

## **E. Statement of the facts**

### **A. The Death of M.A. Sayapin in the Regional Clinical Hospital of Kaliningrad**

1. On 30.12.2005 at about 18:55 a car accident with participation of three cars has taken place. In a car “Opel record” were two passengers: a driver V.S. Surbo and M.A. Sayapin. On the same day at 20:55 M.A. Sayapin was delivered to the regional Clinical Hospital of Kaliningrad by the emergency team. There a first diagnosis has been set.
2. At 20:30 after the medical examination by doctors Kamyshanov and Laryutin M.A. Sayapin was placed to the traumatology department of the hospital, an antishock therapy was appointed.
3. At 22:30 M.A. Sayapin has been examined again by the doctors Waisbeyn, Zenkina and Medskih. During the examination at 22:50 it was ascertained that measures taken have no effect, that is why an operation has been appointed – laporotomy.
4. At 22.30 a joint inspection by the surgeon Vaysbeyn I.Z., anesthesiologists Zenkina S.E., Medskih A.A. and Kamishanova V.D. was held. During the inspection at 22.50 it was stated that the taken measures did not give effect, therefore an operation laparotomy for the diagnostic purposes was appointed.
5. The operation was conducted by the surgeon Vaysbeyn I.Z. and Shishkin V.A. was an assistant. Metskih A.A., Zenkin S.E., and Beznashenko participated. During the operation condition of Sayapin M.A. got worse and his death was announced at 00.00 a.m.
6. After the surgery Sayapin M. A. got the final diagnosis – blunt trauma abdomen, fractured left ischium, alleged aortic rupture, a huge retroperitoneal hematoma and perivesical, traumatic hemorrhagic shock and fourth degree.
7. Immediately after death of Sayapin M.A. forensic investigation was conducted , in which the cause of death was determined by blunt trauma of the abdomen, chest, pelvis and head, accompanied by rupture of the right kidney and renal vein legal, relatively small surface discontinuities liver and spleen injuries and concussions internal organs as hemorrhage, profuse bleeding into the peritoneal cavity and retroperitoneal space, which led to complications – hemorrhagic shock, appearing before the immediate cause of death. Untimely and poor assistance was provided to Sayapin M.A. in the Kaliningrad Regional Hospital, the result was the patient’s death. These conclusions are supported, including the results of the internal investigation conducted by the Ministry of Health Commission of the Kaliningrad region, to establish the facts and wrong late diagnosis of the disease that resulted in inadequate treatment, complications and, as a consequence, death. For three and a half hours after admission to the fault of medical personnel Sayapin M.A. hasn’t received skilled care, which was the reason for the development of the effects of trauma that caused death.

### **B. Criminal investigations of the circumstances of the car accident**

8. On the 4 of January 2006 the State Prosecutor Office of the city Svetliy, Kaliningrad region, initiated a criminal case against Surbo V. S. under the Section 2 of Art. 264 of the Criminal Code of the Russian Federation of the 1996.

9. On 27 of July 2006 there was a decision to dismiss the criminal case against Surbo V.S., because of the opinion of the State Prosecutor Office of the city Svetliy that there was no fault of Surbo V. S. and the accident happened in cause of the mechanical breaking.

10 . On the 10 of August 2006 the complaint of Sayapina I.P. on this decision of the State Prosecutor Office was made. In that complaint it was stated that (1) there was no expert evidence in relation to the car, (2) that, in the framework of the investigation, there were not made efforts to find a car or to establish its location and examine it.

### **C. Criminal investigation into circumstances of Sayapin's death**

11. On the 13 of January 2006 Ms I. Sayapina decided to hand in an application for investigation a criminal case against medical staff of Kaliningrad district hospital on the base of the death of her son.

12. On the 6 of February 2006 it was established on declining the application. It was decided to dismiss the investigation because there were no features of corpus delicti in the actions of the staff under Article 293 § 2 of the Criminal Code.

13. As an answer to this decision it was launched a complaint under Article .of the Criminal Procedural Code. In the complaint it was stated that the rejection was groundless in the light of the fact that there was no medical study, which could give the answer to the question of criminal negligence leading to the victim's death on behalf of the staff.

14. On the 28 of March 2006 the replacement of the Leningradskiy District prosecutor Mr A. Lice in the manner of supervision decided on declining the decision on rejection of the investigation and transmitting the documents of the case for supplemented investigation.

15. On the 7 of April 2006 investigator of the Office of Public Prosecutor of the Leningradskiy District Mr N. Onischenko decided again to re-decline of the investigation.

16. On the 7 of June 2006 there was a decision of the Court, in which the Court satisfied the claim of Ms I. Sayapina and estimated that the declining of the investigation was unlawful and groundless. But on the 13 of August 2006 the office of prosecutor decided the second time on rejecting the claim. On their opinion, the medical staff took all necessary procedures and there was no their guilt there.

17. On the 22 of May 2006 the experts' panel of Kalinidskiy district made a medical conclusion on the materials of the criminal case. The experts found during the study of corpses, except for the following medical procedures, lifetime injury, which in its totality on the basis of risk to life could be qualified as serious body injury in an accident. The death of Mr M. Sayapin came from combined blunt abdominal trauma, chest, pelvis and head, accompanied by rupture of the right kidney and right renal vein ruptures liver and spleen injuries and concussions internal organs as hemorrhages in internal organs complicated by hemorrhagic shock is and was the immediate cause of death . Upon admission to the hospital in medical records of Mr M. Sayapin there is no evidence that he was intoxicated, and forensic chemical examination of his blood and of the urine any alcohol has not been found. These data gives a reason to believe that Mr M. Sayapin was sober.

18. On the 11 of February 2008 the expert from the Main Governmental Centre of Medical Forensic Examinations gave an announcement, containing the following facts:

- the immediate cause of death Sayapina MA was blunt abdominal trauma with rupture of the liver, spleen, right kidney and renal vein, accompanied by profuse hemorrhage;
- examination of Mr M. Sayapin in Kaliningrad district hospital was held in an insufficient amount to establish in a timely manner for damage of the abdominal cavity and retroperitoneal space, accompanied by copious blood loss, and start activities for emergency medical assistance to Mr M. Sayapin;
- the volume of executed survey of Mr M. Sayapin did not let the doctors to make time-well diagnosis of internal injuries of peritoneal cavity and retroperitoneal space, accompanied by copious blood loss, to evaluate the severity of Mr M. Sayapin and to take measures for emergency surgery, therefore, the survey of Mr M. Sayapin was untimely. In this situation, the state Mr M. Sayapin progressively deteriorated due to not-diagnosed internal bleeding;
- in Kaliningrad district hospital there was no well-time identified damage of internal organs of the peritoneal cavity and retroperitoneal space, accompanied by profuse hemorrhage; taken treatment was not consistent with the severity of his condition, volume and nature of existing injuries;
- a X-ray research of internal organs and urinalysis would allow physicians to establish or suspect the presence of kidney damage and internal bleeding;
- there is cause-and-effect relation between an action (non-action) of the medical staff of Kaliningrad district hospital and the death of Mr M. Sayapin;
- experts' panel claimed that there were no life-threatening injuries.

19. On the 3 of September 2009 the experts' panel of the Russian Health Ministry of Kalinidskiy district hospital made a conclusion that discovered omissions in medical assistance to Mr M. Sayapin (incomplete survey conducted antishock therapy are incomplete and with some delay etc.) are not correlated with the death outcome caused by severe concomitant injury. Even full and timely diagnosis and treatment of serious injuries combined with damage to the vital organs could not guarantee a favorable outcome.

20. On the 25 of July 2008 Ms I. Sayapina made a claim for criminal prosecution of the medical staff of Kaliningrad district hospital. On this claim it was decided to reject the start of investigation from the 31 July 2008 on the base of absence of criminal negligence leading to the victim's death or grave injury.

#### **D. Civil claim to Kaliningrad district hospital**

21. In December 2006 Ms I. Saypina and Mr. A. Sayapin (father of Mr M. Sayapin) took a claim concerning recompense of moral damage, caused by the death of Mr M. Sayapin). Kaliningrad district hospital was a defendant in this case.

22. On the 18 of March 2008 Leningradskiy District Court of Kaliningrad city recovered from Kaliningrad district hospital for Ms I. Sayapina recompense of moral damage for 500 000 rubles, costs on experts for 15 000 rubles, costs on national duty for 100 rubles.

23. On 25.04.2008 the Regional Clinical Hospital of Kaliningrad has brought an appeal, where it was demanded to annul a decision of the Leningradskiy District Court on the civil case at the suit of I.P. Sayapina and A.M. Sayapin.

24. On 02.07.2008 the Judicial Board for civil cases of Kaliningradskiy Regional Court has made a cassation determination, by which the decision of Leningradskiy District Court of the city of Kalinigrad from the 18.03.2008 has been annuled and by which the case has been rendered to new trial to the same district court.

25. Then, the applicants have increased their plaintiff's claims, also V.A. Sayapin, who has been a brother of the dead, has brought an independent claim 1) to the Regional Clinical Hospital of Kaliningrad and 2) to V.S. Surbo about compensation of the non-pecuniary damage.

26. On 29.10.2009 the Leningradskiy District Court has made a decision concerning satisfying of the claims of I.P. Sayapina, A.M. Sayapin and V.A. Sayapin only partly. The compensation of the non-pecuniary damage has been recovered from V.S. Surbo. In the resting part the claims of I.P. Sayapina, A.M. Sayapin and V.A. Sayapin were left unsatisfied.

27. On 10.11.2009 an appeal to this decision has been submitted to the Judicial Board for civil cases of the Kaliningradskiy Regional Court by I.P. Sayapina, A.M. Sayapin and V.A. Sayapin, where they have contested a compensation size of the non-pecuniary damage, pointed to the fact that this decision was ill-founded in a part of leaving a claim about compensation of non-pecuniary damage from the Regional Clinical Hospital of Kaliningrad unsatisfied. They also wanted the Court to annul a decision of Leningradskiy District Court of Kalinigrad and to render a case to new trial.

28. On 13.11.2009 a decision from the 29.10.2009 was also appealed by V.A. Sayapin, where he has submitted that the findings of the Court do not comply with the circumstances of the case, that the Court has incorrectly applied the norms of substantive law concerning a size of a non-pecuniary damage that is to be compensated. He also pointed that the conclusions of the court of first instance do not correspond with the case and are not based on law, the Court has groundlessly rejected as sufficient evidences given in the case the testimonial evidences. An applicant has asked to render a case to new trial with differently constituted bench.

29. On 30.12.2009 in cassation determination the the Judicial Board for civil cases of Kaliningradskiy Regional Court has left the decision of Leningradskiy District Court of Kalinigrad from 29.10.2009 and a subsidiary decision from 1.12.2009 unchanged, appeals – without satisfaction.

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

Article invoked	Explanations
<p>1) Article 2 of the Convention</p>	<p>1.1. The Russian judicial system was inefficient in establishing liability for the death of M.A. Sayapin.</p> <p>2.1. The State has neglected its positive obligation to carry out an effective investigation into the circumstances of a car accident on 30.12.2005 with participation of V.S. Surbo, in whose car was M.A. Sayapin.</p> <p>On 27.07.2006 a criminal case was terminated despite of the fact that there was no expert report concerning Surbos` car and that during the investigation there were no attempts at finding this car, neither has it been found, nor examined.</p> <p>2.2. The death of M.A. Sayapin is related to his medical treatment in the Regional Clinical Hospital of Kaliningrad. M.A. Sayapin died because of medical negligence, because of impropriety and poor quality of medical aid that was rendered to him.</p> <p>This submission can be confirmed by the results of an official investigation which was carried out by Ministry of Public Health of Kaliningradskiy region. As a result, it has been affirmed that during 3 hours and a half after admission to the hospital a proper medical aid was not rendered to Sayapin (late and incorrect diagnostics, inadequate treatment) which was a reason for development of consequences of sustained injuries that have caused death of Sayapin. Moreover, there is an expert report of the Main State Centre for the Medico-Legal Forensic Examinations confirming the fact of improper medical aid that was rendered to Sayapin by the Regional Clinical Hospital of Kaliningrad and stating that there are cause-and-effect relations between actions (ineffectiveness) of the medical professions and the death of Saypin. What is important, it has been adjusted that Sayapin had not any injuries not incompatible with life.</p> <p>2.3. The Respondent State has breached its positive obligation to carry out an effective investigation into the circumstances of medical negligence and improper medical aid that has become the cause of Sayapin`s death.</p> <p>I.P. Sayapina, the mother of M.A. Sayapin, has submitted a criminal complaint against medical professions of the Regional Clinical Hospital of Kaliningrad for several times, but every time a decision on refusal in initiation of criminal case has been delivered on the ground of the absence of a crime in medical personnel`s actions. That has been done despite of the fact that there was no medical-legal expertise, which could have given an answer to a question, whether there was a crime in medical personnel`s action and whether there was a cause-and-effect connection between actions of medical professions and Sayapin`s death. At last, 3 different expertise were carried out, the results of which contradict each other.</p> <p>At last, on 25.07.2008 I.P. Sayapina has again submitted a criminal complaint about bringing the doctors of the Regional Clinical Hospital of Kaliningrad to responsibility, but a decision on refusal in initiation of criminal case has been given on the same ground as before.</p>

<p>2) Article 3 of the Convention</p>	<p>1.1. Applicant complains under Article 3 that the doctors at the Regional Clinical Hospital of Kaliningrad had failed to provide timely and appropriate medical care that led to the death of M.A. Sayapin.</p> <p>2.1. On 30 December 2005 at 8:25 p.m. Sayapin M.A. was delivered by the ambulance crew to the Regional Clinical Hospital of Kaliningrad with his initial diagnosis. He was observed by only two doctors and placed in the traumatological department with antishock therapy appointed. After 10:50 p.m. medical personnel decided to conduct the surgery for diagnostic purposes – laparotomy. During the operation condition of M.A. Sayapin worsened and at 12:00 p.m. he was pronounced dead.</p> <p>2.2. Immediately after Sayapin’s death forensic investigation was conducted, in which the cause of death was determined as hemorrhagic shock caused by numerous external and internal injuries to the body. The internal investigation conducted by the Ministry of Health Commission of the Kaliningrad region in February 2006 established the fact of wrong and late diagnosis of the disease that resulted in inadequate treatment, complications and, as a consequence, death. The applicant emphasizes that for three and a half hours after admission due to negligence of medical personnel M.A. Sayapin did not receive skilled care, that further led to the progression of the trauma effects that caused death.</p> <p>2.3. Another forensics held on the 22 of May 2006 stated that upon admission to the hospital M.A. Sayapin was not intoxicated.</p> <p>Moreover, on 11 February the expert from the specialized Centre for Forensic Medicine of the Ministry of Defence added to all stated before that an ultrasound of internal organs and urinalysis would allow physicians to establish actual diagnosis.</p> <p>As follows from the all mentioned above and as stated by the expert evidence there is a casual link between the actions of the medical personnel of the Hospital and Sayapin’s death.</p> <p>Given the fact that the Hospital is a state public institution providing medical care to the general public, State is responsible for the culpable negligence of the medical personnel amounting to inhuman treatment under Article 3 of the Convention.</p>
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<p>3) Section 1 of Article 6 of the Convention</p>	<p>1.1. The applicants complain that they had had no access to a court, contrary to Section 1 of Article 6 of the Convention, as under domestic law they were barred from criminal prosecution of people found guilty in the death of their relative according to the medical expertise № 224/70 from 11.02.2008. They also claim that they were barred from satisfying in a full amount a civil claim to obtain compensation for the death of their relative in the absence of any tangible results from the criminal investigation.</p> <p>2.1. The right to a fair trial was breached by the Respondent State for the first time on the 10 of August 2006 when there was no reply to a complain of I.P. Sayapina where she stated that the termination of the criminal case was illegal.</p> <p>2.2. For the second time the right to a fair trial was breached on the 13 of August 2006 when a decision by the Kaliningradskiy Regional prosecutor's office not to initiate a criminal case against the medical personal of the Regional Clinical Hospital of Kaliningrad was delivered for the second time, because the prosecutor's office stated that the doctors took all the necessary measures to save the patient's life.</p> <p>2.3. The third violation took place on the 31 of July 2008 when the application of I.P. Sayapina from the 25 of July 2008 to initiate a criminal case against the Regional Clinical Hospital of Kaliningrad was rejected.</p> <p>2.4. For the fourth time this right was violated on the 30 of December 2009 when the judicial board for civil cases of the Kaliningrad's Regional Court did not satisfy the appeals on the decision of the Leningrad's District Court of the city of Kaliningrad from the 29 of October 2009 and from the 1 of December 2009.</p>
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4) Article 13 of the Convention	<p>1.1. The applicants claim that they had no effective domestic remedies in respect of the violations of their rights secured by Article 2 of the Convention, contrary to Article 13 of the Convention. The applicants insist that in their case the domestic remedies usually available have proved to be ineffective, given that the investigation had been plagued with defects, that their attempts to bring criminal proceedings did not finish successfully, their civil proceedings were satisfied only towards V.S. Surbo and were not satisfied towards the Regional Clinical Hospital of Kaliningrad, and that most of their applications to public bodies had remained unanswered or had only sometimes produced standard replies.</p> <p>2.1. There was no effective investigation concerning car accident, the applicant I.P. Sayapina complained that there was no expert report about the car belonged to V.S. Surbo, and there were no investigative actions to find and examine that car.</p> <p>2.2. The Kaliningrad's Regional Court took into account only one medical report, made on the initiative of the Regional Clinical Hospital of Kaliningrad and did not regard other reports.</p> <p>2.3. The applicant's civil claim was partly satisfied only in relation to compensation from V.S. Surbo and was not totally satisfied in relation to the Regional Clinical Hospital of Kaliningrad, but these events must have caused the applicants not insignificant moral suffering but also emotional feelings of distress, frustration, injustice, and prolonged uncertainty which call for an award in respect of non-pecuniary damage.</p> <p>2.4. The fact that most of the applicants' complaints and applications to public bodies had remained unanswered or had only sometimes produced standard replies can be found above in section, concerning violations of the Section 1 of the Article 6 of the Convention.</p>
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**G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.**

Complaint	Information about remedies used and the date of the final decision
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<p>All violations of the Convention explained hereinabove (violations of Article 2, Article 3, Section 1 of Article 6, Article 13)</p>	<p><b>I. Criminal investigation into the circumstances of the accident</b></p> <p>1.1 On 27 July 2006 Prosecutor's office decided to discontinue the criminal proceedings against Surbo V.S. as the reason for the accident, according to the prosecutors, was a fault in the vehicle, which Surbo V.S. managed.</p> <p>1.2 This decision was complained in court by the Sayapina I.P.</p> <p><b>II. A criminal investigation into the death of Sayapin M.A.</b></p> <p>2.1 On 13 January 2006 Sayapina I.P. filed a criminal complaint against the medical staff of Regional Clinical Hospital of Kaliningrad.</p> <p>2.2 On 6 February 2006 the decision was issued on refusal to investigate the criminal case on the grounds that there was no evidence of crime in the actions of the staff under Art. 293 of the Criminal Code of the Russian Federation.</p> <p>2.3 This decision was complained by the Sayapina I.P. on the grounds that there was no forensics held as a necessary investigative step.</p> <p>2.4 On 28 March 2006 the Deputy Prosecutor of Leningradskiy district adopted decision on cancellation of the resolution on refusal to initiate the criminal case and return of materials for additional investigation.</p> <p>2.5 On 7 April 2006 the investigator re-issued a resolution on refusal to initiate the criminal case.</p> <p>2.6 This decision was complained by the Sayapina I.P. in court.</p> <p>2.7 On 7 June 2006 the court satisfied the complaint of Sayapina I.P. and held that the refusal to initiate the criminal case was illegal and groundless.</p> <p>2.8 On 17 August 2006 the Prosecutor's office issued a second resolution on refusal to initiate criminal case on the grounds that, doctors carried out all necessary actions and their fault is missing.</p> <p>2.9 This decision was complained by the Sayapina I.P. to the Prosecutor of Kaliningrad Region.</p> <p>3.1 On 25 July 2008 Sayapina I.P. filed a criminal complaint against the medical staff of Regional Clinical Hospital of Kaliningrad.</p> <p>3.2 On 31 July 2008 the decision was issued on refusal to investigate the criminal case on the grounds that there was no evidence of crime in the actions of the staff.</p> <p><b>III. Civil claim against Regional Clinical Hospital of Kaliningrad.</b></p> <p>3.1 In December 2006 Sayapina I.P. and Sayapin A.M. filed a claim for moral compensation against Regional Clinical Hospital of Kaliningrad.</p> <p>3.2 On 18 March 2008 Leningradskii District Court of Kaliningrad awarded moral damages to the claimants along with reimbursement for forensics and stamp duty.</p> <p>3.3 On 25 April 2008 Regional Clinical Hospital of Kaliningrad filed appeal demanding to cancel the decision of the Leningrad district court.</p> <p>3.4 On 2 July 2008 the judicial Board for civil cases of the Kaliningrad regional court was cancelled the decision of the Leningrad district court and sent the case for new consideration in the same district court.</p> <p>3.5 Claimants increased their claims, involving Surbo also as a</p>
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defendant. Sayapin V.A., the brother of Sayapin M.A. also filed a separate claim in the same case.

3.6 On 29 October 2009 Leningradskii District Court of Kaliningrad partially satisfied claims of Sayapina I.P., Sayapin A.M. and Sayapin V.A. Compensation for moral damages was charged with Surbo V.S. The rest of the requirements were rejected.

3.7 On 10 November 2009 Sayapina I.P., Sayapin A.M. and Sayapin V.A. filed appeal in Kaliningrad regional court.

3.8 On 30 December 2009 the final decision at domestic level was made by the Kaliningrad regional court that left the decision of Leningradskii District Court without change.

## **I. List of accompanying documents**

**You should enclose full and legible copies of all documents.**

**No documents will be returned to you. It is thus in your interests to submit copies, not originals.**

**You MUST:**

- **arrange the documents in order by date and by procedure;**
- **number the pages consecutively;**
- **NOT staple, bind or tape the documents.**

1. A copy of the application on initiating criminal case against the Regional Clinical Hospital of Kaliningrad from 13.01.2006.
2. A copy of the decision on the refusal to initiate criminal proceedings against the Regional Clinical Hospital of Kaliningrad from 06.02.2006.
3. A copy of the revocation of the decision from 06.02.2006 on the refusal to institute criminal proceedings from 28.03.2006.
4. A copy of the decision on the refusal to institute criminal proceedings against the Regional Clinical Hospital of Kaliningrad from 07.04.2006.
5. A copy of the expert opinion of the Bureau of Forensic Medical examination of the Kaliningrad region from 22.05.2006.
6. A copy of the expert opinion of the Bureau of Forensic Medical examination of the Kaliningrad region from 22.05.2006.
7. A copy of the decision of the Leningradskiy District Court from 7.06.2006.
8. An appeal against the decision from 27.06.2006 from 10.08.2006.
9. A copy of the decision on the refusal to institute criminal proceedings against the Regional Clinical Hospital of Kaliningrad from 13.08.2006.
10. A copy of the expert report of the Main State Centre for the Medico-Legal Forensic Examinations from 11.02.2008.
11. A copy of the expert report of the Ministry of Health and Social Development of Russian federation from 03.09.2009.
12. A copy of the application on instituting criminal proceedings against medical personnel of the Regional Clinical Hospital of Kaliningrad from 25.07.2008
13. A copy of the decision on the refusal to institute criminal proceedings against medical personnel of the Regional Clinical Hospital of Kaliningrad from 31.07.2008.
14. A copy of the civil claim Regional Clinical Hospital of Kaliningrad from December 2006.
15. A copy of the decision of the Leningradskiy District Court from 18.03.2008.
16. A copy of the cassation decision of the judicial board on civil cases of the Kalinigradskiy Regional court from 02.07.2008.
17. A copy of the decision of the Leningradskiy District Court from 29.10.2008.
18. A copy of the cassation claim of 13.11.2008 against the decision from 29.10.2008.
19. A copy of the cassation decision of the judicial board on civil cases of the Kalinigradskiy Regional court from 30.12.2009.