**УПОЛНОМОЧЕННЫЙ РОССИЙСКОЙ ФЕДЕРАЦИИ
ПРИ ЕВРОПЕЙСКОМ СУДЕ ПО ПРАВАМ ЧЕЛОВЕКА –
ЗАМЕСТИТЕЛЬ МИНИСТРА ЮСТИЦИИ РОССИЙСКОЙ ФЕДЕРАЦИИ**

**Representative
of the Russian Federation at
the European Court of Human Rights
– deputy Minister of Justice
of the Russian Federation**

**Représentant
de la Fédération de Russie auprès
de la Cour Européenne
des Droits de l'Homme – vice-ministre de
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«01» March 2013 г.

№ 14-1010-13

Mr Søren NIELSEN
First Section Registrar,
European Court
of Human Rights

COUNCIL OF EUROPE
STRASBOURG – FRANCE

Application no. 46998/08
Mikhaylova v. Russia

Dear Sir,

Please find attached a copy of the English translation of the Memorandum of the Russian Federation authorities on the above application.

Best regards,

G. Matyushkin

01 February 2013
14-0421-13

EUROPEAN COURT OF HUMAN RIGHTS

MEMORANDUM
on application no. 46998/08
Mikhaylova v. Russia

On 12 October 2012 the European Court of Human Rights (hereinafter referred to as "the European Court") informed the authorities of the Russian Federation of application *Mikhaylova v. Russia*, lodged with the European Court under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention").

Pursuant to Rule 54 § 2 (b) of its Rules, the European Court invited the authorities of the Russian Federation to submit their observations and answer the following questions:

1. Does the present case fall within the scope of Article 35 § 3 (b) of the Convention? In particular, did the applicant suffer any "significant disadvantage"?

2. (a) Was Article 6 of the Convention applicable to the domestic proceedings in the present case? Was it applicable, under its criminal or civil limb, to the case under Article 19.3 of the Code of Administrative Offences (CAO)? As regards the case under Article 20.2 of the CAO:

- Was Article 6 of the Convention applicable under its civil limb (see, for comparison, *Lutz v. Germany*, 25 August 1987, §§ 51-57; Series A no. 123; *Malige v. France*, 23 September 1998, §§ 31-40, *Reports of Judgments and Decisions* 1998-VII; *Schmautzer v. Austria*, 23 October 1995, §§ 26-28, Series A no. 328-A; and *Nilsson v. Sweden* (dec.), no. 73661/01, 13 December 2005)?

- Does it matter that non-payment of a fine imposed in a case under Article 20.2 may entail conviction and detention under Article 20.25 (see, for comparison, *Weber v. Switzerland*, no. 11034/84, § 34, 22 May 1990; see *Ravnsborg v. Sweden*, no. 14220/88, § 35, 23 March 1994; and *Schmautzer v. Austria*, no. 15523/89, § 28, 23 October 1995)?

(b) If Article 6 of the Convention was applicable, was the applicant afforded an adequate opportunity to defend herself in person? Was she afforded an opportunity to receive legal assistance before and/or during the trial and/or on appeal before the District Court? Having regard to various relevant factors (for instance, the seriousness of the offences, the severity of the possible sentences, the complexity of the cases and the personal situation of the accused), did the interests of justice require that legal assistance be provided free of charge? If yes, was there a violation of Article 6 of the Convention (cf. *Pakelli v. Germany*, 25 April 1983, § 31, Series A no. 64; *Benham v. the United Kingdom*, 10 June 1996, § 61, *Reports of Judgments and Decisions* 1996-III), and *Gutfreund v. France* (dec.), no. 45681/99, 25 April 2002)?

Relevant domestic legislation (in force at the material time)

Federal Law of 19 June 2004 no. 54-FZ *On Assemblies, Meetings, Demonstrations, Marches and Picketing* (extract)

Article 2. Basic Notions

...

1) public event implies an open, peaceful action accessible to everyone that is implemented as an assembly, meeting, demonstration, march or picketing or by using various combinations of those forms that is undertaken at the initiative of citizens of the Russian Federation, political parties, other public or religious associations, including with the use of means of transport. The objective of the public event is to exercise the free expression and shaping of opinions and to put forward demands concerning various issues of political, economic, social and cultural life of the country and also issues of foreign policy;

...

6) picketing implies a form of public expression of opinions carried out without moving and using sound-amplifying technical devices by stationing one or several citizens carrying placards, streamers and other aids of visual campaigning outside an object being picketed;

...

Article 7. Notice of holding the public event

1. A notice of holding the public event (except for an assembly and picketing held by a single participant) shall be sent by its organizer in writing to the executive authority of the subject of the Russian Federation or the body of local self-government within the period not earlier than fifteen and not later than ten days prior to holding of the public event. In the event of a picket by a group of persons, notice of a public event may be submitted no later than three days prior to the holding of that event.

Code of Administrative Offences of the Russian Federation

Article 19.3. Failure to Follow a Lawful Order of a Militiaman, a Military Serviceman, an Officer of the Bodies for Control over the Traffic of Narcotics and Psychotropic Substances, Persons Authorized to Perform Control and Supervisory Functions in the Migration Sphere or an Officer of the Criminal Punishment System

1. Failure to follow a lawful order or demand of a militiaman, a military servicemen or an official of the criminal punishment system in connection with discharge of their official duties related to maintenance of public order and security, as well as impeding the discharge by them of their official duties -

shall entail the imposition of an administrative fine from five hundred to one thousand roubles or an administrative arrest for a term of up to fifteen days.

...

Article 20.2. Violation of the Established Procedure for Arranging or Conducting an Assembly, Meeting, Demonstration, March or Picketing

...

2. Violating the procedure established for conducting an assembly, meeting, demonstration, march or picketing –

shall entail the imposition of an administrative fine on the organizers from one thousand to two thousands roubles, and on the participants from five hundred to one thousand roubles.

Article 20.25. Nonpayment of the Administrative Fine or Willful Departure from the Place of Serving the Administrative Arrest

1. Failure to pay the administrative fine within the time limit fixed by this Code, -

shall entail the imposition of the double amount of the unpaid administrative fine or an administrative arrest for a period of up to fifteen days.

...

Article 25.1. Person Who is on Trial in Connection with a Case Concerning an Administrative Offence

1. A person who is on trial in connection with a case concerning an administrative offence shall be entitled to familiarize himself with all the materials of the case, to give explanations, to present evidence, to make motions and objections, to have the legal assistance of a defense counsel, as well as to enjoy other procedural rights in compliance with this Code.

...

Statement of facts

On 25 November 2007 V.N. Mikhaylova participated in the march along Mayakovskogo street in St. Petersburg. That public event was carried out without preliminary notification of the executive authorities in violation of Article 7 of the Federal Law of 19 June 2004 no. 54-FZ *On Assemblies, Meetings, Demonstrations, Marches and Picketing.*

Those actions were the basis for the arrest of the applicant by the police officers and drawing up records of administrative offences under Article 19.3 part 1 and Article 20.2 part 2 of the Code of Administrative Offences of the Russian Federation (hereinafter - "the CAO RF").

On the same day the protocols of administrative offences were forwarded for consideration to the justice of the peace of the judicial district no. 201 of St. Petersburg.

On 25 November 2007 the justice of the peace of the judicial district no. 201 of St. Petersburg initiated the proceedings of the said cases and scheduled their consideration on the same day, and delivered the corresponding rulings. The applicant was explained her rights in accordance with Article 25.1 part 1 of the CAO RF.

On 25 November 2007 V.N. Mikhaylova filed motions for adjournment of the proceedings in connection with the necessity to involve a defense counsel.

Those motions were granted by the justice of the peace, and the consideration of the cases was adjourned till 28 November 2007.

On 27 November 2007 V.N. Mikhaylova filed motions for adjournment of the proceedings in connection with the necessity to familiarize with the case-files and the video record.

Those motions were granted by the justice of the peace, and the consideration of the cases was adjourned till 5 December 2007.

On 28 November 2007 V.N. Mikhaylova requested for provision of free legal assistance.

On 5 December 2007 consideration of the cases was adjourned till 19 December 2007 in connection with the applicant's motion for summon of witnesses.

By the rulings of 19 December 2007 the justice of the peace of the judicial district no. 201 of St. Petersburg dismissed the applicant's request for free legal assistance. The justice of the peace noted inter alia that in her motions *"V.N. Mikhaylova refers to the provisions of the Convention for the Protection of Human Rights and to the judgments of the European Court of Human Rights"* and dismissed the motions as the provisions of the CAO RF do not stipulate assignment of a counsel to the person that is brought to an administrative responsibility.

By the judgment of 19 December 2007 the justice of the peace of the judicial district no. 201 of St. Petersburg found the applicant guilty in commission of an administrative offence under Article 20.2 Part 2 of the CAO RF, and subjected her to an administrative punishment in the form of an administrative fine of 500 roubles.

By the separate judgment of 19 December 2007 the justice of the peace of the judicial district no. 201 of St. Petersburg found the applicant guilty in commission of an administrative offence under Article 19.3 Part 1 of the CAO RF, and subjected her to an administrative punishment in the form of an administrative fine of 500 roubles.

On 26 December 2007 the applicant lodged appeals against the said judgments of the justice of the peace with the Dzerzhinskiy District Court of St. Petersburg.

On 19 February 2008 V.N. Mikhaylova filed motions for provision of free legal assistance and for summon of witnesses.

By the separate rulings of the Dzerzhinskiy District Court of 19 February 2008 the applicant's motions for summon of witnesses were granted, and the motions for provision of free legal assistance were dismissed.

On 11 March 2008, the applicant filed to the Dzerzhinskiy District Court motions for deposition of the video record, as well as the supplements to the appeals containing motions for assignment of a counsel free of charge.

By the rulings of the Dzerzhinskiy District Court of 11 March 2008 the applicant's motions for deposition of the video record were granted.

By the rulings of the Dzerzhinskiy District Court of 11 March 2008 the applicant's motions for assignment of a counsel free of charge were dismissed. The court inter alia noted that substantiating her motions *"V.N. Mikhaylova refers to the rules of international law that guarantee participation of a "free" counsel in administrative cases"* and dismissed those motions, as the CAO RF, in contrast to the Code of Criminal Procedure of the Russian Federation, does not provided for a compulsory participation of a defense counsel. The court indicated that the applicant has the right to decide the question about involvement of a defense counsel to participation in examination of her appeals by herself in accordance with the provisions of the CAO RF, which were explained to her.

By the judgments of 17 March 2008 the Dzerzhinskiy District Court of St. Petersburg upheld the judgments of the justice of the peace of the judicial district no. 201 of St. Petersburg of 19 December 2007.

Answer to question no. 1

According to Article 35 § 3 (b) of the Convention the European Court declares an individual application lodged in accordance with Article 34 inadmissible, if it considers that the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

In deciding whether the application falls within the Article 35 § 3 (b) of the Convention the European Court should examine whether the applicant suffered a significant disadvantage, whether respect for human rights would in any event require an examination of the case, and whether the case was duly considered by a domestic tribunal (see *Korolev v. Russia* (dec.), no. 25551/05, of 1 July 2010; *Rinck v. France* (dec.), no. 18774/09, of 19 October 2010).

Did the applicant suffer a significant disadvantage?

The European Court assesses the severity of a violation taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Holub v. the Czech Republic* (dec.), no. 24880/05, of 14 December 2010). In respect of the objective significance of a case the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives (*Burov v. Moldova* (dec.), no. 38875/03, §§ 26-29, of 14 July 2011). As regards the subjective importance of the case, the Court indicated that the disadvantage included not only the monetary aspect of a violation, but also the general interest of the applicant in pursuing the case (see *Havelka v. the Czech Republic* (dec.), no. 7332/10, of 20 September 2011).

In the first place the authorities of the Russian Federation note that this application does not contain an indication of infliction to the applicant any damage in the material aspect of Article 35 § 3 (b) of the Convention in connection with imposition of administrative fines. Thus, the conclusion of the European Court in *Zwinkels v. the Netherlands* (no. 16593/10, 9 October 2012, § 25) that "the complaint is entirely unrelated to the fine imposed on the applicant" is applicable to this case. Correspondingly the said material aspect is absent in this case.

In any case, according to the case law of the Court, the amount of the imposed fines, which made 1 000 roubles (less than 25 euro), allows to conclude that the applicant did not suffer a significant disadvantage (*Burov v. Moldova*, above; *UHL v. the Czech Republic* (dec.), no. 1848/12, 25 September 2012; *Ionescu v. Romania* (dec.), no 36659/04, 1 June 2010). In *UHL v. the Czech Republic* the Court concluded that "the loss of such an amount [47 euro] does not constitute a significant disadvantage".

Moreover, this application is similar to *Shefer v. Russia* (decision of 13 March 2012, no. 45175/04), in which the Court indicated that the "applicant's relevant submissions are limited to general references to her "modest salary" ...no specific arguments relevant to her personal circumstances were presented".

As regards the importance of the case for the applicant, the authorities of the Russian Federation emphasize that the case-file does not contain any information that bringing of the applicant to the administrative responsibility had a negative impact on her situation. This case significantly differs from the case *Luchaninova v. Ukraine* (judgment of 9 June 2011, application no. 16347/02, §§ 49, 50), in which the European Court was satisfied that the applicant suffered a significant disadvantage in connection with the fact that bringing her to administrative responsibility served as a ground for her dismissal.

Does respect for human rights require examination of the present case?

Article 35 § 3 (b) of the Convention compels the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention (*Shefer v. Russia*, above).

The European Court has repeatedly established that respect for human rights does not require examination of applications if the issues raised have already been a subject of consideration of the European Court (*Bazelyuk v. Ukraine* (dec.), 27 March 2012, no. 49275/08; *Jančev v. the former Republic of Macedonia*, (dec.), 4 October 2011, no. 18761/09).

As regards the issues raised in the present application, there is an established case-law of the European Court, which concerns both the application of Article 6 of the Convention in the sphere of "administrative" court proceedings (*Sergey Zolotuhin v. Russia*, 10 February 2010, no. 14939/03; *Lutz v. Germany*, 25 August 1987, no. № 9912/82; *Schmautzer v. Austria*, 23 October 1995, no. 15523/89; *Menesheva v. Russia*, 9 March 2006, no. 59261/00), and the provision of legal assistance (*Benham v. the United Kingdom*, 10 June 1996, 19380/92; *McVicar v. the United Kingdom*, 7 May 2002, no. 46311/99).

Accordingly, the authorities of the Russian Federation consider that respect for human rights does not require examination of the present application within the meaning of Article 35 § 3 (b) of the Convention.

Was the case duly considered by a domestic tribunal?

Article 35 § 3 (b) of the Convention does not allow to refuse examination of a case on the basis of the established inadmissibility criterion, if the case was not duly examined by a domestic court (*Bazelyuk v. Ukraine*, above).

The cases concerning administrative offences against the applicant were examined by the courts of first and appeal instances. In the course of the court proceedings, V.N. Mikhaylova filed numerous motions that were considered by the court and granted for the most part. As regards dismissal of the motions for provision of free legal assistance, the courts substantiated their decisions by the fact that the provisions of the CAO RF do not provide for assignment of a counsel to a person that is brought to an administrative responsibility.

In this connection it is worth to mention the decision in *Korolev v. Russia* (cited above), where the European Court found that the applicant's case was duly considered by the domestic court and noted that "the applicant's initial grievances against the State authorities were considered at two levels of jurisdiction... His subsequent complaint... was rejected by the district court for non-compliance with domestic procedural requirements. The applicant failed to comply with those requirements... This situation does not constitute a denial of justice imputable to the authorities".

Moreover, it should be noted that the applicant's allegations that, while considering the motions for provision of free legal assistance the courts did not take into account her references to the provisions of the Convention, are incorrect and are refuted by the content of the rulings of the justice of the peace of the judicial district no. 201 of St. Petersburg of 19 December 2007 and rulings of the Dzerzhinskiy District Court of 11 March 2008 by which the applicant's motions were dismissed.

Accordingly, the applicant's case was duly considered by the domestic court within the meaning of Article 35 § 3 (b) of the Convention.

In view of the foregoing, the authorities of the Russian Federation consider that all three conditions of the inadmissibility criterion established by Article 35 § 3 (b) have been met, and in this connection the application must be declared inadmissible.

Answer to question no. 2

In determining, whether the provisions of Article 6 of the Convention can be applied in a particular case, the European Court determines whether a "criminal charge" or a "civil" right was in issue (*Escoubet v. Belgium*, 28 October 1999, no. 26780/95, § 31).

First of all, the authorities of the Russian Federation emphasize that this application contains the applicant's submissions about violation of her rights guaranteed by Article 6 of the Convention only in the "criminal limb".

In this connection it is possible to apply the conclusion of the European Court in *Escoubet v. Belgium* (cited above, § 39), in which the Court acknowledged inapplicability of Article 6 of the Convention and stated that "the applicant has not submitted any evidence that a "civil" right was at issue in the present case".

Moreover, the approach of the European Court used in the judgment in *Gutfreund v. France* (12 June 2003, no. 45681/99) is applicable in the present case to a considerable extent.

In the said case the European Court in the first place stated that the "the applicant's complaint relates solely to the procedure for applying for legal aid".

Further the European Court acknowledged that Article 6 in its criminal limb is inapplicable to that case on the following grounds.

"The procedure for applying for legal aid only concerned the provision of legal assistance to the applicant, and not the establishment of guilt or the determination of the amount of the penalty. Nor did it touch upon the legal or factual merits".

The Court also referred to the earlier decision on the admissibility of the same application and indicated that on the assumption of the amount of the fine and the nature of the corresponding proceedings, "the interests of justice did not require the applicant to be afforded legal assistance" (*more detailed analysis of that decision in the context of the present case is provided below*).

"Despite the refusal of legal aid, the applicant therefore had a choice in the light of what was at stake and the nature of the proceedings between appearing in person or being represented by a lawyer".

"The refusal of legal aid was not a decisive factor in the determination of the... charge against the applicant".

While declaring Article 6 of the Convention inapplicable in the civil limb as well, the Court stated the following.

"... the Court will first address the issue whether a "right" to the legal aid claimed could arguably be said to be recognised under national law or the Convention".

Having again referred to the decision on the admissibility of the same application, the Court was satisfied that "in the instant case the Convention did not guarantee the applicant the right to free legal assistance...".

"The question whether it is possible in the present case to affirm that such a right exists must therefore be answered solely by reference to domestic law".

After analysis of the corresponding provisions of the French legislation, the European Court concluded that the national legislation does not provide for the right of free legal assistance.

"The applicant did not... possess a right which could arguably be said to be recognised under domestic law".

After having again noted the insignificant amount of the fine and the "simplicity" of the procedure, the Court stated that the refusal to provide free legal assistance "did not affect the applicant's access to the court".

As in the case *Gutfreund v. France* the present application concerns only with the examination of the applicant's motions for free legal assistance by the national courts. The national legislation, specifically the CAO RF does not stipulate provision of a legal assistance to a person brought to an administrative responsibility. However, according to Article 25.1 of the CAO RF, the applicant was entitled to decide the question about engaging a defense counsel in the proceedings by herself. The amount of the fines imposed on the applicant (less than 25 euro) is insignificant. The proceedings in the cases concerning administrative offences are "simple" in view of the criteria stated in the decision of the European Court of 25 April 2002 on the admissibility of the application *Gutfreund v. France* (*cited below*).

Taking into account the above arguments, the authorities of the Russian Federation are of opinion that Article 6 of the Convention is not applicable in the present case.

At the same time it should be underlined that in the course of examination of the applicant's cases concerning administrative offences she was provided with a full set of the procedural rights stipulated by the CAO RF. She was informed about such rights and used them to the full extent.

As it was indicated in the statement of facts and in the answer to question 1 of the European Court, in the course of the court proceedings, V.N. Mikhaylova filed numerous motions that were considered by the court and granted for the most part. The applicant's motions for free legal assistance were dismissed as the provisions of the CAO RF do not stipulate assignment of a counsel to a person that is brought to administrative responsibility. The applicant was entitled to decide the question about engaging a defense counsel in the proceedings by herself.

As regards the question on provision of free legal assistance in the interests of justice in view of the circumstances of the case, the authorities of the Russian

Federation consider it necessary to refer to the case *Gutfreund v. France* (decision on admissibility) again.

In the said decision, the Court declaring the inadmissibility of the application alleging violation of Article 6 § 3 (c) of the Convention established that the interests of justice do not require provision of free legal assistance to the applicant on the basis of the fact that participation of a representative is not obligatory according to the national legislation, the amount of the fine and the fact that the corresponding proceedings are "simple" in nature and accessible for the applicant, even though he does not have broad knowledge in the sphere of jurisprudence.

The said approach of the European Court is entirely applicable to the present case for the following reasons.

As it was stated above, the provisions of the CAO RF do not provide for an obligatory participation of a defense counsel in examination of the cases concerning administrative offences.

The amount of the fines imposed on the applicant is insignificant in view of the Court's case law as well.

The proceedings if the cases concerning administrative offences can be recognized as "simple" on the same criteria as in the said case *Gutfreund v. France* – "procedure is oral", "legal representation is not compulsory", the persons that are brought to responsibility are "entitled to appear and to make the submissions they consider appropriate in their defence at the hearing itself".

Moreover, in the decision on the admissibility of the application *Mata Jara v. Spain* (4 May 2000, no. 43550/98) the European Court, along with the said criteria noted that "nothing precluded the applicant from contesting or denying the imputed facts... despite the absence of the defense counsel".

In addition the authorities of the Russian Federation would like to draw attention of the European Court to the written materials submitted by the applicant to the national courts under her signature (written explanations on the merits of the cases and numerous motions). The content of those documents and the wordings used allow concluding that the applicant was familiar with the applicable provisions of the national legislature to a proper extent and could defend herself in the proceedings in the administrative offence cases.

In view of the foregoing, representing the interests of the Russian Federation in accordance with the Regulations on Representative of the Russian Federation at the European Court of Humans Rights approved by Decree of the President of the Russian Federation of 29 March 1998 no. 310,

I ASK:

to declare the application lodged by Valentina Nikolayevna Mikhaylova alleging violation of her rights guaranteed by Article 6 of the Convention inadmissible within the meaning of Article 35 § 3 (b) of the Convention;

to declare that the provisions of Article 6 of the Convention are inapplicable in the present case;

in case the European Court finds that the application lodged by Valentina Nikolayevna Mikhaylova is admissible, and considers that Article 6 of the Convention is applicable, to declare the application manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and dismiss it in accordance with Article 35 § 4 of the Convention.

G.O. Matyushkin
(signature)