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Mikheyev v. Russia: the Issue of Adequacy in Investigating Claims of Ill-treatment under the European Convention

I. INTRODUCTION

In recent years, independent observers have become increasingly alarmed with a rapidly rising number of victims tortured and killed at the hands of Russian law-enforcement agents. The lack of convincing efforts on the part of the Russian State to eradicate the problem has been particularly troubling. The Russian government dismisses these claims as “abstract and irrelevant.”¹ It maintains that Russia possesses effective legal mechanisms to protect individuals against ill-treatment. But when one hears a story of a young victim who will never be able to walk, have children, or go to the bathroom unaided again, one must wonder just how effective those “legal mechanisms” are. For that young Russian man and thousands of other criminal detainees like him, these claims are neither abstract nor irrelevant.

That story began on September 10, 1998, when police arrested Alexei Mikheyev and his friend Ilya Frolov in connection with the disappearance of a teenage girl, Mariya Savelyeva.² Savelyeva was last seen with them in the city of Bogorodsk, Russia, on the previous day.³ Initially, both Mikheyev and Frolov denied any involvement in her disappearance.⁴ After being repeatedly beaten by police investigators, Frolov agreed to sign a confession admitting that he and Mikheyev had raped and killed Savelyeva.⁵ On September 19, several police and procuracy officials tortured Mikheyev to make him corroborate Frolov’s confession.⁶ While he

1. *Mikheyev v. Russia*, App. No. 77617/01, Eur. Ct. H.R. ¶ 100 (2005).

2. *Id.* ¶¶ 9-10.

3. *Id.*

4. *Id.* ¶¶ 14-22.

5. *Id.* ¶¶ 18, 43.

6. *Id.* ¶ 20.

was sitting handcuffed on a chair, police investigators administered electric shocks to his earlobes using metal clips wired to an electrical box, a torture practice known as “a phone call to Putin” (referring to Vladimir Putin, president of the Russian Federation).⁷ Unable to withstand the pain, Mikheyev agreed to confess.⁸ A sheet of paper containing an unfinished passage in Mikheyev’s handwriting describing the details of Savelyeva’s disappearance would later be found in Mikheyev’s police file under the title “Voluntary Confession.”⁹ When his tormentors left for a tea break, half-dead Mikheyev threw himself out of the second floor window, breaking a double-glazed window with his head.¹⁰ He fell on a police motorcycle and broke his spine.¹¹ On that same day, the missing girl returned home unharmed: she had gone to visit a friend without informing her parents.¹²

The story of Alexei Mikheyev’s ordeal is one of the many recent accounts of police torture in Russia. Suffocation; electroshock; and beatings with fists, books, and poles are some of the means Russian police utilize to extract confessions from criminal detainees.¹³ These practices are well-known and well-documented both in Russia and outside its borders.¹⁴ Yet claims of ill treatment are rarely investigated and offenders are rarely prosecuted.¹⁵

Without adequate investigations, however, the number of torture cases in Russia is bound to rise. This Note argues that Russian authorities are presently unable to conduct proper investigations into the claims of ill treatment by law-enforcement officials. As the holding of the European Court of Human Rights (ECHR) in *Mikheyev v. Russia* reveals, this inability stems from the unchecked power of the Russian Procuracy. The recently-

7. *Id.*

8. *Id.*

9. *Id.* ¶ 59.

10. Interview by Amnesty Int’l with Alexei Mikheyev (Jan. 14, 2003), <http://news.amnesty.org/mavp/mediaclip.nsf/0/1963C842F62C014380256CAE00594C61>.

11. *Mikheyev*, App. No. 77617/01, Eur. Ct. H.R. ¶ 22.

12. *Id.* ¶ 25.

13. Press Release, Amnesty Int’l, Russian Federation: Beating Out “Confessions” in Police Detention (Nov. 22, 2006), <http://news.amnesty.org/index/ENGEUR460602006> [hereinafter Russian Federation: Beating Out “Confessions”].

14. See Amnesty Int’l, *Russian Federation: Torture and Forced Confessions in Detention*, AI Index EUR 46/056/2006, Nov. 2006, available at [http://web.amnesty.org/library/pdf/EUR460562006ENGLISH/\\$File/EUR4605606.pdf](http://web.amnesty.org/library/pdf/EUR460562006ENGLISH/$File/EUR4605606.pdf) [hereinafter *Russian Federation: Torture and Forced Confessions*].

15. Russian Federation: Beating Out “Confessions,” *supra* note 13.

enacted Russian Code of Criminal Procedure (CCP) vests the Procuracy with the power to pursue criminal prosecutions and to supervise criminal investigations. This dual power precludes any attempts at an independent, expedient, and thorough investigation of an ill-treatment claim.

Part II of this Note will provide an overview of Mikheyev's struggle with Russian authorities to seek justice following the incident. Part III will briefly discuss the new Russian CCP and the power of the Procuracy, a governmental agency responsible for ensuring that all State institutions as well as individuals observe the law. Part IV will lay out the legal framework of the ECHR's implied positive duty to investigate the violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention). Finally, Part V will provide a legal analysis of Mikheyev v. Russia, exposing severe deficiencies in the new Russian CCP and providing conceptual guidance for creating a criminal justice system that is capable of effectively investigating torture claims.

II. OFFICIAL RESPONSE TO MIKHEYEV'S ALLEGATIONS

Two days after Mikheyev jumped out of the police station window, the procuracy office commenced a criminal investigation into the incident.¹⁶ The investigation ceased shortly thereafter due to an alleged lack of evidence.¹⁷ The investigators concluded that Mikheyev's claim was unsubstantiated because the police officers suspected of torturing him denied the allegations.¹⁸ The Procuracy promptly reopened the case only to close it again based on the same rationale.¹⁹ During the following seven years, the investigation was suspended, closed, and reopened twenty-three times.²⁰ On three occasions, the procuracy office denied Mikheyev's requests to reopen his case.²¹ The investigation itself was laden with deficiencies and omissions that will be discussed in Part IV of this Note.

In 2001, frustrated with the Russian criminal system,

16. *Mikheyev*, App. No. 77617/01, Eur. Ct. H.R. ¶ 28.

17. *Id.* ¶ 34.

18. *Id.* ¶¶ 29, 35.

19. *Id.* ¶ 36.

20. Vladimir Ardayev, *Chetvert Milliona Postradavshemu ot Pytok [Quarter of a Million to a Victim of Torture]*, BBC RUSSIAN, Jan. 30, 2006, http://news.bbc.co.uk/hi/russian/russia/newsid_4663000/4663038.stm.

21. *Id.*

Mikheyev filed an action with the ECHR claiming a violation of the Convention's prohibition on torture.²²

In 2005, seven years after the incident, the Procuracy finally brought charges against two police officers for torturing Mikheyev.²³ Other law enforcement agents involved in the matter, including a high-ranking procuracy official, were never charged. The Russian court found the two police officers guilty of abusing their power and sentenced them to four years of imprisonment.²⁴ However, in 2006, when the ECHR heard Mikheyev's case, this judgment had not yet been made final.²⁵

Alexei Mikheyev is now permanently bedridden.²⁶ As a result of his fall, he is paraplegic and suffers from severe dysfunction of his pelvic organs.²⁷ He requires permanent nursing care and frequent hospital examinations.²⁸ In connection with the incident, Mikheyev received a one-time insurance indemnity from the Russian government in the amount of 60,302 Russian rubles (about \$2,250).²⁹

III. JUSTICE IN THE RUSSIAN CRIMINAL SYSTEM

Seventy-four years of Soviet rule left Russia with a legacy of laws that were not conceived to protect human rights, but to perpetuate "the authoritarian power of one of the most tyrannical regimes in the history of the world."³⁰ Specifically, the USSR designed criminal law to ensure the success of the prosecution rather than to facilitate proper administration of justice.³¹ Under the Soviet rule, the power of the Procuracy was nearly absolute.³² The USSR's Code of Criminal Procedure vested the Procuracy with the dual power to supervise criminal investigations and to

22. *Id.*

23. *Mikheyev*, App. No. 77617/01, Eur. Ct. H.R. ¶ 61.

24. *Id.*

25. *Id.*

26. *Id.* ¶ 75.

27. *Id.*

28. *Id.*

29. *Id.*

30. Leonard Orland, *A Russian Legal Revolution: The 2002 Criminal Procedure Code*, 18 CONN. J. INT'L L. 133, 135-36 (2002).

31. *Id.* at 135.

32. See Lauren Chen, Comment, *Power Plays: Reallocating Power Under the New Russian Federation Code of Criminal Procedure*, 30 N.C.J. INT'L L. & COM. REG. 429, 431 (2004).

pursue all criminal prosecutions on behalf of the State.³³ This arrangement of powers created a vicious conflict of interest: a law-enforcement agent suspected of torturing a detainee would be prosecuted by a fellow procurator, who would also oversee the investigation. A tortured detainee, therefore, had no real recourse as the Soviet Procuracy regularly used its unchecked power to shield law enforcement officers from prosecution by suppressing the investigation into the detainee's claim.³⁴

The enactment of the new Russian Code of Criminal Procedure in 2002 was Russia's genuine attempt to break away from the Soviet past. Approved by the Russian federal legislature, the new Russian CCP was hailed as a fundamental undertaking designed to "change a criminal justice system widely condemned by Russians, as well as other nations, as oppressive" to a system that facilitates protecting human rights by subjecting all of its actors to the rule of law.³⁵

The new CCP makes an attempt to qualify the power of the Procuracy. It gives investigating officers a certain degree of autonomy.³⁶ In particular, the decisions affecting the execution and direction of an investigation are now within discretion of investigators.³⁷ In an attempt to avoid a potential conflict of interest, the new CCP prohibits officers involved in a current or former tactical inquiry operation related to a case to conduct a later inquiry of the same case.³⁸

However, the new CCP does not provide for an independent agency to determine whether an investigation has been adequate.³⁹ Thus, the Procuracy still retains a significant amount of control over the criminal investigation process.⁴⁰ The procurators initiate investigations, assign cases, issue binding instructions to investigators, and personally participate in inquiry operations.⁴¹ Moreover, investigators are required to obtain procurator's

33. *Id.* at 433.

34. *Russian Federation: Torture and Forced Confessions*, *supra* note 14.

35. Orland, *supra* note 30, at 133.

36. Chen, *supra* note 32, at 448.

37. *Id.*

38. *Id.*

39. See generally Paul J. De Muniz, *Judicial Reform in Russia: Russia Looks to the Past to Create a New Adversarial System of Criminal Justice*, 11 WILLAMETTE J. INT'L L. & DISP. RESOL. 81, 93 (2004).

40. Chen, *supra* note 32, at 448.

41. *Id.*

consent to initiate a case or to file procedural motions in a court.⁴² Finally, procurators have the power to recuse and remove an investigator from a case.⁴³ As a result, under the new CCP, the investigating officers remain mere instruments of the Procuracy rather than being independent and neutral “information-gatherers.”⁴⁴

Thus, despite the legislative efforts, the power of the Procuracy lives on and remains largely unrestrained. A victim of torture by law enforcement agents still has no real recourse in the Russian criminal justice system. The Russian Procuracy still can and often does wield its power to protect its own ranks and police officials from investigation and prosecution with virtual impunity.⁴⁵

IV. THE FRAMEWORK OF THE DUTY TO INVESTIGATE

As the struggle of Alexei Mikheyev with the Russian authorities reveals, the Russian criminal justice system has proven itself incapable of providing accountability for the crimes law enforcement officials commit against detainees. Fortunately, that does not mean that victims are left without options. The international legal system is designed to fill the gaps left by national systems when domestic crimes also constitute violations of international law. Faced with the dismal prospects of finding justice within the Russian criminal system, thousands of victims have turned to the European Court of Human Rights.⁴⁶

A. *The Convention and its Enforcer*

In 1996, Russia signed the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴⁷ The Convention prohibits torture in absolute terms. In particular, Article 3 of the Convention states that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁴⁸

42. *Id.*

43. *Id.*

44. *Id.*

45. *Russian Federation: Torture and Forced Confessions*, *supra* note 14.

46. Claire Bigg, *Russia: Russians Increasingly Seek Redress in European Court*, RADIO FREE EUR. / RADIO LIBERTY, Feb. 3, 2006, available at <http://www.rferl.org/featuresarticle/2006/02/deb146c3-60a5-4a03-8c3d-e86a686f727a.html>.

47. See Jeffrey Kahn, Note, *Russian Compliance with Articles Five and Six of the European Convention of Human Rights as a Barometer of Legal Reform and Human Rights in Russia*, 35 U. MICH. J.L. REFORM 641, 641-42 (2002).

48. Convention for the Protection of Human Rights and Fundamental Freedoms, art.

Taken together with the Article 1's duty "to secure to everyone within their jurisdiction the rights and freedoms" defined in the Convention, the prohibition on torture requires all Member-States to accept a two-prong obligation.⁴⁹ First, the parties must ensure that individuals within their respective jurisdictions are not subjected to torture or inhuman or degrading treatment. Second, Member-States must adequately investigate and prosecute those responsible for violations. As a member of the Convention, Russia accepted this obligation and recognized the ECHR's authority to ensure that Russian government observes its respective duties.⁵⁰

The ECHR serves as Europe's constitutional court for human rights and remains the most important mechanism of the Convention.⁵¹ It is vested with jurisdiction over "all matters concerning the 'interpretation and application'" of the Convention and possesses a powerful means of enforcing its decisions.⁵² When the ECHR finds a Member State in violation of the Convention, the State's government must obey the Court's verdict.⁵³ The compliance with the ECHR's decisions has been exemplary as Member States have consistently followed the Court's judgments in virtually every case.⁵⁴

B. Legal Background

1. General Duty to Investigate

The ECHR case law reflects the Court's awareness that a prohibition against torture will be ineffective in practice unless Member States are required to investigate every claim of human rights violations.⁵⁵ Hence, the ECHR may find a violation of the Convention if a Member State fails to conduct an effective investigation of a claim of torture by State agents.⁵⁶

3, Nov. 4, 1950, Europ. T.S. No. 5.

49. *Id.* art. 1; see also Paul L. McKaskle, *The European Court of Human Rights: What It Is, How It Works, and Its Future*, 40 U.S.F. L. REV. 1, 57 (2005).

50. Kahn, *supra* note 47, at 642.

51. Tarik Abdel-Monem, *The European Court of Human Rights: Chechnya's Last Chance?*, 28 VT. L. REV. 237, 263 (2004).

52. *Id.*

53. *Id.* at 265.

54. *Id.* at 265-66.

55. See Thomas M. Antkowiak, Note, *Truth as Right and Remedy in International Human Right Experience*, 23 MICH. J. INT'L L. 977, 982 (2002).

56. *Id.*

The ECHR introduced the legal concept of the duty to investigate human rights violations in *McCann v. United Kingdom*. In *McCann*, the ECHR held that the prohibition on torture implies a need for some form of official investigation in cases where an individual was killed as a result of the use of force by State agents.⁵⁷ The investigation must be effective in that it should be capable of leading to the identification and punishment of the offenders.⁵⁸ If this were not the case, State agents would be able to abuse the rights of detained individuals within their control with impunity.

2. Adequacy of Investigation

According to ECHR's case law, an investigation must be adequate to be effective. In *Edwards v. United Kingdom*, the ECHR noted that a duty to investigate under Article 3 "is not an obligation of result, but of means."⁵⁹ Adequacy in this context does not equal success. Nor does the lack of conclusion make it per se inadequate. To be adequate, an investigation should simply employ the means that enable investigating authorities, at least in principle, to discover the substance of the alleged incident. It should be capable of leading to the establishment of the relevant facts, as well as identification and punishment of the perpetrators.⁶⁰

When an investigation involves a claim of torture by State agents, adequacy necessarily entails two aspects: procedural and substantive. Procedural adequacy requires independence of investigation. The State must ensure that the investigation is conducted by an independent agency in a way that guarantees its impartiality.⁶¹ Substantive adequacy entails two additional requirements: thoroughness and expediency. The investigating agency must make a serious attempt to ascertain the facts leading to the torture claim.⁶² The agency must not rely on hasty or ill-founded conclusions to close its investigation or as the basis of its

57. *McCann v. United Kingdom*, 324 Eur. Ct. H.R. (ser. A) ¶ 161 (1995) (Grand Chamber).

58. *Edwards v. United Kingdom*, 2002-II Eur. Ct. H.R. ¶ 71.

59. *Id.*

60. *Kaya v. Turkey*, 2000-III Eur. Ct. H.R. ¶ 124.

61. *Ogur v. Turkey*, 1999-III Eur. Ct. H.R. ¶¶ 85-93 (Grand Chamber); *see also Gulec v. Turkey*, 1998-IV Eur. Ct. H.R. ¶¶ 77-82.

62. *See Assenov v. Bulgaria*, 1998-VIII Eur. Ct. H.R. ¶¶ 102-06; *see also Tanrikulu v. Turkey*, 1999-IV Eur. Ct. H.R. ¶¶ 101-11 (Grand Chamber).

decisions.⁶³ Further, the authorities must conduct all facets of the investigation promptly and at relevant times.⁶⁴

V. LEGAL ANALYSIS

In *Mikheyev v. Russia*, the ECHR confronted issues of both procedural and substantive adequacy in the same case for the first time. Although the Court's case law on the subject is limited, its recent decisions provide overwhelming support for the holding in this case.

A. Procedural Adequacy

The procedural requirement of independence is the foundation of an adequate investigation. The ECHR has held that independence of an investigation demands the absence of a hierarchical or institutional connection between suspected offenders and those who investigate them.

The ECHR articulated this view in *Ogur v. Turkey*, which involved the death of a civilian in the course of a security force operation.⁶⁵ During the investigation, two conflicting theories of the incident emerged. The local authorities contended that the victim had been one of the suspected terrorists who found refuge at a remote mining site. During an operation to capture them, the security forces fired upon the terrorists, killing the victim.⁶⁶ The victim's mother, however, claimed that her son had been one of the guards at the mining site and that the security forces had shot and killed him without warning.⁶⁷

The institutional link between the security forces and the investigating agency in *Ogur* was evident. The local governor in charge of the security force operations also chaired the administrative body that supervised the proceedings in the case.⁶⁸ In addition, the governor was in charge of assigning an official investigator to the claim against the security forces.⁶⁹ As a member of the police force, the investigator was a subordinate to the same chain of command as the security forces and took his directions

63. See *Assenov v. Bulgaria*, 1998-VIII Eur. Ct. H.R. ¶¶ 102-06.

64. *Salman v. Turkey*, 2000-VII Eur. Ct. H.R. ¶ 106 (Grand Chamber).

65. See *Ogur*, 1999-III Eur. Ct. H.R. ¶¶ 9-15.

66. *Id.* ¶ 10.

67. *Id.*

68. *Id.* ¶ 91.

69. *Id.*

from the very people he was investigating.⁷⁰ As a result, he never seemed to have had any doubt about the government's version of the events leading to the victim's death.⁷¹ The Court concluded that in cases where there is an evident structural link between the State agents responsible for the investigation and those implicated in the ill-treatment, the investigation will fail to meet the procedural requirements of independence.⁷²

Consequently, in Russia the dual role of the Procuracy means that in almost every case a criminal investigation will fail to be independent and impartial. It certainly failed in the case of Alexei Mikheyev. On the day of the incident, Mikheyev was tortured in the presence of senior police officers and regional procuracy officials.⁷³ The police referred the investigation of Mikheyev's ill-treatment claim to the city procurator's office, which reported directly to the regional procuracy office where one of the alleged torturers was a high-ranking official.⁷⁴

In the years that followed, the investigation remained in the hands of the same procuracy office.⁷⁵ In 2004, the case was forwarded to a special unit that handled investigations into cases of particular importance.⁷⁶ This unit, however, was subordinate to the Procuracy and the case still remained within the jurisdiction of the regional procuracy office.⁷⁷ As a result, many essential investigative functions in the case were entrusted to the suspects.⁷⁸ For example, the Procuracy assigned the task of finding Mikheyev's key witness to a police officer who was actually implicated in the incident.⁷⁹ It came as no surprise that the officer could not locate the witness despite the fact that the witness was permanently confined to a wheelchair and rarely left his home.⁸⁰ Given such an obvious hierarchical connection between the perpetrators and the investigators, the ECHR was well-justified in finding that the official investigation in Mikheyev was neither independent nor impartial.

70. *Id.*

71. *Id.*

72. *Id.* ¶ 93.

73. Mikheyev v. Russia, App. No. 77617/01, Eur. Ct. H.R. ¶ 19 (2005).

74. *Id.* ¶ 115.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* ¶ 116.

79. *Id.*

80. *Id.*

B. Substantive Adequacy

1. Requirement of Thoroughness

The inquiry into the adequacy of the investigation does not end with its procedural aspect. Even a wholly independent investigation can be inadequate if it fails to meet the two elements of substantive adequacy: thoroughness and expediency.⁸¹ In cases of less-than-independent investigations, however, failure to meet these elements becomes a virtual certainty. Less-than-impartial officers have no incentive to be either thorough or expedient when it comes to proving their own guilt.

The ECHR first introduced the requirement of thoroughness into their determination of adequacy in *Assenov and Others v. Bulgaria*. Fourteen-year-old Anton Assenov alleged that while he had been in police custody, the officers had beaten him with truncheons.⁸² As a result, he sustained numerous injuries to his body.⁸³ After a short-lived inquiry into the incident, the State investigators concluded that Assenov's injuries were caused by a third party.⁸⁴ Despite the lack of evidence to support these findings, the head of the investigating agency closed the case, concluding that there was no truth to Assenov's allegations.⁸⁵

Although the case was later reopened, the investigators never attempted to collect any new evidence.⁸⁶ Thus, even though the incident had taken place in public view and no less than fifteen people witnessed it firsthand, officials made no effort to ascertain the truth by contacting and questioning them.⁸⁷ To address this investigative deficiency, the ECHR held that where an individual has an arguable claim of ill treatment in violation of Article 3, the notion of an adequate remedy requires a thorough investigation by the State.⁸⁸ Any omission that potentially undermines the ability to establish the cause of injuries or identity of the offenders will put an investigation at risk of failing the thoroughness requirement. Therefore State authorities must take all reasonable steps to

81. *See, e.g.*, *Assenov v. Bulgaria*, 1998-VIII Eur. Ct. H.R. ¶ 103.

82. *Id.* ¶ 9.

83. *Id.* ¶ 11.

84. *Id.* ¶ 16.

85. *Id.* ¶¶ 12-17.

86. *Id.* ¶¶ 18-23.

87. *Id.* ¶ 103.

88. *Id.* ¶ 106.

secure the evidence pertaining to the incident, including eyewitness testimony and forensic evidence.

The Procuracy case records in Mikheyev similarly revealed a number of significant omissions in the official investigation. First, until 2000 every decision to reopen Mikheyev's case referred to the "need for further and more thorough investigation."⁸⁹ The officials in charge, however, frequently failed to follow these directions.⁹⁰ As a result, every subsequent decision to discontinue the proceedings was based on identical questionable reasoning.⁹¹ Second, even when investigators had discovered new evidence, they had not included the new findings in their official reports.⁹² Thus, investigators did not disclose that they had carried out a search of the premises where Mikheyev had been tortured.⁹³ They also omitted the fact that the search yielded an important piece of evidence – Mikheyev's written confession.⁹⁴

In 2000, the investigation finally moved forward and the new information appeared in the investigators' official reports.⁹⁵ However, precious time had been lost, which had an undeniably negative impact on the accuracy and thoroughness of the investigation.⁹⁶

2. Requirement of Expediency

The second element of substantive adequacy is the requirement of expediency. In *Labita v. Italy*, where the effectiveness of the official investigation was at issue, the ECHR emphasized the importance of a prompt reaction by State authorities to the complaints of ill treatment.⁹⁷ In *Timurtas v. Turkey*, the Court focused its attention on the unjustified delays in conducting certain investigative measures.⁹⁸

In *Timurtas*, the plaintiff's son disappeared within the State penitentiary system after being arrested by the State police.⁹⁹

89. *Mikheyev v. Russia*, App. No. 77617/01, Eur. Ct. H.R. ¶ 114 (2005).

90. *Id.*

91. *Id.*

92. *Id.* ¶ 112.

93. *Id.*

94. *Id.*

95. *Id.* ¶¶ 112-14.

96. *Id.* ¶ 114.

97. *See Labita v. Italy*, 2000-IV Eur. Ct. H.R. ¶¶ 133-36 (Grand Chamber).

98. *See Timurtas v. Turkey*, 2000-VI Eur. Ct. H.R. ¶ 89.

99. *Id.* ¶¶ 10-22.

Official inquiry yielded no clues as to where the plaintiff's son was.¹⁰⁰ Immediately after the investigation commenced, the plaintiff apprised the authorities of information he had obtained through informal channels.¹⁰¹ The plaintiff offered statements of several witnesses who testified that the police had transferred his son to the Sirnak province of Turkey.¹⁰² The witnesses had seen the plaintiff's son firsthand at a place of detention in Sirnak.¹⁰³ The plaintiff had grave reasons to worry: two years before the incident, his other son had died while in the custody of Sirnak police.¹⁰⁴ Yet the authorities ignored and subsequently dismissed the witnesses' testimonies and the father's pleas.¹⁰⁵ It was not until two years after the disappearance that State authorities contacted Sirnak province police to inquire about the fate of the plaintiff's son.¹⁰⁶ By that time, however, he was nowhere to be found; his whereabouts are unknown to this day and he is presumed dead.¹⁰⁷ "The lethargy displayed by the investigating authorities," the Court stated in its Timurtas decision, "poignantly bears out the importance of the prompt judicial intervention" that may prevent life-threatening violations of the fundamental guarantees contained in the Convention.¹⁰⁸

Similarly, in Mikheyev, the procuracy officials were anything but expedient in taking a number of essential investigative measures. They conducted a forensic medical examination of Mikheyev more than five weeks after the alleged ill treatment.¹⁰⁹ By that time, the biological analysis that detects the invisible injuries to the skin caused by the application of electrodes was of no use.¹¹⁰ Investigators did not request that Mikheyev identify the offenders in a lineup until two years after the incident.¹¹¹ Mikheyev's mother had been among the first witnesses to see him after the incident in 1998; yet investigators did not question her

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* ¶¶ 87-90.

107. *Id.* ¶ 86.

108. *Id.* ¶ 89.

109. *Mikheyev v. Russia*, App. No. 77617/01, Eur. Ct. H.R. ¶ 113 (2005).

110. *Id.* ¶ 93.

111. *Id.* ¶ 113.

until 2000.¹¹² In 2000, the Procuracy discontinued the proceedings based on its “findings” that Mikheyev was not a victim of torture, but rather of his “suicidal” mental condition.¹¹³ But his psychiatric examination was not conducted until 2001, long after the Procuracy issued that decision.¹¹⁴ Such blatant tardiness on the part of investigating officers was unacceptable but inevitable: without the oversight of an independent body, they were in no hurry to secure evidence that would incriminate them or their fellow officers.

VI. CONCLUSION

The European Court of Human Rights concluded that Russian authorities failed to conduct an adequate investigation into Mikheyev’s complaint of torture by State agents.¹¹⁵ It found Russia in violation of Article 3 of the Convention and awarded 250,000 euros (about \$325,000) in damages to Alexei Mikheyev.¹¹⁶

This failure of the Russian criminal justice system was to be expected. The lack of procedural adequacy was bound to produce a substantively inadequate outcome. Specifically, the lack of an independent body to conduct inquiries was likely to result in an ineffective investigation that could only yield ill-founded conclusions. Therefore, to prevent future violations of Article 3, Russia must fix defects in its Code of Criminal Procedure exposed by the ECHR’s holding. Stripping the Procuracy of its unrestrained power and providing for an independent investigative body is the first step towards guaranteeing impartiality of inquiries. Such an independent body can potentially ensure that investigations are conducted in the more thorough and expedient manner.

It would be naïve to expect that an injection of modern norms and practices into its legal system can “fix” Russia overnight. In spite of the steps Russia has made on its way to a fair and just criminal system, the legacy of the Soviet-era view of law as a mechanism of oppression considerably slows Russia’s progress.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* ¶ 136.

116. *Strasburgskiy Sud Postanovil Vyplatit 250 Tysyach Evro Rossiyaninu, Stavshemu Invalidom Posle Pytok v Militzii* [Strasburg Court Awards 250 Thousand Euros to a Russian Citizen], NEWSRU (Russ.), Jan. 26, 2006, <http://www.newsru.com>.

Therefore the Convention and its enforcer, the ECHR, will remain the only effective organs for the protection of human rights of Russian citizens for some time to come. Not only will the ECHR provide a forum of last resort for the victims, its case law will also serve as a conceptual guide for implementing the investigative means that can bring the perpetrators to justice.

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