down in the extensive European Court case-law under Articles 2 and 3 concerning the obligation to carry out timely and effective investigations.

(iii) Training of judges to ensure respect of the Convention by the security forces

60. Training of this nature has previously been made a requirement for compliance in the Turkish cases (see, e.g., Interim Resolution DH(99)434, 9 June 1999).

4 October 2005