EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

RUS - 2014/1

Формуляр жалобы

Об этом формуляре жалобы

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Штрих-код
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Номер жалобы
Если Вы знаете номер жалобы, который был присвоен Судом, укажите его ниже.

A. Заявитель (физическое лицо)

Этот раздел предназначен только для физических лиц. Если заявителем является организация, заполните Раздел B.

1. Фамилия

Саблина

2. Имя (имена) и отчество

Елена Владимировна

3. Дата рождения

2	0	1	0	1	9	7	1
Д	Д	М	М	Г	Г	Г	Г

напр. 27/09/2012

4. Гражданство

Россия

5. Адрес

Россия, 620144, г.Екатеринбург, ул.Сурикова, д. 39 , кв. 45

6. Номер телефона (включая международный код страны)

+79086363623

7. Адрес электронной почты (если имеется)

perspektiff@mail.ru

8. Пол

- ○ мужской
- ◉ женский

B. Заявитель (организация)

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9. Название

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напр. 27/09/2012

12. Сфера деятельности

13. Адрес регистрации юридического лица

14. Номер телефона (включая международный код страны)

15. Адрес электронной почты

C. Представитель/представители заявителя

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Представитель, не являющийся адвокатом/ должностное лицо организации

Заполните эту часть формуляра, если Вы представляете интересы заявителя, *но не являетесь адвокатом.*

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16. Отношение к заявителю / должность

17. Фамилия

18. Имя (имена) и отчество

19. Гражданство

20. Адрес

21. Номер телефона (включая международный код страны)

22. Номер факса

23. Адрес электронной почты

Адвокат

Заполните эту часть формуляра, если Вы являетесь *адвокатом*, представляющим интересы заявителя.

24. Фамилия

Бурков

25. Имя (имена) и отчество

Антон Леонидович

26. Гражданство

Россия

27. Адрес

620075, Россия, Екатеринбург, ул. Тургенева, 11-1, Свердловская региональная общественная организация "Сутяжник"

28. Номер телефона (включая международный код страны)

+79161250593

29. Номер факса

+73433553651

30. Адрес электронной почты

anton.burkov@gmail.com

Одобрение полномочий

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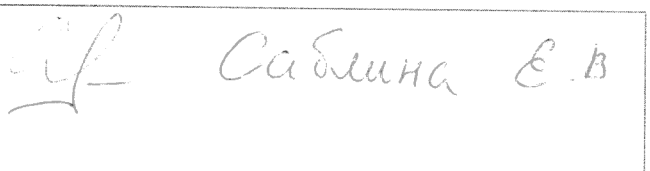
Настоящим уполномочиваю вышеуказанное лицо представлять мои интересы при рассмотрении дела в Европейском суде по правам человека по моей жалобе, поданной в соответствии со статьей 34 Конвенции.

31. Подпись заявителя



32. Дата

1	6	1	2	2	0	1	5
Д	Д	М	М	Г	Г	Г	Г

напр. 27/09/2012

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1. Фамилия

Бирюкова

2. Имя (имена) и отчество

Татьяна Михайловна

3. Дата рождения

0	2	1	0	1	9	5	0
Д	Д	М	М	Г	Г	Г	Г

напр. 27/09/2012

4. Гражданство

Россия

5. Адрес

Россия, 665218, Иркутская область, Тулунский район, село Гадалей

6. Номер телефона (включая международный код страны)

+79086661508

7. Адрес электронной почты (если имеется)

-

8. Пол

- ○ мужской
- ◉ женский

B. Заявитель (организация)

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напр. 27/09/2012

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13. Адрес регистрации юридического лица

14. Номер телефона (включая международный код страны)

15. Адрес электронной почты

C. Представитель/представители заявителя

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Представитель, не являющийся адвокатом/ должностное лицо организации

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17. Фамилия

18. Имя (имена) и отчество

19. Гражданство

20. Адрес

21. Номер телефона (включая международный код страны)

22. Номер факса

23. Адрес электронной почты

Адвокат

Заполните эту часть формуляра, если Вы являетесь *адвокатом*, представляющим интересы заявителя.

24. Фамилия: Бурков

25. Имя (имена) и отчество: Антон Леонидович

26. Гражданство: Россия

27. Адрес: 620075, Россия, Екатеринбург, ул. Тургенева, 11-1, Свердловская региональная общественная организация "Сутяжник"

28. Номер телефона (включая международный код страны): +79161250593

29. Номер факса: +73433553651

30. Адрес электронной почты: anton.burkov@gmail.com

Одобрение полномочий

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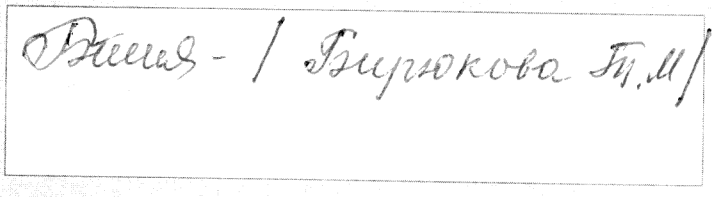

32. Дата: 16/12/2015 (напр. 27/09/2012)

Д Д М М Г Г Г Г

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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1. Фамилия

Саблина

2. Имя (имена) и отчество

Нэлли Степановна

3. Дата рождения

1	9	0	7	1	9	4	2
Д	Д	М	М	г	г	г	г

напр. 27/09/2012

4. Гражданство

Россия

5. Адрес

Россия, 620050, г. Екатеринбург, ул. Надеждинская д. 9 кв. 94

6. Номер телефона (включая международный код страны)

+79122902791

7. Адрес электронной почты (если имеется)

-

8. Пол

- ○ мужской
- ◉ женский

B. Заявитель (организация)

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Д	Д	М	М	г	г	г	г

напр. 27/09/2012

12. Сфера деятельности

13. Адрес регистрации юридического лица

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18. Имя (имена) и отчество

19. Гражданство

20. Адрес

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24. Фамилия

Бурков

25. Имя (имена) и отчество

Антон Леонидович

26. Гражданство

Россия

27. Адрес

620075, Россия, Екатеринбург, ул. Тургенева, 11-1, Свердловская региональная общественная организация "Сутяжник"

28. Номер телефона (включая международный код страны)

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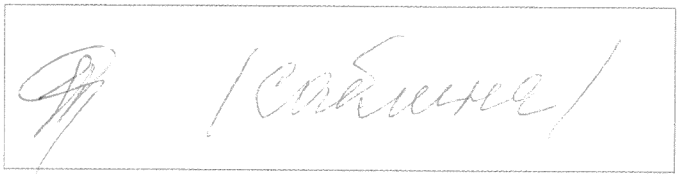


32. Дата

1	6	1	2	2	0	1	5
Д	Д	М	М	Г	Г	Г	Г

напр. 27/09/2012

D. State(s) against which the application is directed

33. Tick the name(s) of the State(s) against which the application is directed

- [ ] ALB - Albania
- [ ] AND - Andorra
- [ ] ARM - Armenia
- [ ] AUT - Austria
- [ ] AZE - Azerbaijan
- [ ] BEL - Belgium
- [ ] BGR - Bulgaria
- [ ] BIH - Bosnia and Herzegovina
- [ ] CHE - Switzerland
- [ ] CYP - Cyprus
- [ ] CZE - Czech Republic
- [ ] DEU - Germany
- [ ] DNK - Denmark
- [ ] ESP - Spain
- [ ] EST - Estonia
- [ ] FIN - Finland
- [ ] FRA - France
- [ ] GBR - United Kingdom
- [ ] GEO - Georgia
- [ ] GRC - Greece
- [ ] HRV - Croatia
- [ ] HUN - Hungary
- [ ] IRL - Ireland
- [ ] ISL - Iceland
- [ ] ITA - Italy
- [ ] LIE - Liechtenstein
- [ ] LTU - Lithuania
- [ ] LUX - Luxembourg
- [ ] LVA - Latvia
- [ ] MCO - Monaco
- [ ] MDA - Republic of Moldova
- [ ] MKD - "The former Yugoslav Republic of Macedonia"
- [ ] MLT - Malta
- [ ] MNE - Montenegro
- [ ] NLD - Netherlands
- [ ] NOR - Norway
- [ ] POL - Poland
- [ ] PRT - Portugal
- [ ] ROU - Romania
- [x] RUS - Russian Federation
- [ ] SMR - San Marino
- [ ] SRB - Serbia
- [ ] SVK - Slovak Republic
- [ ] SVN - Slovenia
- [ ] SWE - Sweden
- [ ] TUR - Turkey
- [ ] UKR - Ukraine

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

34.

1. This case involves the removal of Alina Olegovna Sablina's ('AS') organs in Russia without her consent or the consent of her parents, Oleg Sablin and the applicant Elena Sablina ('ES').

2. In addition to ES, the two other applicants are Tatiana Birukova and Nelli Sablina, the grandmothers of AS.

3. On January 11, 2014 AS was hit by a car in Moscow while crossing the street in a pedestrian walkway which left her in a coma.

4. After the accident, AS was taken to Intensive Care Unit No. 24 of the City Clinical Hospital No. 1 ("the Hospital"), which is established, funded and licensed by the Moscow Department of Health. Her parents immediately flew to Moscow from the city of Yekaterinburg.

5. Every day from January 12 to January 16, 2014 AS's parents visited her at the hospital at least twice a day. During this period, they spoke to the head doctor of Intensive Care Unit No. 24 Ostapchenko Dmitriy Anatolievich on three occasions and a ward doctor on every other occasions. On January 16, 2014 a ward doctor of the intensive care unit Karzin Alexey Vladimirovich informed them that AS's condition had deteriorated.

6. On January 17, 2014 AS's parents tried twice to see their daughter. The same ward doctor from the intensive care unit simply refused them access to their daughter without any explanation. During both conversations between AS's parents and the ward doctor, it clearly transpired from the manner in which the latter spoke to them that they were not welcomed to stay at the hospital. The ward doctor looked nervous and agitated, as if he knew and was afraid of something, and he spoke to AS's parents with a sharp tone and averted their eyes. AS's parents were asked to leave the hospital without having a chance to see their daughter.

7. AS is recorded as having died at 11:40 p.m. on January 17, 2014, less than six hours after the Hospital staff had refused her parents access to their daughter (Document 1).

8. On February 15, 2014, while filling out paperwork in connection with the criminal case against the driver who caused the accident, ES accidentially came across a forensic report of February 11, 2014 (Document 4) that detailed the removal of her daughter's organs at the Hospital in the criminal case file. According to the report, a forensic expert who had examined AS's body, Klianchenkov Andrey Nikolaevich, had reviewed a list of the organs that had been removed from the body for transplantation (Document 2), which was drafted by the transplantologists who performed the organ removal. This list of organs which had been removed was not made available to AS's parents at any time until civil action court hearing on December 23, 2014. This list of removed organs included only AS's heart and kidneys. However, the forensic expert's examination of the body revealed that the hospital had also removed part of her aorta and inferior vena cava, her adrenal gland, and a piece of the lower lobe of the right lung (Document 4). No one provided an explanation or accounted for this major discrepancy.

9. AS neither neither expressed any consent nor any refusal to donate her organs prior to her accident. Her parents affirm never having been asked whether their daughter had consented or refused to being an organ donor or whether they would consent to organ transplantation in the absence of any wishes expressed by AS. Despite the parents' constant physical attendance at the hospital at all relevant times, as well as numerous discussions with the hospital's doctors and personnel, they were altogether deprived of their right to consent or oppose the removal of their daughter's organs. On April 6, 2015, the head doctor of Intensive Care Unit No. 24 testified in the district court

Statement of the facts (continued)

35.

that he classified AS as "a potential donor" on the second or third day of AS's presence at the hospital - this is January 12 or 13, 2014. He informed Moscow Coordination Center of Organ Donation (МКЦОД) about AS as a "potential donor" present at the hospital, but did not informed AS's parents about this, although he spoke with them about AS's health (see Documents 27-28). The Hospital never informer AS's parents that transplantologists had in fact removed their daughter's organs for transplantation after AS's death.

10. On July 4, 2014 the Investigative Committee (СК России, ГСУ СК России по г. Москве, СУ по Центральному АО г.Москвы) esteblished that transplantologists of FGBU "Federal Scientific Centre of Transplantology and Artificial Organs Named After Shumakov" took part in removing AS's heart, while Moscow Coordination Center of Organ Donation removed kidneys of AS (page 6 of Document 15). Apparently FGBU participated in transplanting AS's heart to a recipient. At trial, judge Shemyakina of Zamoskvoretskiy district court refused a request (dated March 2, 2015) of the representative of Sablina's family to hear direct witnesses who could clarify these facual circumstances (see Document 23).

11. When ES found out about the removal of AS's organs, including the organs missing from the Hospital's list of removed organs, she fell immediate sick from emotional shock and fainted. When the Hospital failed to provide answers as to why it had removed Alina's organs without informing her and seeking her consent, ES called her relatives, crying and questioning how the doctors could do such a thing. She remained concerned that the doctors had killed AS to harvest her organs. To this day, ES never recovered from the psychological shock she suffered when she was informed of what had happened to AS's body. ES describes her sufferings caused by the secret organ removal as the second death of AS: "I buried Alina twice, when I learned about her death, and when I learned of secret organ removal." (Document 24).

12. The members of AS's family were never afforded an opportunity to say goodbye to their loved one, and have not been properly informed of the exact cause and circumstances of AS's death. Thus AS's right to life, as well as the family's right to know the circumstances of their loved one's death, remain at issue.

13. The Applicants instituted a civil action against the hospital where the removal took place and the doctors responsible for the removal and transplantation (collectively referred to as the "Defendants in first instance") (Documents 16, 17).

14. On December 23, 2014 a trial judge granted (Document 19) the Defendants' motion (Document 18) for closed hearing. On February 11, 2015 the Applicants requested, both orally and in writing (Document 20), the reconsideration of the December 23, 2014 decision which ordered the closed hearing. The request was dismissed and the closed hearing order was maintained (Document 21).

15. Although the State was not a defendant or an impleaded party in the civil lawsuit, on February 11, 2015 a preliminary trial hearing took place where a State Prosecutor was present. This Prosecutor was sitting at the Applicants' counsel table, preventing him to work properly, although the law did not allow a Prosecutor to participate proprio motu in the proceedings.

16. On February 11, 2015 the Applicants filed an oral motion to exclude the State Prosecutor from the courtroom. His motion was summarily dismissed by the trial judge without any justifications. No immediate appeal was possible under Russian rules of civil procedure.

17. During another preliminary hearing on March 2, 2015 the Applicants filed a written motion with the Court's Registrar (Document 22) and no answers were given to this date.

Statement of the facts (continued)

36.

18. The in camera trial began on April 6, 2015. At this occasion, the Applicants' counsel was prevented to examine direct witnesses of the organ removal (the defendant-transplantologists who performed the removal), although his intention to do so had been duly announced prior to trial, the whole in conformity with rules of civil procedure (Document 23). The Applicants' counsel told the judge that such a restriction on the evidence would impair Applicants' capacity to demonstrate that a civil wrong had been committed, particularly if the same transplantation institution , i.e. the FGBU, participated in removing and transplanting of AS's heart. The Applicants could not ask questions on whereabouts of the four missing organs. Nevertheless, the judge maintained her decision not to allow the examinations. The judge only allowed the ward doctor and the head of the Intensive Care Unit No. 24 of the Hospital to testify on April 6, 2015. Instead of transplantologiests the judge examined the first legal representative of the Hospital O.A Bortnikova. Bortnikova O.A. was examined by the judge in the capacity of a medical expert who possesses medical education. Bortnikova O.A. "confirmed" that those missing organs were "destroyed", although she could have not witnessed this.

19. On the first day of trial on April 6, 2015 the State Prosecutor was not present.

20. On the second day of trial on April 7, 2015, when only parties' closing arguments were heard and neither evidence considered nor witnesses heard, the State Prosecutor was present, having missed the presentation of the evidence and examination of witnesses which took place during the first day of the hearing on April 6, 2015. The Applicants' representative filed an oral motion in which they once again demanded the exclusion of the State Prosecutor from the courtroom. Although the judge dismissed this motion, Applicants' counsel was allowed regain access to his table, on the plaintiffs' side of the courtroom. The State Prosecutor sat at the same table as the court's clerk who was taking court's minutes. The State Prosecutor announced its conclusions on the merits of the case and asked the court to dismiss the application. The Appliicants' representative was not allowed to ask questions to the State Prosecutor.

21. On April 7, the trial held in camera ended with a judgment on the merits. The judge only publicly announced operative part of the judgment (i.e. its conclusions). No reasons were given to the public and to the journalist who was present. Such public announcement of the operative part of the judgment did not allow the public and journalist to make any sense of the tremendous importance of the subject matter of the judgment for the Russian public in general.

22. As it appears from the minutes of the hearing (Document 25), little, if any, information from the medical record was discussed during the trial, as the application was about reasons for secret organ removal, not about AS' treatment.

23. The judgment of April 7, 2015 (Document 26) has never been officially published. Moscow City Court later prohibited on-line publication of the judgment of the first instance court and of the court of appeal (Document 29).

24. On June 30, 2015 the appeal (Document 30) hearing at the Moscow city court was also held in closed chamber on the request of the defendant (Document 31) despite oral and written motion by the Applicant's representative to open the hearing to the public and announce the judgment fully (Document 32).

25. Only the operative part of the decision by the appeal court was announced publicly, and no copies of the decision were made public. This is despite the fact that no medical records were discussed during the closed hearing, as it appears from the minutes of the hearing (Document 35), and despite Applicants' motion of 30.06.2015 to announce the full judgment (Document 33).

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

37. Article invoked	Explanation
Article 3 (Applicant: Elena Sablina)	1. Russia's actions caused ES to suffer well beyond what is normally expected from a parent due to the loss of a child (V. v. United Kingdom 24888/94, § 71). The way ES was treated amounts to a degrading treatment (Elberte v. Latvia 61243/08, §§ 134-135). ES suffered a profound psychological impact when she discovered that AS's organs had been secretly removed and several organs simply disappeared. These facts have pushed ES's in a state of emotional distress because she believes that her daughter's death might have been accelerated for the purpose of organ trafficking. Numerous violations of the right to a fair trial is yet another element which leads to a conclusion of degrading treatment (see for example Çakici v Turkey ([GC]), No 23657/94, § 98). Russia, by not providing an effective official investigation, was and is still keeping ES in ignorance concerning her daughter's post mortem treatment, which aggravates her suffering and renders it endless (Assenov and others v. Bulgaria 90/1997/874/1086, § 102).
Article 6 (Applicants: Elena Sablina, Tatiana Birukova & Nelli Sablina)	2. Russia violated the right to a public hearing when its courts ordered a closed hearing . Even if the judges at all levels had concluded that public exposure had to be limited for parts of the evidence, such as medical data (see Z v. Finland, 22008/93, § 95), such limitations would have had to be applied strictly to the extent necessary (Nikolova and Vandova v. Bulgaria 20688/04, § 74). The trial and appeal judges imposed an unjustified, illegal and disproportionate blanket exclusion of the press and the public. 3. The obligation as to public announcement of the judgments was violated when only conclusions of the trial and appeal judgments were announced publicly. No judgments were published. 4. Despite her missing of key parts of the trial, the State Prosecutor's intervened in favor of the defendants. This created an imbalance between the parties, and therefore violated the principle of equality of arms, (Korolev v. Russia (No.2) 5447/03, § 37). 5. When the trial judge did not allowed the examination of the transplantologists who performed AS's organs removal, the Applicants were not given a reasonable opportunity to present their case. They were therefore placed at a substantial disadvantage vis-à-vis their opponents (Menchinskaya v. Russia, no. 42454/02, §§ 37-40). 6. All the arguments based on European human rights law were systematically dismissed or ignored by the national courts, which caused a further violation of the Applicants' right to a fair trial (Wagner and J. M. W. L. v. Luxemburg 76240/01, §§ 96-98). 7. Judges' conduct at both level raised a subjective apprehension of bias which is objectively justified (Kyprianou v. Cyprus, no. 73797/01, § 118; Morice v. France, no. 29369/10, § 74).
Article 8 (Applicant: Elena Sablina, Tatiana Birukova & Nelli	8. The Applicants were denied the right to express their consent to the organ removal conducted on AS's body (Elberte v. Latvia 61243/08, §§ 105-107). The lacunae and ambiguities in relevant Russian domestic laws regarding organ removal created arbitrariness and violated the principle of legality (Petrova v. Latvia 4605/05, §§ 94-95), therefore creating the conditions for the doctors to perform the removal without informing the relatives or seeking their consent.
Article 10 (Applicant: Elena Sablina)	9. The doctors failed to inform ES of the post-mortem organ removal procedure that was undertaken on AS's body (Appleby & Others v. United Kingdom 44306/98, § 47; K.H. and Others v. Slovakia 32881/04, § 46; Claude Reyes v. Chile IACHR Series C No. 151, § 77). Concomitantly, ES was not given the opportunity to express an informed consent, according to AS's values, prior to the organ removal (R.R v. Poland 27617/04, § 197).
Article 13 (Applicants: Elena Sablina, Tatiana Birukova & Nelli Sablina)	10. There was no possible way for the Applicants to find an effective remedy: the complaints made to the criminal authorities remained unanswered and the civil pursuit lead to many violations of the rights protected by article 6 (as seen in Lukenda v. Slovenia 23032/02, §§ 81-88).

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.

38. Complaint	Information about remedies used and the date of the final decision
Articles 3, 8 and 10, and articles 6 and 13.	1. On April 5, 2014 ES filed a complaint to the head of the main investigative department of the Investigative Committee of the Russian Federation for Moscow seeking a criminal investigation into the removal and transplantation of AS's organs (Document 5). The only response to this complaint that ES received was a statement from the Prosecutor's Office for Moscow on April 10, 2014 that extended the deadline for its review of the situation (Document 14); and two other statements subsequently referring the matter to other department (Documents 6, 7). 2. On April 7, 2014 ES submitted another complaint to the territorial body of the Federal Service for Supervision of Health for Moscow and the Moscow region ("Federal Service") seeking a criminal investigation into the Hospital's removal and transplantation of AS's organs (Document 8). On June 4, 2014 the Federal Service responded that based on their examination, the Hospital had violated various Russian regulations, but none of these violations related to organ transplantation (Document 9). The Federal Service did not provide any details regarding Russian regulations that the Hospital had in fact violated. Nor did it provide AS's mother any apology or compensation for the harm she suffered as a result of the hospital's removal of AS's organs without her consent, and the related failure and omission to inform her of the removal (Document 9). 3. In March 2014 ES filed complaints to the General Prosecutor of Russia the Deputy Prosecutor General of Russia Malinovskiy V.V. (Document 11) and the Deputy Prosecutor General of Russia Ponomarev U.A. (Document 12) asking the state to pursue criminal charges against the hospital's doctors. On April 1, 2014 ES filed an additional explanation of the events in question to the Prosecutor's Office of the Central Administrative Region of Moscow at the request of the Prosecutor's Office (Document 13). 4. The Applicants instituted a civil action in December of 2014 against the hospital where the removal took place and the doctors responsible for the removal and transplantation (Document 16, 17). Case No 2-557/2015. 5. On April 7, 2015 the judgment of the first instance was rendered (Document 26). Only the operative parts were announced in public. The applicants then filed an appeal (Document 30). Case No 33-21633. 6. On June 30, 2015, the appeal hearing took place and only the operative parts of the judgment were made announced in public (Document 29). 7. On June 30, 2015 the Applicants asked a revision of the District court judge's refusal to allow the applicants to interrogate the doctors on April 6, 2015; it was summarily dismissed by a judge of the Moscow City Court. Case No 4r-8280/2015 8. On July 27, 2015 the Applicants filed a cassation request to the Presidium of Moscow City court (Document 36). On October 15, 2015 the cassation was dismissed (Document 37). Case No 5-КФ15/3836. 9. On October 23, 2015 the applicants filed cassation to the Supreme Court of Russia (Document 38). On November 27, 2015 the cassation was dismissed (Document 39). This is the date of the final decision. 10. At all stage, the Applicants' presented the relevant principles applicable to Russian judiciary pursuant to Art. 3, 6, 8, 10 of the Convention with references to the relevant ECHR case-law. These arguments were all dismissed without due consideration by the judges at all levels. 11. No other effective internal remedies are available to the Applicants.

39. Is or was there an appeal or remedy available to you which you have not used? (●) Yes ( ) No

40. If you answered Yes above, please state which appeal or remedy you have not used and explain why not.

On July 27, 2015 the applicants filed an application to the Russian Constitutional Court challenging Article 8 of the Federal Law On transplantation, which allowed secret removal of human organs for transplantation (Document 41-43). This application is still being considered. As the Russian Constitutional Court is not, as a rule, considered as a effective remedy, and because Applicants do not believe that this constitutional remedy is effective due to the existence of the 2003 Constitutional Court's decision on a similar to the Applicant's case (Decison by the Constitutional Court of the Russian Federation of 4 December 2003 N 459-O on L.V. Zhytynsky v. Saratov Regional Hospital - (Document 40) the applicants submitted this application to the ECHR before receiving the decision by the Constitutional Court. This is done to keep on the safe side with the 6-month rule of the application to the ECHR. However, applicants are in the process of exhausting this ineffective remedy to allow the Constitutional Court a chance to correct the wrong before the ECHR will do it subsidiarily. Applicants will duly inform the ECHR of the decision by the Constitutional Court as soon as they learn of the outcome of the constitutional claim.

H. Information concerning other international proceedings (if any)

41. Have you raised any of these complaints in another procedure of international investigation or settlement? ( ) Yes (●) No

42. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

43. Do you (the applicant) currently have, or have you previously had, any other applications before the Court? (●) Yes ( ) No

44. If you answered Yes above, please write the relevant application number(s) in the box below.

Applicants have previously had application Sablina and Others v. Russia, No. 52859/14, ruled inadmissible by a single judge formation (judge K. Hajiyev) during sessions 8 to 22 January 2015, the ECHR's letter of 29.01.2015 (Document 44)

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.**

45. In the box below, please list the documents in chronological order with a concise description.

1. Protocol of brain death 17.01.2014
2. Act of organ removal from dead donor for transplantation (no date contained)
3. Death Certificate of Alina Sablina, 20.01.2014
4. Forensic Report, No. 133/21, 11.02.2014
5. Complaint to Investigative Committee of the Russian Federation for Moscow, 5.04.2014
6. Response, No. 216/2-419-14 (2-6494), 29.04.2014
7. Response, No. 1-p-14(591), 14.05.2014
8. Complaint to Federal Service for Supervision of Health, 7.04.2014
9. Response to Federal Service for Supervision of Health, 4.06.2014
10. Complaint to General Prosecutor of Russia, March 2014
11. Complaint to Deputy Prosecutor General of Russia Malinovskiy V.V., March 2014
12. Complaint to Deputy Prosecutor General of Russia Ponomarev U.A., March 2014
13. Additional Explanation to Prosecutor's Office of Central Administrative Region of Moscow, 1.04.2014
14. Statement, Prosecutor's Office of Moscow, 10.04.2014
15. The Investigative Committee' ruling of 4.07.2014.
16. Civil action (as amended 11.02.2015)
17. Memorandum on civil action of 6.04.2015
18. Defendants' motion of 23.12.2014 for closed hearing
19. Court's decision of 23.12.2014 granting this motion
20. Applicants' motion of 11.02.2015 to partially open the hearing
21. Court's decision of 11.02.2015 on refusing Applicants' motion to partially open the hearing
22. Applicants' motion of 02.03.2015 to exclude the State Prosecutor from the courtroom
23. Applicant's request of 2.03.2015 to hear direct witnesses
24. Request to accept exhibits as evidence of moral sufferings dated April 6, 2015.
25. Continued on Supplement appending further details to the application form ("20 additional pages") 4 pages

Any other comments

Do you have any other comments about your application?

46. Comments

The applicants request that the Court give priority to their application under Rule 41 of the Rules of the Court. The Court should prioritize this application in order to address the claims before Alina Olegnova Sablina's grandparents pass away; they are both disabled and suffer from various physical ailments.

Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

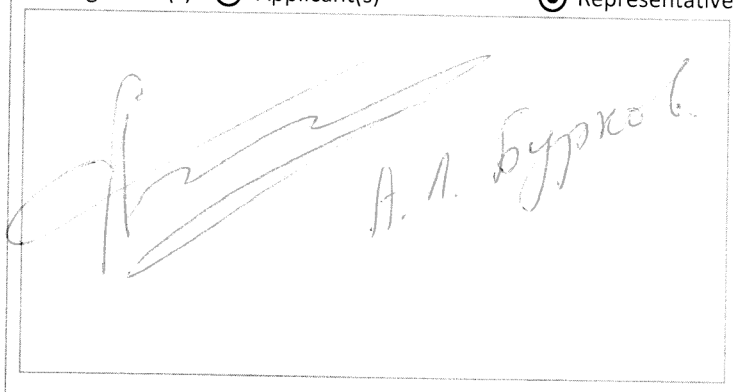
47. Date

2	4	1	2	2	0	1	5
D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) ○ Applicant(s) ◉ Representative(s) - tick as appropriate



Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of ○ Applicant ◉ Representative - tick as appropriate

Anton Burkov, Russia, 620075, Yekaterinburg, Turgenev Street, 11-1, Sverdlovsk regional NGO "Sutyajnik"

The completed application form should be signed and sent by post to:

The Registrar
European Court of Human Rights
Council of Europe
67075 STRASBOURG CEDEX
FRANCE

Document 45
(4 pages)

Supplement appending further details to the application form ("20 additional pages") 4 pages

E. Statement of the facts

The relevant Russian laws

1. Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues", dated 22 December 1992, establishes a presumption of consent on the part of an individual or her close relatives to the post-mortem removal of her organs for the purpose of transplantation. Article 8 prohibits a medical institution from removing an individual's organs if at that time it is aware that the individual or her close relatives have expressed their objection to the organ removal. In Russia, however, hospitals are often unaware that an individual has expressed their donative intent because there is no centralized database tracking donor consent or providing Russian citizens with any documentation reflecting donor consent, such as a driver's license (see Actual Problems of Post-Mortem Organ Donation by Bequest in the Law of Succession in Russia: A Comparative Legal Analysis, Middle-East J. of Sci. Res. 109701101 (2013)).

2. Article 5 of the Russian law "On Burial and the Funeral Business", dated 12 January 1996, states that each individual can express his or her will with regard to the treatment of his or her body after death, including organ removal. If the individual does not express their will, the right to consent or refuse consent to organ removal belongs to the spouse, a close relative (including a parent or grandparent), or a legal representative of a deceased individual.

3. In 2003, Russia's Constitutional Court—the only Russian Court empowered to rule on whether a Russian law contravenes the Russian Constitution—upheld the constitutionality of Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues" (Decison by the Constitutional Court of the Russian Federation of 4 December 2003 N 459-O on the complaint of L.V. Zhytynsky regarding removal of organs in Saratov Regional Hospital, a case raising similar claims to those at issue here). The Constitutional Court reasoned that it is "inhumane to put the question of harvesting organs or tissues to a person's relatives at practically the same time as they are notified of his death, or immediately before an operation or other type of medical treatment" and concluded that Article 8 "is not unclear or ambiguous per se and therefore cannot be held to contravene individuals' constitutional rights" (Document 40).

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4. Russia has stated that Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues" and Article 5 of the Russian law "On Burial and the Funeral Business" conflict and that this conflict has hindered Russia's prosecution of doctors who remove an individual's organs without consent. Russia responded to a 2002 questionnaire from the Secretary General of the Council of Europe regarding official investigations and prosecutions related to organ trafficking. In its response, Russia noted that although the Prosecutor's Office of the town of Bijsk had initiated proceedings in August 1999 based on allegations that local doctors had removed the organs of deceased individuals without permission of the deceased individuals' relatives, Russian authorities had not pursued these proceedings "[b]ased on the contradictions in the existing legislation" and their resulting conclusion "that the actions of the official of the central hospital of the town of Bijsk did not constitute fact of crime" (Council of Europe, Steering Comm. on Bioethics & European Health Comm., *Replies to the questionnaire for member states on organ trafficking*, CDBI/INF (2003) 11 rev. 2, 2 June 2004).

5. It does not appear that Russia has prosecuted anyone for the removal of an individual's organs without consent as a result of the supposed "contradictions" between Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues" and Article 5 of the Russian law "On Burial and the Funeral Business".

6. Russian lawmakers have known about the confusion caused by their supposedly contradictory laws since at least April 2002, when the Prosecutor General's Office —in response to the allegations described above—proposed revisions to the legislation in a letter to the Russian legislature. Yet, almost ***twelve years*** after discovering the legal deficiency, the Duma has provided no clarification regarding the supposed conflict between Article 8 of the Law of the Russian Federation "On Transplantation of Human Organs and/or Tissues" and Article 5 of the Law of the Russian Federation "On Burial and the Funeral Business".

7. In 2011, Russia enacted Article 47 of the Russian law "On the Basics of Preservation of Health of Russian Citizens", which again addressed the issue of consent to organ donation. Although Article 47 requires that the parents of a minor or mentally incapacitated individual provide consent in cases of organ removal, it does not address whether consent is required in the case of mentally sound adults. Similarly to Article 5 of the Russian law "On Burial and the Funeral Business", Article 47 provides that mentally sound adults can express their donative intent, and in the case that the individual has not expressed their donative intent, a spouse or close relative possesses the right to express that intent. Similarly to Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues", Article 47

prohibits a medical institution from removing an individual's organs if at that time it is aware that the individual or her close relatives have expressed their objection to the organ removal. While Russia could have enacted a law that clarified the supposed conflict between Article 8 of the Russian law "On Transplantation of Human Organs and/or Tissues" and Article 5 of the Russian law "On Burial and the Funeral Business", it did not do so, merely confirming the supposed "contradictions" in Russian law.

I. List of accompanying documents (continuation)

25. Minutes of the 6-7.04.2015 hearing
26. Judgment of 7.04.2015
27. Applicant's changes to the protocol (22.04.2015)
28. Decision of 28.07.2015 to accept changes
29. Screenshot of court's web-site and journalist's correspondence with the Moscow city court (5 pages)
30. Four appeals of the Applicants (11 pages)
31. Defendants' motion for closed appeal hearing (no date available)
32. Applicants' motion of 30.06.2015 to open the appeal hearing
33. Applicants' motion of 30.06.2015 to announce the full judgment
34. Decision by the appeal court of 30.06.2015
35. Minutes of the appeal hearing
36. Applicants' cassation requests of 27.07.2015 the to the Presidium of Moscow City Court
37. Decision of the cassation of 15.10.2015
38. Applicants' cassation of 23.10.2015 to the Supreme Court of Russia
39. Decision of 27.11.2015 by the Supreme Court of Russia
40. Ruling No. 459-O, Russian Constitutional Court, 4.12.2003 (in Russian and with informal translation into English)
41. Application to the Russian Constitutional Court 27.07.2015
42. Reply by the Secretariat of the Russian Constitutional Court 03.09.2015

43. Application to the Russian Constitutional Court under Article 40, 1.10.2015

44. ECHR's letter of 29.01.2015

45. Supplement appending further details to the application form ("20 additional pages") 4 pages