

**Applicant's Observations on the Government's Memorandum  
in the case of Minibayev v. Russia (68793/13)**

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## **1 INTRODUCTION**

1.1 The applicant makes this submission at the invitation of the European Court of Human Rights in response to the Government's observations on the admissibility and merits of the case. In this submission, the applicant discusses the following issues:

- he makes additional observations on the statement of facts prepared by the Registry of the Court; (part 2)
- he makes additional observations on the admissibility of the case; (part 3)
- he comments the government's responses to the question of the Court and makes additional submissions on the merits of the case and the violations of the Convention; (part 4)
- he submits his claim under Article 41 of the Convention; (part 5)
- he restates the object of his claim; (part 6)

**2 OBSERVATIONS ON THE STATEMENT OF FACTS**

- 2.1** In this part the applicant would like to make 2 clarifications concerning the statement of facts prepared by the Registry of the Court.
- 2.2** The application was lodged on 20 November 2008 and not on 20 November 2009.
- 2.3** The applicant invoked a violation of Article 13 (in conjunction with Article 3) of the Convention in addition to violations of Articles 3 & 5 of the Convention. (Supplement to the application, § 15.68 – 15.72)

**3 OBSERVATIONS ON THE ADMISSIBILITY OF THE CASE**

- 3.1 The Government alleged that the application was inadmissible under Article 35(1) of the Convention because it was lodged out of time. (Government Memorandum, § 11)
- 3.2 The applicant submits that he lodged his application on 20 November 2008 and provided an update on his application in December 2011. The applicant lodged his application after he had verified that the domestic investigation became ineffective, in particular after the investigative authorities' refusals to open a criminal case into his ill-treatment and unlawful detention had been repeatedly quashed because the investigation was incomplete. If now the Government hereby implied that the applicant should have lodged his application even earlier in view of the ineffectiveness of the domestic investigation, the applicant recalls that the Government denied that the investigation was ineffective (for example, Government Memorandum, § 25) and in this regard referred to the final domestic decision refusing to open a criminal case, which was not taken until 22 February 2014. (Government Memorandum, § 24)
- 3.3 Accordingly, the applicant invites the Court to declare the application admissible.

#### **4 OBSERVATIONS ON THE GOVERNMENT'S RESPONSES TO COURT'S QUESTIONS**

4.1 In this part the applicant replies to the questions of the Court and comments the Government's responses to the questions of the Court.

##### *Question 1: violation of Article 3 of the Convention (ill treatment)*

4.2 The applicant reiterates that he was subjected to ill-treatment in the police station in Birsk on 4 May 2006 and in the prosecutor's office in Ufa on 5 May 2006. (for details, *see* Supplement to the application, § 14.71 to 14.81)

4.3 In the evening of 5 May 2006 two officers took the applicant to the town clinical hospital no. 21 in Ufa where he was diagnosed with "bruises and haemorrhages on the head.» As he was accompanied by one of the officers who had previously ill-treated him, the applicant was afraid to tell the doctor under which circumstances he sustained these injuries. (Supplement to the application, § 14.86 - 14.88).

4.4 Upon placement in the Ufa SIZO on 6 May 2006 a doctor found extensive bruises on the applicant's body. Now outside the presence of his tormentors, the applicant made a brief statement declaring that he had been tortured. (Supplement to the application, § 14.92 – 14.95 above)

4.5 According to forensic report no. 5823 the applicant had the following injuries: bruises, abrasions, hemorrhages in the soft tissues of the head. Those injuries were caused by "strikes and sliding impacts with blunt objects, the possibility of [the injuries'] formation on 5 May 2006 cannot be excluded." (Supplement to the application, annex 84b) Forensic report no. 9691 did not exclude the possibility that the applicant sustained the injuries on 5 May 2006. (Supplement to the application, annex 85b)

4.6 The investigative authorities alleged that the applicant suffered his injuries before he was deprived of his liberty (Government Memorandum, § 31 and annex 5, page 12) but failed to collect any evidence for this version. The authorities did not even take concrete steps to investigate this version properly. The official version of events is contradicted by the testimonies of 6 colleagues and friends of the applicant. (Supplement to the application, § 14.66 & 14.69)

The investigative authorities dismissed 2 of those testimonies as unreliable because being close friends of the applicant they wanted to help him evade criminal liability. (Government Memorandum, § 33 and annex 5, page 14) At the same time the authorities never bothered to interrogate the other 4 witnesses. The investigative authorities then transmogrified the fact that the police officers contradicted each other and repeatedly altered their statements into reliable evidence that the police officers did not conspire to organize a cover up. (Government Memorandum, annex 5, page 15) The applicant submits that this is preposterous. It is obvious that the officials from Birsk presented a different account from the officials from Ufa in order to exonerate themselves and visa versa. Investigator Mukhametshin altered his testimony after he was confronted with irrefutable evidence that he had lied. (Supplement to the application, § 14.81)

- 4.7 Bearing in mind the State's obligation to account for injuries caused to persons under its control in custody and in view of the absence of a convincing and plausible explanation by the authorities for the applicant's injuries, the applicant invites the Court to find he has established beyond reasonable doubt that he suffered ill-treatment in state custody on 4 and 5 May 2006 in breach of Article 3 of the Convention.
- 4.8 For the reasons outlined in his application, the applicant submits that the ill-treatment he suffered constituted torture. (Supplement to the application, § 15.49)
- 4.9 Regarding the sub-questions posed by the Court the applicant makes the following remarks:
- 4.10 a) i) The applicant did not have any injuries when he was brought to the police station in Birsk on the afternoon of 4 May 2006. The applicant submitted statements from 6 people who testified that the applicant had no injuries before he was taken to the police station. (Supplement to the application, § 14.66 & 14.69)
- 4.11 ii) The applicant was not informed about any of his rights. The applicant's unrecorded detention (see § 4.40 below) deprived him of all procedural safeguards provided in domestic law.

- 4.12 iii) The applicant was not informed of his right of access to a lawyer from the start of his deprivation of liberty. He did not explicitly waive this right either. The applicant did not meet a lawyer until approx. 24 hours after he had been deprived of his liberty and 5 hours after he had incriminated himself during questioning. The lawyer provided to the applicant (Usov) was appointed by the investigator and failed to properly defend the applicant. (Supplement to the application, § 14.83 & 14.84) Usov's credibility is undermined because he failed to notice the applicant's obvious injuries which were medically documented just hours later.
- 4.13 iv) The applicant did not have access to a doctor from the start of his deprivation of liberty. The applicant first gained access to a doctor in the evening of 5 May 2006 but this occurred in the presence of at least one of the police officers who had ill-treated him. The applicant first saw a doctor outside the presence of his tormentors in the late evening of 6 May 2006 upon arrival at the SIZO, meaning more than 48h after he was deprived of his liberty.
- 4.14 b) *see* Government Memorandum, § 16.
- 4.15 i) None of the official investigative measures was conducted during the night.
- 4.16 ii) The applicant did not gain the procedural status of a suspect until 24h after the start of his deprivation of liberty and therefore could not enjoy the procedural safeguards to which a suspect is entitled under Russian law.
- 4.17 iii) The applicant was taken to the police station in Birsk around 4 p.m. on 4 May 2006. Around midnight he was transferred to the prosecutor's office in Ufa where he stayed until the evening of 5 May 2006. At 7 p.m. on 5 May he was brought to the town clinical hospital no. 21 in Ufa. He was then placed in the IVS until the district court hearing on 6 May remanding him in custody. In the late evening of 6 May he was placed in the SIZO.
- 4.18 iv) The applicant did not meet a lawyer until approx. 24 hours after he had been deprived of his liberty and after he had already made a confession during interrogation by Mukhametshin in the morning of 5 May 2006. The lawyer provided to the applicant (Usov) during interrogation in the afternoon of 5 May 2006 was appointed by the investigator and failed to properly defend the

applicant. (Supplement to the application, § 14.83 & 14.84)

*Question 2: violation of Article 3 of the Convention (no effective investigation)*

- 4.19 The applicant submits that the domestic investigation fell far short of the standard for an effective investigation set out by the Court in § 107-110 of *Mikheyev v. Russia*. (no. 77617/01, 26 January 2006)
- 4.20 The applicant submits that according to the Government's own account the final domestic decision was reached after almost 8 years. (Government Memorandum, § 24)
- 4.21 The applicant notes that the investigative authorities at least 5 times (26 June 2006, 11 August 2006, 9 October 2007, 28 September 2011 and 22 February 2014) refused to open a criminal case into the applicant's ill-treatment but that 4 out of 5 refusals were held unlawful by a court and/or by a hierarchical superior investigator because the investigation was incomplete.
- 4.22 The applicants submits that the domestic investigation failed to collect and properly evaluate testimonies of all relevant witnesses. It belatedly questioned certain witnesses, for example: Lugovoy, Khamnayev, I.R. Gareyev and 2 cellmates of the applicant. (Supplement to the application § 14.75, 14.77, 14.88 & 14.96) It failed to question certain witnesses at all, for example: Arslanova, Isayev, Kasyanova, Blinov, Gaynullina, Guryev and 22 out of 24 cellmates of the applicant. (Supplement to the application § 14.68- 14.69, 14.78, 14.84 & 14.96) It failed to conduct a thorough interrogation of certain witnesses, for example: the statements of Chernov and I.R. Gareyev are word for word identical. (Supplement to the application §14.25 & 14.76) Finally, it completely failed to undertake any steps (by organizing confrontations between witnesses etc.) to resolve the obvious contradictions between the witnesses, notably between the officials from Birsk and the officials from Ufa, as well as inside the group of officials from Ufa. (Supplement to the application, § 14.23-14.25, 14.52-14.53, 14.75-14.76 & 14.110-14.112)
- 4.23 The applicant draws the Court's attention to the selective and inconsistent approach to the assessment of evidence by the domestic investigation. In particular, the investigative authorities found no reasons not to believe the

officials from Birsk and Ufa, although they made contradictory statements and some officials were revealed as liars. Despite this, the authorities never seriously contemplated the possibility that the officials could be attempting to evade criminal responsibility for torture. However, at the same time the authorities dismissed the applicant's statements as defense tactics and the testimonies of the applicant's colleagues and friends as unreliable because they wanted to help their friend and colleague to escape criminal liability.

- 4.24 The applicants complain about the lack of proper documentation and evaluation of their injuries by a medical forensics expert. The applicants submit that the forensic examinations they were subjected to fell short of the standards recognized by the Court (*Salmanoglu and Polattas v. Turkey* (no. 15828/03; 17 March 2009), § 79 & 80). The forensic examinations were neither carried out promptly nor thoroughly. (Supplement to the application, § 15.44)
- 4.25 Finally the applicant submits that the domestic investigation lacked independence and impartiality. (Supplement to the application, § 15.45)
- 4.26 Bearing in mind the State's procedural obligation to conduct an effective investigation into a substantial violation of Article 3, the applicant invites the Court to find that the domestic authorities failed to effectively investigate his complaints about ill-treatment and illegal detention in police custody on 4 & 5 May 2006.
- 4.27 Regarding the sub-questions posed by the Court the applicant makes the following remarks:
- 4.28 a) *see* § 4.20 above.
- 4.29 b) i) The investigative authorities bended the medical evidence so that it supported the officers' version according to which the applicant's injuries predated his detention, although the officers' version was by far the least plausible, especially in view of the contradictory and altering statements from these officials and the testimonies of several witnesses who did not observe any injury on the applicant before he was deprived of his liberty. On the quality of the medical documents, *see* Supplement to the application, § 15.44.
- 4.30 ii) *see* § 14.22 above.

- 4.31 iii) The Government simply denied that the state officials made contradictory statements. The applicant submits that the materials of the case submitted by him to the Court clearly prove the opposite.
- 4.32 iv) The investigative authorities alleged that the applicant suffered his injuries before he was deprived of his liberty but failed to collect any evidence for this version. The applicant submits that the authorities did not undertake any specific investigative measures to corroborate their preferred version except for denouncing the witnesses supporting the applicant's account of events as unreliable because of bias. The authorities were satisfied that some of the medical evidence at least did not completely exclude the possibility that the injuries predated the start of the applicant's detention.
- 4.33 v) The Government simply denied that the applicant was held in the IVS. If this were indeed the case, the applicant invites the Government to specify in what institution the applicant then did stay in the night from 5 to 6 May 2006.
- 4.34 c) A. was not independent because he belonged to the prosecutor's office of Bashkortostan which was in charge of the criminal investigation against the applicant. The applicant had directly accused several members of this investigative group of subjecting him to ill-treatment.
- 4.35 d) In § 135 – 137 of *Lyapin v. Russia* (no. 46956/09, 24 July 2014) the Court held that the practice of conducting repeated pre investigation inquiries into credible allegations of ill-treatment and the failure to open a criminal case constituted by itself a violation of Article 3 of the Convention.
- 4.36 e) The judge who remanded the applicant in custody on 6 May 2006 did not undertake any steps regarding the applicant's ill-treatment.

*Question 3: violation of Article 5 of the Convention*

- 4.37 The Government alleged that the applicant's deprivation of liberty was voluntary from the afternoon of 4 May 2006 until his arrest as a suspect at 4 p.m. on 5 May 2006. (Government Memorandum, § 13 & 42)
- 4.38 The applicant strongly disagrees with the government's position.
- 4.39 The Government's allegation is simply not credible and contradicted by the

statements of the applicants' colleagues (Supplement to the application, § 14.66) and the police officers from Birsk. (Supplement to the application, § 14.70) The applicant refers to the fact that the authorities also recognized that the applicant's overnight stay at the prosecutor's office violated domestic law. (Supplement to the application, § 14.81 *in fine*)

- 4.40 The applicant reiterates that, although he was brought to the Birsk police station at 4 p.m. on 4 May 2006, the authorities failed to properly record his presence at the police station in Birsk and later at the prosecutor's office in Ufa and hereby denied him all procedural safeguards to which he was entitled under domestic law. This constituted a clear violation of Article 5.
- 4.41 The investigator's reasoning that "there was no de facto deprivation of liberty (of the applicant) because, if the investigative authorities had wanted to arrest the applicant in conformity with Articles 91 & 92 of the RF CPC, nothing would have prevented them of doing so" (Government Memorandum, annex 5, page 13) cannot justify the obvious violation of criminal procedure law. It's pure legal nihilism because it implies that any suspect is automatically beyond the protection of the law.

*Violation of Article 13 of the Convention (in conjunction with Article 3)*

- 4.42 The applicant submits that in accordance with §§ 140-141 of *Mikheyev v. Russia*, in addition to the payment of compensation where appropriate, an effective remedy implies a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the ill-treatment.
- 4.43 The applicant has already demonstrated that the domestic authorities failed to carry out an effective investigation into the ill-treatment.
- 4.44 In light of the above, the applicant invites the Court to find that he was denied an effective remedy in violation of Article 13 of the Convention.

## **5 OBSERVATIONS UNDER ARTICLE 41 OF THE CONVENTION**

### *A. Pecuniary damage*

5.1 The applicant does not claim compensation for pecuniary damage.

### *B. Non-pecuniary damage*

5.2 The applicant has suffered a violation of several of the most fundamental articles of the European Convention of Human Rights. As a result of this, the applicant has felt severe emotional anguish and distress, anxiety and trauma.

5.3 He also feels immense frustration, helplessness and injustice in the face of the indifference that the Russian authorities have demonstrated to his case. As described in the applicant's detailed submissions, the Russian authorities have consistently refused to conduct an effective investigation into his complaints. In addition, the confession statements obtained after torture formed the ground for the applicant's 8 year prison sentence.

5.4 The applicant therefore requests the Court to award him **40 000 euro** in non-pecuniary damages.

**6 CONCLUSION**

- 6.1 In light of the above, the applicant respectfully asks the European Court of Human Rights to find a violation of Articles 3, 5 and 13 (in relation with Article 3) of the Convention.

Place: Nizhniy Novgorod, Russian Federation

Date: 3 October 2014

Olga Sadovskaya

Representative of the applicant