

**ANALYSIS OF THE  
CASE OF MIKHEYEV V. RUSSIA**  
*(Application no. 77617/01)*

**JUDGMENT OF THE EUROPEAN COURT OF  
HUMAN RIGHTS**

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## **Introduction**

This is an analysis of the judgment of the European Court of Human Rights (hereinafter referred to as the “European Court”) on the case of *Mikheyev v. Russia*, issued on 26 January 2006. The case concerns violations of Articles 3 (prohibition of torture) and 13 (right to an effective remedy) of the European Convention on Human Rights (hereinafter referred as “ECHR”).

This analysis aims to study the facts of the case, including a thorough examination of the applicant’s complaints and the arguments of the Russian Government. The analysis will also provide an overview of the specific approaches of the European Court regarding the interpretation of the rights and freedoms in question.

This analysis is educational in character and is primarily designed to enable legal professionals, including judges, lawyers, advocates, legal service providers and others involved in the protection of human rights - including law students - to identify the criteria and the standards that the European Court follows when interpreting the rights and freedoms guaranteed by the European Convention.

## PART I – CASE OF MIKHEYEV V. RUSSIA

### A. Short summary of the facts of the case

Aleksey Yevgenyevich Mikheyev (the applicant), a Russian national, was born in 1976 and lives in Nizhney Novgorod (Russia). At the material time he was a road traffic police officer.

On 8 September 1998, while off duty, the applicant and his friend F, met MS, a teenage girl, in Bogorodsk (Nizhney Novgorod region) and gave her a lift to Nizhney Novgorod in the applicant's car.

On 10 September 1998 MS's mother informed the police of her daughter's disappearance.

On 10 September the applicant and his friend F were arrested by the Bogorodsk police and questioned in relation to MS's disappearance and detained in custody. No formal charges were brought against them at this point.

On the evening of 10 September 1998 while in police custody, the applicant was visited by his superior officer who forced him to sign a back-dated letter of resignation from the police.

The chronology of events and legal proceedings, which were held in the case of *Mikheyev v. Russia* are described in Table No. 1 below.

*Table .1*

THE DOMESTIC JUDICIAL INVESTIGATION	
<b>11 September 1998</b>	The police searched the applicant's flat, country house, garage and car and found three gun cartridges in his car.
<b>12 September 1998</b>	An administrative offence report was filed by three police officers of the Bogorodsk police department against the applicant and F for allegedly disturbing the peace. On the same day they were sentenced to five days administrative detention.  While in detention in Bogorodsk police station, the applicant had been repeatedly questioned about the disappearance of MS. However, the applicant denied any involvement in her disappearance.
<b>16 September 1998</b>	The police opened a criminal investigation into the finding of the gun cartridges in the applicant's car. By this time the term of administrative detention had expired and he was placed in custody in connection with the criminal case and transferred to another detention centre under the jurisdiction of Leninskiy police department which was in charge of the criminal case. The applicant submitted that after this transfer the questioning had become more intensive and violent. The police officers on several instances slapped him and threatened with torture trying to extract a confession that he had killed MS.  Meanwhile, F (the applicant's friend) testified to the police that he

	had seen the applicant rape and kill MS. He indicated the place where they allegedly hidden the body, however the police did not find the body of MS in the indicated place.
<b>19 September 1998</b>	<p>The applicant was questioned at Leninskiy police station in the presence of several police officers and prosecution officials, including the deputy regional prosecutor.</p> <p>The applicant alleged that he had been subjected to torture in order to make him corroborate F's confession, namely that he raped and killed MS. The applicant submitted that while he was sitting handcuffed on a chair, two police inspectors several times applied electric shocks to his ears through metal clips. The applicant had also been threatened with severe beatings and application of an electric current to his genitals.</p> <p>According to the applicant unable to withstand the torture and left unattended for a moment, he had broken free and jumped out of the window of the second floor of the police station in order to commit suicide. He had fallen on a police motorcycle parked in the courtyard and broken his spine. Accompanied by a police inspector he was immediately taken to hospital, where he was examined by a doctor, who established various injuries caused by his fall from the window, affecting in particular his vertebral column and locomotor system.</p>
<b>19 September 1998</b>	On the day of the applicant's fall from the window, MS returned home unharmed. She explained that on the night of 8 September 1998 the applicant had offered her a ride in his car and she had agreed. When they had arrived in Nizhniy Novgorod, the applicant had suggested that she could spend the night at his place, but she had refused and the applicant had let her go. MS had spent several days with her friends living in Nizhniy Novgorod, without letting her mother know where she was.
<b>21 September 1998</b>	The applicant's detention was formally stopped.
<b>22 September 1998</b>	The applicant underwent spinal surgery.
<b>25 September 1998</b>	The criminal case against the applicant concerning the alleged rape and murder of MS was closed. However, the applicant became a suspect in another criminal case in which he was charged with the abduction of MS.
<b>26 October 1998</b>	A forensic medical examination of the applicant was drawn up which found that he had wounds on the top of his head, scratches on his forehead and bite marks on his tongue.
<b>1 March 1999</b>	The criminal investigation into the illegal possession of the gun cartridges was discontinued, on the ground that at the time of their discovery the applicant had been a police officer and, therefore, had had the right to possess the ammunition.
<b>1 March 1999</b>	On 1 March 2000 the case concerning the alleged abduction of MS was also discontinued on the ground that the applicant had freed

	MS at her request.
2005	<p>Two policemen who had participated in the questioning of the applicant on 19 September 1998 were charged. The case was eventually forwarded to Leninskiy District Court of Nizhniy Novgorod, which found that the police officers had administered electric shocks to the applicant using a device connected to his ears. Unable to withstand the pain, the applicant had attempted suicide by jumping out of the window. On 30 November 2005 the police officers were found guilty under Article 286 § 3 (a) and (b) of the Criminal Code of abuse of official power associated with the use of violence or entailing serious consequences, however this judgment was not yet final.</p> <p>The applicant's dismissal from the police was later annulled and he was reinstated in his post. The officers responsible for his backdated dismissal were subjected to disciplinary proceedings. However, he is completely disabled and has had to leave the traffic police.</p>

### **B. The applicant's complaints under the European Convention**

- The applicant complained that while in police custody, in violation of **Article 3** of the Convention, he had been subjected to various forms of ill-treatment and torture, especially during the questioning in Leninskiy police station on 19 September 1998.
- The applicant also complained of a lack of an effective investigation in respect of his complaint of ill-treatment and torture in breach of **Article 3** of the Convention
- The applicant complained that there were no effective remedies in domestic law in respect of his allegations of ill-treatment and torture in breach of **Article 13** of the Convention.

*Table 2* highlights the complaints of the applicant under the European Convention and the Russian Government's arguments against the alleged violations raised by the applicant before the European Court.

*Table 2*

Articles allegedly violated	The applicant's complaints	The arguments of Russian Government
<p><b>Article 3</b> of the Convention, provides:</p> <p>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p>	<p>a) The applicant alleged, that while in detention on remand he had been tortured by police officers to make him confess to the rape and murder of a female minor. As a result, he had jumped</p>	<p>a) The Government submitted that the investigation into the events of the present case is still being conducted and no final decision has yet been taken at the domestic level.</p>

	<p>out of the window of the police station and broken his spine.</p> <p>b) He also complained that the investigation into his alleged torture and ill-treatment had been ineffective. In particular that the Government had breached its positive obligation to investigate his case under Article 3 of the Convention. The applicant pointed to numerous shortcomings in the official investigation and the lack of independence of the investigation.</p>	<p>Referring to that, they maintained that the applicant had failed to exhaust domestic remedies in respect of his complaint of ill-treatment.</p> <p>b) The Government did not submit any observations in respect to alleged ill-treatment and torture of the applicant by police officers.</p>
<p><b>Article 13</b> of the Convention reads as follows:</p> <p>Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.</p>	<p>The applicant claimed that he had been denied an effective remedy in respect of his Convention complaint of ill-treatment.</p>	<p>The Government submitted the same arguments that were submitted under Article 3.</p>

### **C. The Judgment of the European Court**

Table 3 below underlines the European Court’s assessments of the Applicants complaints and the Russian Government’s arguments. It also explains the judgment of the European Court, highlighting the reasoning set forth with respect to the complaints of the applicant and the alleged violations of his rights guaranteed by the relevant Articles of ECHR.

**Table 3**

<b>ALLEGED VIOLATION OF ARTICLE 3 (INEFFECTIVENESS OF INVESTIGATION)</b>
<p><i>The Court pointing to its established case-law stated that:</i></p> <ul style="list-style-type: none"> <li>Referring to <i>Klaas v. Germany</i>, <i>mutatis mutandis</i> the Court reiterated that allegations of ill-treatment must be supported by appropriate evidence.</li> </ul>

- To assess the evidence of torture or ill-treatment, the Court adopts the standard of proof “beyond reasonable doubt”. However, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. In such cases the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (*Salman v. Turkey*) .
- In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (*Orhan v. Turkey*).
- The lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate “is not an obligation of result, but of means” (*Paul and Audrey Edwards v. the United Kingdom*).
- Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible *mutatis mutandis*, (*Mahmut Kaya v. Turkey*).
- The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (*Assenov and Others v. Bulgaria*).
- The investigation must be expedient.
- For an investigation into alleged ill-treatment by State agents to be effective, it should be independent (*Öğür v. Turkey*).

***Court’s assessment of the case:***

In order to be able to assess the merits of the applicant’s complaints and in view of the nature of the allegations, the Court asked the Russian Government to submit copies of the criminal investigation files. The Government refused to do so, without explaining how the disclosure of the materials sought might be prejudicial for the interests of the investigation or the individuals involved. Neither did they advance any other plausible explanation for their failure to produce relevant documents and information, which were clearly in their possession.

The Court therefore considered that it should examine the merits of the case on the basis of the applicant’s arguments and existing elements in the file and the evidence given at the hearing of Leninskiy District Court of Nizhniy Novgorod on 30 November 2005.

Concerning the alleged ineffectiveness of investigation the Court noted among other things the following:

- the investigators’ decisions to discontinue the proceedings disclosed significant

omissions in the official pre-trial investigation;

- many investigative measures were carried out after a significant lapse of time, eg. the forensic report was dated more than five weeks after the alleged ill-treatment;
- until 2000 the decisions to discontinue the proceedings were based on almost identical evidence and reasoning;
- there was a clear link between the officials responsible for the investigation and those allegedly involved in the ill-treatment; and,
- the approach to the assessment and collection of evidence by the prosecutor's office was selective and inconsistent

The Court was particularly struck by the factual inaccuracy of the investigator's report of 21 December 1998 which stated that the applicant had been arrested for disturbing the peace when it had already been officially confirmed that at the relevant time he had been in the hands of the police.

The Court emphasised that it took seven years for the case to reach trial stage. The pre-trial investigation was closed and then re-opened more than 15 times and it was clear that during certain periods the investigative process was no more than a formality with a predictable outcome.

#### **ALLEGED VIOLATION OF ARTICLE 3 (ILL-TREATMENT)**

*The Court pointing to its established case-law stated that:*

- The authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (*Ribitsch v. Austria*).

*Court's assessment of the case:*

The Court noted that throughout the investigation the applicant had provided a consistent and detailed description of who had tortured him and how. He also had witnesses to support his allegations and the bite marks on his tongue described in the forensic report could also be seen as indirectly supporting his accounts.

In the absence of any evidence to the contrary, the Court concluded that that the applicant did not suffer from any mental deficiency which might have influenced his decision to commit suicide. He was subjected to a very stressful situation, having been wrongfully suspected of such a serious crime. However, no plausible explanation had been adduced as to why, knowing he was innocent, he should attempt suicide, if no pressure had been put upon him. In addition, the Court noted that there was evidence that other detainees had suffered, or been threatened with, similar ill-treatment.

In view of the circumstances, the Court was prepared to accept that, while in custody, the applicant was seriously ill-treated by the police officers, with the aim of extracting a confession or information about the offences of which he was suspected. The ill-treatment inflicted on him caused such severe physical and mental suffering that he attempted

suicide, resulting in a general and permanent physical disability.

**ALLEGED VIOLATION OF ARTICLE 13**

*The Court pointing to its established case-law stated that:*

- Article 13 of the Convention requires that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. The Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (*Kudła v. Poland*).
- The scope of the State’s obligation under Article 13 varies depending on the nature of the applicant’s complaint, and in certain situation the Convention requires a particular remedy to be provided. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires (in addition to the payment of compensation where appropriate) a thorough and effective investigation capable of leading to the identification and punishment of those responsible (*Anguelova v. Bulgaria*).

The Court found that the applicant had been denied a sufficiently effective investigation in respect of the ill-treatment by the police and thereby access to any other available remedies at his disposal, including a claim for compensation.

**Table 4**

ARTICLES ALLEGEDLY VIOLATED AND DAMAGE	COURT’S JUDGMENT
<b>Article 3 of ECHR</b>	The Court held <i>unanimously</i> that there has been a violation of <b>Article 3</b> of the Convention in respect of the failure to conduct an effective investigation into the applicant’s fall from the window of the police station on 19 September 1998.
<b>Article 3 of ECHR</b>	The Court held <i>unanimously</i> that there has been a violation of <b>Article 3</b> of the Convention on account of the ill-treatment inflicted on the applicant while in police custody.
<b>Article 13 of ECHR</b>	The Court held <i>unanimously</i> that there has been a violation of <b>Article 13</b> of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of.
<b><u>Pecuniary damage</u></b>  The applicant claimed <b>RUR 23,562,500</b> to cover his future medical expenses up to the age of 65.	The Court held that given the seriousness of the applicant’s condition, the need for specialised and continuous medical treatment and his complete inability to work in the future, the Court awards him <b>EUR 130,000</b> under this head, plus any tax that may be chargeable on this amount.

<p>Basing his calculation on the official statistical data on the average salary in Russia during the relevant period, the applicant claimed <b>RUR 2,736,384</b> in compensation for his lost income and <b>RUR 513,072</b> in compensation for his mother's lost income.</p> <p>In sum, the applicant claimed <b>RUR 27,351,812</b> for pecuniary damage about <b>EUR 794,000</b> at the current official exchange rate.</p>	
<p><b><u>Non-pecuniary damage</u></b></p> <p>The applicant indicated that he had been subjected to torture with electrodes in the police station, which had caused him severe physical and mental suffering.</p> <p>On the basis of this the applicant claimed <b>RUR 22,530,000</b> in respect of non-pecuniary damage (approximately <b>EUR 654,000</b>).</p>	<p>Given the exceptionally serious consequences of the incident of 19 September 1998 for the applicant, the Court awards him <b>EUR 120,000</b> in compensation for non-pecuniary damage, plus any tax that may be chargeable on this amount.</p>

## PART II -- STUDY OF THE JUDGMENT OF THE EUROPEAN COURT

1. In general it should be said that Article 3 of ECHR makes no provision for exceptions and that no derogation from it is permitted under Article 15 of ECHR in time of war or other national emergency. This absolute prohibition of torture and of inhuman or degrading treatment and punishment under the terms of the Convention indicates that Article 3 enshrines one of the fundamental values of democratic societies making up the Council of Europe. It is also found in other international and regional instruments such as the 1966 International Covenant on Civil and Political Rights and the 1969 American Convention on Human Rights, the 1981 African Charter on Human and Peoples' Rights, and it is generally recognized as an international standard.<sup>1</sup>

In the case of *Mikheyev v. Russia*, the European Court once more stressed several important issues concerning complaints under **Article 3 of ECHR (prohibition of torture)** especially concerning the concept of "effective investigation" of alleged ill-treatment:

<sup>1</sup> See *Soering v. the United Kingdom*, judgment of 7 July 1989, ECHR series A vol. 161, par. 88

**I.** The Court stressed once more that allegations of ill-treatment must be supported by appropriate evidence.<sup>2</sup> To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt”. However, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. In such cases the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.<sup>3</sup> And most importantly that “in the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government.”<sup>4</sup>

**II.** The Court also stressed once more that the lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate “is not an obligation of result, but of means.”<sup>5</sup> Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.<sup>6</sup>

**III.** The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.<sup>7</sup>

**IV.** The Government must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, etc.<sup>8</sup> Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

**V.** The Court reiterated that the investigation must be expedient and in assessing whether the authorities reacted promptly to the complaints at the relevant time, consideration is given to the starting of investigations, delays in taking statements, the length of time taken during the initial investigation.

**VI.** The Court repeated that for an investigation into alleged ill-treatment by State agents to be effective, it should be independent.<sup>9</sup> The investigation would be deemed not independent where members of the same division or detachment as those implicated in the alleged ill-treatment were undertaking the investigation.<sup>10</sup> The independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms.<sup>11</sup>

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<sup>2</sup> *Mutatis mutandis Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18

<sup>3</sup> *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII

<sup>4</sup> *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002

<sup>5</sup> *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II

<sup>6</sup> *Mutatis mutandis, Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III

<sup>7</sup> *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 103 et seq.

<sup>8</sup> *Mutatis mutandis, Salman v. Turkey*, cited above, § 106, ECHR 2000-VII

<sup>9</sup> *Öğür v. Turkey*, [GC], no. 21954/93, ECHR 1999-III, §§ 91-92

<sup>10</sup> *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 80-82

<sup>11</sup> *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84

**VII.** Concerning allegations of torture or ill-treatment the Court repeated that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused.<sup>12</sup>

**VIII.** Concerning Article 13 the Court reiterated that Article 13 of the Convention requires that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. The Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. As a general rule, if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so.<sup>13</sup>

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<sup>12</sup> *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34

<sup>13</sup> *Kudła v. Poland [GC]*, no. 30210/96, § 157, ECHR 2000-XI