



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

FIRST SECTION

CASE OF SHUMKOVA v. RUSSIA

(Application no. 9296/06)

JUDGMENT

STRASBOURG

14 February 2012

FINAL

14/05/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shumkova v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 24 January 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 9296/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Mariya Nikolayevna Shumkova (“the applicant”), on 3 March 2006.

2. The applicant, who had been granted legal aid, was represented by Mr A. Domolego, a lawyer practising in Irkutsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 4 November 2008 the President of the First Section decided to grant the application priority under Rule 41 of the Rules of Court.

4. On 12 February 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1928 and lives in Irkutsk.

A. Vladimir Shumkov's conviction and death in prison

1. Criminal proceedings against Mr Shumkov and pre-trial detention

6. On 8 December 1993 the applicant's son, Vladimir Shumkov, was arrested on suspicion of murder and placed in a temporary remand centre. On 10 December 1993 he was transferred to a remand prison.

7. On 9 March 1995 Mr Shumkov was convicted of murder and perjury and sentenced to nine years and six months' imprisonment. The sentence was due to expire on 7 June 2003.

2. Correctional facilities where Mr Shumkov served his sentence

8. On 15 July 1995 Mr Shumkov was transferred from the remand prison to correctional facility ITK-19 in Irkutsk to serve his sentence.

9. On 14 January 1999 he was transferred to correctional facility IK-6 in Irkutsk so as to prevent a conflict with other detainees.

10. On 6 February 1999 Mr Shumkov requested to be transferred to a different correctional facility since he was in conflict with other detainees and had allegedly been threatened by them.

11. On 13 July 1999 Mr Shumkov was transferred from correctional facility IK-6 to correctional facility IK-15 in Angarsk, again to prevent a conflict with other detainees.

12. On 10 April 2001 he was transferred to correctional facility IK-20 in Ust-Kuta, once again to prevent a conflict with other detainees.

3. Medical institutions where Mr Shumkov was placed during his post-conviction detention

13. In 1995 Mr Shumkov was diagnosed with epilepsy. Later the diagnosis was changed to psychopathic personality disorder. Between 1995 and 2001 he regularly underwent medical examinations and in-patient treatment in prison hospitals:

- on 2 August 1995 Mr Shumkov was admitted to prison hospital no. 1 in Irkutsk and was diagnosed with psychopathic personality disorder and epilepsy;

- on 26 August 1995 he was transferred to prison hospital no. 2 in Angarsk with a diagnosis of epilepsy; he was discharged on 13 September 1995 following an improvement in his condition;

- on 23 July 1996 Mr Shumkov was admitted to prison hospital no. 1 in Irkutsk and was diagnosed with psychopathic personality disorder, with explosive-type accentuation; he was discharged on 23 August 1996 following an improvement in his condition;

- on 20 March 1997 he was again placed in prison hospital no. 1 in Irkutsk with a diagnosis of psychopathy of explosive-hysteroid type, and

demonstratively blackmailing behaviour with simulation of psychic equivalences and paraxial disorders; he was discharged on 14 May 1997 following an improvement in his condition;

- on 24 February 1998 Mr Shumkov was admitted to prison hospital no. 1 in Irkutsk with a diagnosis of psychopathy of explosive-hysteroid type; he was discharged on 12 March 1998 following an improvement in his condition;

- on 7 July 1998 he was admitted to prison hospital no. 2 in Angarsk with a diagnosis of psychopathy of explosive-hysteroid type with simulation of paraxial disorders; he was discharged on 18 August 1998 following an improvement in his condition;

- on 1 April 1999 Mr Shumkov was admitted to prison hospital no. 1 in Irkutsk with a diagnosis of psychopathy of hystero-excitabile type and neurocirculatory dystonia; he was discharged on 14 April 1999 following an improvement in his condition;

- on 9 March 2000 Mr Shumkov was admitted to prison hospital no. 2 in Angarsk with a diagnosis of psychopathy of explosive-hysteroid type with simulation of paraxial disorders; he was discharged on 30 March 2000 following an improvement in his condition;

- on 26 April 2000 he was admitted to prison hospital no. 1 in Irkutsk with a diagnosis of psychopathy of explosive type and a duodenal ulcer; he was discharged on 19 June 2000 following an improvement in his condition;

- on 28 February 2001 Mr Shumkov was again admitted to prison hospital no. 1 in Irkutsk with a diagnosis of a duodenal ulcer and hypertension; he was discharged on 30 March 2001 following his recovery;

- on 23 May 2001 Mr Shumkov was once again admitted to prison hospital no. 1 in Irkutsk with a diagnosis of psychopathy of explosive type; he was discharged on 6 June 2001 following an improvement in his condition.

4. Acts of self-mutilation and death in correctional facility IK-20

14. On 17 June 2001 Mr Shumkov was placed in a disciplinary cell, where on 1 August 2001 he slashed his left wrist. After medical aid had been administered to him, he was ordered to return to the cell. When Mr Shumkov refused to comply, officers L. and S. used rubber truncheons and physical force to return him to his cell.

15. On 4 August 2001 at 2 a.m. Mr Shumkov knocked at the door of his cell to attract the warder's attention, and when the warder Yu. came over Mr Shumkov said that he needed pills for blood pressure. Warder Yu. reported accordingly to Major P., an officer on duty, who promptly arrived at the disciplinary cell and, having opened the door, found that Mr Shumkov had slashed veins in his elbows. Mr Shumkov said that he needed a bandage but refused to accept medical assistance from the warders and also said that he would not let anybody into the cell except for the prison doctor. At

2.15 a.m. Major P. sent officer D. to fetch the prison doctor, G. At around 2.40 a.m. Dr G. arrived, dressed the wounds and administered injections of cardamine and caffeine. Mr Shumkov was then placed on a stretcher and transported to the medical unit; however, he was dead upon arrival at the unit as a result of heavy blood loss. The time of death was entered in the register as 2.40 a.m.

B. Investigation into the death of Vladimir Shumkov

16. On 6 August 2001 a post-mortem report was drawn up. According to the report, the cause of Mr Shumkov's death was heavy blood loss as a result of injuries to the large blood vessels in the antecubital fossa and forearms.

17. On 10 August 2001 the prison governor, K., decided not to open a criminal investigation into the death of Mr Shumkov for lack of *corpus delicti*.

18. On 17 August 2001 the Kazachinsko-Lenskiy District Prosecutor's Office quashed that decision and referred the case back for additional inquiries. He stated, in particular, that in the course of the inquiries conducted it had not been established whether the officers on duty had tried to provide Mr Shumkov with medical aid and that neither the officers on duty nor the detainees held in adjacent cells had been questioned.

19. On 20 August 2001 the prison doctor G. provided an explanation concerning the events of 4 August 2001 to the Kazachinsko-Lenskiy District Prosecutor's Office. He submitted:

“At 2.30 a.m. on 4 August 2001 a service car arrived to collect me from my home, and I was told that I had to go urgently to the [correctional facility] since a detainee [had collapsed] in a disciplinary cell. I immediately got into the car and at 2.40 a.m. we arrived at the [correctional facility]. Having entered the disciplinary wing, I asked to open the cell where [Mr] Shumkov was being held. [When] the warder opened the door, I saw that [Mr Shumkov] was lying motionless on the floor and blood was splashed around the whole cell. Having examined [Mr Shumkov's] elbow joints, I found that a vein and an artery were cut open on the left elbow joint and similar injuries had been caused to the right elbow joint. I immediately dressed the wounds and administered injections of cardamine, caffeine..., glucose and gluconate and performed artificial ventilation. Since the treatment had no effect, [Mr Shumkov] was transported to the medical unit and fifteen minutes after the beginning of the treatment I pronounced him dead as a result of heavy blood loss. Before my arrival at the disciplinary cell the warders did not provide [Mr] Shumkov with medical aid since he requested to be seen by a doctor and refused to accept medical aid until the [doctor's] arrival. On 1 August 2001 [Mr] Shumkov had committed an act of self-mutilation, having slashed minor blood vessels on his left arm... An antiseptic dressing was applied. If [on 4 August 2001] I had arrived twenty or thirty minutes earlier, it would still have been impossible ... to save [Mr Shumkov's] life since he had arteries and veins slashed in both arms.”

20. On 21 August 2001 the prison governor K. again refused to open a criminal investigation as no crime had been committed. He stated that on 4 August 2001 the prisoner had asked warders to call for a doctor because he had high blood pressure. The warders had discovered that the prisoner had cut veins in both elbows. Mr Shumkov had then been placed in the medical unit, where he had died as a result of heavy blood loss.

21. On 24 August 2001 the Kazachinsko-Lenskiy District Prosecutor's Office refused to open a criminal investigation into the death of Mr Shumkov for lack of *corpus delicti*.

22. On 4 June 2002 the Office of the Prosecutor General set aside the decision of 24 August 2001 and opened a criminal investigation. The prosecutor noted that the district prosecutor's office had failed to investigate the grounds for Mr Shumkov's confinement in a disciplinary cell, the circumstances leading to his suicide and his mental state, in particular taking into account the medical records concerning his treatment from 1996 to 2001. Nor had they identified the object with which Mr Shumkov had slashed the veins in his elbows.

23. The case was forwarded to the Irkutsk Regional Prosecutor's Office. The applicant was informed of that decision by letters of 7 and 25 June 2002.

24. On 8 July 2002 another post-mortem report was drawn up on the basis of Mr Shumkov's medical file. It confirmed the findings of the post-mortem report of 6 August 2001.

25. On 15 July 2002 the prison doctor G. was questioned. He stated that he had known Mr Shumkov since June 2001, when the latter had complained of headaches and high blood pressure. At around 2.40 a.m. on 4 August 2001, following a call from the officer on duty, he had arrived at the disciplinary cell, where he had found that Mr Shumkov had slashed his veins. Dr G. had dressed the wounds and administered an injection of caffeine; however, by that time Mr Shumkov was already in a semi-conscious state. Mr Shumkov had been then transported to the medical unit, where, according to doctor G.'s statement, he had died at 2.40 a.m.

26. On the same date the Ust-Kuta District Prosecutor's Office refused to institute criminal proceedings against officers L. and S. concerning the events of 1 August 2001, and against warder Yu. and Major P. concerning the events of 4 August 2001. The decision stated, *inter alia*, that after Mr Shumkov had committed an act of self-mutilation on 1 August 2001, his cell had been searched on several occasions and no forbidden items had been found. On 4 August 2001 warder Yu. and Major P. had immediately provided Mr Shumkov with first aid.

27. On an unspecified date the applicant complained about the length of the criminal investigation. On 30 December 2002 the Ust-Kuta District Prosecutor's Office replied to her that it had questioned all the witnesses

and had examined medical evidence and that an expert report on Mr Shumkov's mental state at the relevant time had been commissioned.

28. On 27 January 2003 the Ust-Kuta District Prosecutor's Office discontinued the criminal proceedings against the prison governor K. and officer Y., the head of the operating unit, for lack of *corpus delicti*. It appears that on an unspecified date that decision was quashed.

29. On 31 January 2003 a commission of four psychiatrists and one psychologist drew up a forensic psychiatric report in respect of Mr Shumkov. The commission concluded as follows:

“[The commission's] conclusion:

[Mr] Shumkov suffered from a chronic psychiatric disorder in the form of psychopathy of mixed type. [This diagnosis] is confirmed by the anamnesis, medical documents and the criminal case file: [Mr Shumkov] had such character traits as difficulty in communication, quarrelsomeness, hot temper, irritability, aggressiveness, affective instability, tendency towards hysterical and demonstrative reactions with self-mutilation in subjectively difficult situations, tendency towards simulative behaviour (his examination and lengthy monitoring in the course of repeated placements for psychiatric and neurological in-patient treatment did not confirm the epileptic nature of the 'fits') ... However, the above-mentioned peculiarities of [Mr Shumkov's] psychic state were not accompanied by a broad decrease in intellect or disturbances of thought, delirium, hallucinations or disturbances of critical and prognostic functions, since as a whole he could control his actions (his conduct changed depending on the place and environment, he took into account the social status and rank of the interlocutor), realise the meaning of his actions and direct them. In the period preceding [the act of self-mutilation committed by Mr Shumkov] ... he did not display signs of a temporary mental disorder or dementia, he did not have delirium or hallucinations, and he could realise the meaning of his actions and direct them.

The psychologist's conclusion:

Psychological analysis of the contents of the criminal case file confirms that [Mr] Shumkov had such individual psychological peculiarities as egocentrism, emotionally volitional instability, hot temper, increased irritability, malignance, aggressiveness, difficulties in interpersonal contact, tendency towards conflict in close contact, tendency to create conflict situations, [tendency towards] asocial acts, and impulsiveness. In subjectively difficult situations [he] displayed affective outbursts, demonstrative behaviour, a tendency towards impulsive behavioural reactions, simulative behaviour and suicide attempts... The analysis of the contents of the criminal case file confirms the lack of extreme conditions which would have prompted the suicide, and of conditions that would have been conducive to the accumulation of negative emotional experiences and ... neuropsychological tension. [Mr Shumkov's] individual psychological peculiarities were conducive to his committing suicide.”

30. On 28 February 2003 Ust-Kuta District Prosecutor's Office again discontinued the criminal proceedings against the prison governor K. and officer Y. on the same ground as before.

31. On 31 March 2003 the Deputy Prosecutor of the Irkutsk Region quashed the decision of 28 February 2003 as ill-founded and premature. He stated, in particular, that the investigating authorities had failed to clarify all the circumstances preceding Mr Shumkov's death, had not fully complied with the instructions of the Office of the Prosecutor General, had not made a legal assessment of the correctional facilities' officers' actions as regards the search in the disciplinary cell, and of the prison doctor G.'s actions as regards the untimely medical aid provided on 4 August 2001.

C. Final decision to discontinue the criminal investigation

32. On 28 May 2003 the Ust-Kuta District Prosecutor's Office discontinued the criminal proceedings on the following grounds.

33. According to the decision, Mr Shumkov was irritable, aggressive, had an explosive temper and had constant conflicts with other detainees and warders. He often complained of poor health and headaches. During the period of serving his sentence, that is, from December 1993 to August 2001, Mr Shumkov was on eleven occasions admitted to hospitals within the penal system. In 1995 he was diagnosed with epilepsy; however, the diagnosis was not confirmed and in 1998 it was changed to psychopathy. From 23 May to 9 June 2001 Mr Shumkov underwent treatment for his condition in Hospital No. 1 in the Irkutsk Region. For swearing and threatening physical violence he was discharged from the hospital on 9 June 2001 and transferred back to correctional facility IK-20. Between 10 April and 1 August 2001 Mr Shumkov was subjected to disciplinary measures on six occasions.

34. On 17 June 2001 Mr Shumkov was placed in a disciplinary cell for a breach of discipline. On 1 August 2001 he cut his veins. After medical aid had been administered to him, he refused to return to his cell, insulted and threatened officers L. and S. and grabbed L.'s uniform. So as to prevent his unlawful threats, L. and S., using physical force and rubber truncheons, placed him in the cell. Thereafter Mr Shumkov was examined by a member of staff of the medical unit, who noted bruises on his body and extremities. According to the results of the investigation, officers L. and S. lawfully used rubber truncheons and physical force against Mr Shumkov. On the same date the prison governor ordered Mr Shumkov's placement in a disciplinary cell for the act of self-mutilation.

35. At around 2.10 a.m. on 4 August 2001 Mr Shumkov, while being held in disciplinary cell no. 20, cut his veins. He refused medical aid from the officers on duty and requested to be seen by a doctor. At around 2.40 a.m. the prison doctor G. provided Mr Shumkov with medical aid, having dressed the wounds and administered injections, following which Mr Shumkov was transported to the medical unit, where he died at 2.45 a.m. as a result of heavy blood loss.

36. The prison governor K. submitted that on 1 August 2001 he had ordered Mr Shumkov's placement in a disciplinary cell for having committed an act of self-mutilation.

37. A witness, S-v, stated that on 4 August 2001 he had been held in an adjacent disciplinary cell when he had heard Mr Shumkov shouting and complaining of high blood pressure. Then Mr Shumkov had cut his veins. S-v did not know why he had done so.

38. Major P. stated that on 4 August 2001 he and warder Yu. had been among the officers on duty in the disciplinary wing. At around 2.10 a.m. he had heard screaming from cell no. 20, where Mr Shumkov was being held. At around 2.15 a.m. he and warder Yu. had entered the cell and had seen that Mr Shumkov had cut his veins. They had tried to provide him with medical aid so as to stop the bleeding, but he had firmly refused to be aided and to leave the cell and had stated that he needed a doctor. Major P. had then called for a doctor, who had arrived at the disciplinary wing at 2.40 a.m. Dr G. had dressed the wounds and had administered injections, following which Mr Shumkov had immediately been transported to the medical unit. However, because of the blood loss he had died there at around 2.45 a.m. In the course of additional questioning Major P. submitted that late in the evening of 3 August 2001 he and warders D. and Yu. had conducted an inspection of the disciplinary wing and had not found any forbidden objects.

39. Warder Yu. made a similar statement and added that after Mr Shumkov had been pronounced dead, officer Y., the head of the operating unit, had arrived at the disciplinary wing and conducted an inspection of cell no. 20.

40. Dr G. submitted that on 4 August 2001 he had been the prison doctor on standby duty. At around 2.40 a.m., after a call from an officer on duty, he had arrived at the disciplinary wing, where in cell no. 20 he had dressed the wounds and administered an injection of caffeine to Mr Shumkov, who had cut his veins. At the time Mr Shumkov had been in a semi-conscious state. Then Mr Shumkov had been transported on a stretcher to the medical unit, where he had died. Dr G. had pronounced him dead at 2.45 a.m.

41. The post-mortem report stated that the death of Mr Shumkov had occurred because of heavy blood loss as a result of injuries caused by the slashing of the large vessels in the elbows and forearms. It also noted that the prisoner had had bruises on his body and legs.

42. According to a psychiatric and psychological expert report, Mr Shumkov suffered from psychopathic personality disorder, was in constant conflict with other persons, and tended towards hysterical behaviour, self-mutilation, suicide attempts and simulation of epileptic fits. However, he was able to assess and control his conduct and never showed symptoms of imbecility. The experts did not establish the existence of any circumstances which could have prompted Mr Shumkov to commit suicide.

43. In the course of the investigation no proof of prison governor K.'s and officer Y.'s having committed such offences as abuse of official powers and incitement to suicide was found.

44. In the course of additional inquiries, it was established that Mr Shumkov had cut his veins with a piece of a blade from a disposable safety razor which he had had with him in the disciplinary cell as it was allowed by the internal regulations. When warder D. had asked Mr Shumkov what he had done with the piece of blade, he had replied that he had placed it in the lavatory pan.

45. The additional check also established that duty schedules were fixed for medical staff for holidays and weekends. At night a member of the medical staff remained on duty at his home. The time required for a member of the medical staff to arrive at the correctional facility in reply to an urgent call depended on the distance between his home and the facility. Dr G., who had been the prison doctor on duty on 4 August 2001, had arrived at the facility within twenty minutes from the departure of the operating unit to fetch him. This was also confirmed by Dr G. in the course of additional questioning and by the head of the medical unit, K-v.

46. Warder D. stated that during the night of 3 to 4 August 2001 he had been the assistant officer on duty. At around 10 p.m. on 3 August 2001 he, Major P. and warder Yu. had conducted an inspection of the disciplinary wing and had found no forbidden objects. At around 2 a.m. on 4 August 2001 or a little later, following a call from warder Yu., he had arrived at disciplinary cell no. 20 and had seen that Mr Shumkov had cut his veins. When he had asked him how he had cut his veins, Mr Shumkov had explained that he had used a piece of blade from a disposable safety razor which he had thrown into the lavatory pan. Mr Shumkov had refused to leave the cell to be provided with first aid and requested to be seen by a doctor. Warder D. then had gone to fetch Dr G. and had returned with him twenty minutes later. He did not know what medical aid Dr G. had provided since he had left to inspect the facility. Having reached the medical unit, he had learnt from Dr G. that Mr Shumkov had died of blood loss.

47. Having regard also to (i) Annex 1 to the Internal Regulations of Correctional Institutions, adopted by order no. 224 of the Ministry of the Interior of 30 July 2001, which did not forbid the keeping of a disposable safety razor in a disciplinary cell, and (ii) the Instruction on Supervision of Inmates held in Correctional Facilities, adopted by order no. 83 of the Ministry of Justice of 7 March 2000, which provided that constant supervision of inmates held in disciplinary cells must be effected through the inspection hole in the doors of the cells, and that officers on duty must call a doctor for inmates requiring medical assistance, the Ust-Kuta District Prosecutor's Office concluded that the prison governor K., the head of the operating unit Y., Major P., warders D. and Yu. and the prison doctor G. had not committed the alleged offences of incitement to suicide, abuse of

official powers and neglect of duty or failure to assist in a dangerous situation, and discontinued the criminal proceedings.

D. The applicant's complaints about the discontinuation of the criminal proceedings

48. On 9 September 2004 the Office of the Prosecutor General dismissed a complaint by the applicant about the discontinuation of the criminal proceedings, finding that decision to have been lawful and well-founded.

49. On an unspecified date the applicant challenged the decision of 28 May 2003 before a court. She also complained that her son's beating with rubber truncheons by warders on 1 August 2001 had not been lawful.

50. On 29 October 2004 the Ust-Kuta District Court of the Irkutsk Region dismissed the applicant's complaint. The applicant was not present at the hearing.

51. On 14 February 2005 the Irkutsk Regional Court quashed that decision and remitted the case for a fresh examination on the ground that the applicant had not been duly notified of the hearing of 29 October 2004.

52. On 5 April 2005 the Ust-Kuta District Court held that the prosecutor's decision was lawful and dismissed the applicant's complaints.

53. On 6 September 2005 the Irkutsk Regional Court upheld the decision on appeal. The applicant's subsequent application for supervisory review of that decision was refused by the Irkutsk Regional Court on 18 January 2006.

E. Medical documents relating to Mr Shumkov's condition

1. Transcript of questioning of Dr P.

54. On 29 July 2002 Dr P., a neuropathologist at prison hospital no. 2, was questioned. He submitted that in March 2000 Mr Shumkov had been admitted to the hospital, having been diagnosed with epilepsy. However, the diagnosis had not been confirmed and Mr Shumkov had been diagnosed with a psychopathic disorder. During his stay at the hospital he had displayed unbalanced behaviour and mood swings, and had been irritable and emotionally unstable. Mr Shumkov had been provided with a complete course of treatment. His parents had never been asked to provide any medicines for him since all the required medicines had been available at the hospital.

2. Undated expert opinions concerning the medical aid available to Mr Shumkov in detention

55. Having examined Mr Shumkov's medical file, the neurologist G. stated that in his childhood he had suffered a craniocerebral trauma. Since

1988 he had been suffering from frequent fits that had mostly occurred at night. He had been diagnosed with epilepsy and had undergone in-patient treatment in 1992. Later he had been treated in the psychiatric ward of prison hospital no. 1. There he had repeatedly feigned polymorphous fits and had been placed under constant monitoring, which had revealed no momentary lapses of reason or convulsive contractions, although irritability, hot temper and rudeness had remained. Accordingly, the diagnosis of epilepsy had been changed to one of psychopathy. During the term of Mr Shumkov's detention, in-patient and outpatient treatment and supervision had been fully available to him.

56. The head of a psychiatric ward, Sh., having studied Mr Shumkov's medical file, concluded that while in detention he had been fully provided with the requisite medical assistance for his mental and somatic state. The diagnosis of epilepsy had been correctly discarded and had not subsequently been confirmed.

3. Certificate concerning Mr Shumkov's death issued by the head of the prison medical unit

57. On 30 April 2009 L., the head of the medical unit of correctional facility IK-20, issued a certificate concerning the circumstances of Mr Shumkov's death. The certificate stated:

"At around 2 a.m. on 4 August 2001 ... [Mr Shumkov] knocked at the door of disciplinary cell no. 2, told [warder Yu.] that he had high blood pressure and asked him to call for a doctor on duty.

[Warder Yu.] reported to [Major P.], [who] immediately sent [warder D.] in a car to fetch [prison doctor G.], who lived near the correctional facility and was required to go to the facility in the event of an emergency. At the same time [Mr Shumkov] was placed under constant visual supervision through the inspection hole in the door of the cell.

At 2.15 a.m. [the warders] opened cell no. 20 following changes in [Mr Shumkov's] behaviour and discovered that he had committed an act of self-mutilation, having cut blood vessels in both arms.

[Mr Shumkov] refused to leave the cell to receive medical assistance and stated that he would wait for the doctor in the cell. [The warders] brought bandages to the cell in order to dress the wounds. [Mr Shumkov] took the bandages but refused [the warders'] medical assistance.

At 2.30 a.m. [Dr G.] arrived and immediately provided [Mr Shumkov] with medical assistance in the cell. [He] dressed the wounds so as to stop the bleeding, administered injections to increase blood pressure and stimulate cardiac activity ..., and performed artificial lung ventilation and indirect heart massage, following which [Mr Shumkov] was taken to the medical unit ... where, despite the efforts to resuscitate him, at 2.40 a.m. he was pronounced dead as a result of heavy blood loss caused by the injuries to the large blood vessels."

F. Other documents submitted by the Government

1. Certificates concerning Mr Shumkov's detention

58. According to a certificate of 21 April 2009 issued by the prison authorities, during Mr Shumkov's detention in correctional facility IK-20 from 10 April to 23 May 2001 and from 9 June to 4 August 2001 he was held in conditions which complied with the relevant regulations. There was no infringement of Mr Shumkov's right to life by any officers of the correctional facility.

59. Another certificate issued on the same date stated, *inter alia*, that in the course of serving his sentence Mr Shumkov had breached prison discipline thirty-five times, as a result of which he had on six occasions been placed in the disciplinary wing and twenty-seven times in solitary confinement in a disciplinary cell. In 2000 he was recognised as a persistent offender and placed in stricter conditions of detention. All these measures were applied lawfully. Mr Shumkov was hot-tempered, tended to create conflicts, behaved defiantly and did not react to admonitions.

2. Statements concerning Mr Shumkov's personality

60. In an undated certificate prison officer A. stated that throughout the term of his imprisonment Mr Shumkov had physically resisted prison officers, provoked conflicts with other inmates, behaved aggressively and breached disciplinary regulations.

61. In two undated certificates prison officers U. and E. stated that in 1999 they had served in correctional facility IK-6. They submitted that Mr Shumkov had been mentally unstable and had repeatedly created conflicts with other detainees, which was the reason for his subsequent transfer to a different correctional facility. A number of times he had attempted to commit acts of self-mutilation by cutting his forearms. He had also regularly been admitted for treatment in prison hospital no. 1.

62. In a certificate of 16 April 2009 prison officer B. stated that during the term of his imprisonment Mr Shumkov had on a number of occasions been subjected to disciplinary sanctions for disobedience, insults and conflicts with other inmates. He had often been aggressive and violent. Such behaviour had been caused not only by his psychological particularities but by a manifest unwillingness to follow the prison rules.

63. In a report of 20 April 2009 prison officer P-na stated that from 1996 to 2000 she had held a post as inspector of the living quarters. She remembered Mr Shumkov as a frequent offender who had behaved defiantly towards other detainees, which had often caused conflicts.

3. Investigation into the events of 1 August 2001

64. On 2 August 2001 inspector K. of correctional facility IK-20 drew up an internal inspection report concerning the incident of 1 August 2001. According to the report, the use of rubber truncheons in respect of Mr Shumkov was lawful and proportionate.

65. On 15 August 2002 the Ust-Kuta Prosecutor's Office refused to institute criminal proceedings against officers L. and S. in respect of the events of 1 August 2001. The decisions stated, *inter alia*:

“On 1 August 2001 [the detainee Mr] Shumkov committed an act of self-mutilation having slashed his veins. However, he was provided with medical aid in due time. After [officers L. and S.] asked [Mr] Shumkov to return to his cell, the latter refused, grabbed [L.'s] uniform, swore at him and threatened him with physical violence. So as to prevent the unlawful threats of [Mr] Shumkov, [L. and S.], using physical force and rubber truncheons, placed him in the cell. [Thereafter] [Mr] Shumkov was examined by a member of staff of the medical unit, who noted bruises on his body and extremities.

Taking into account the foregoing, as well as the fact that [officers L. and S.] used [rubber truncheons] and physical force in respect of [Mr] Shumkov after the latter's refusal to comply with their lawful orders, the institution of criminal proceedings against [L. and S.] should be refused for lack of *corpus delicti*.”

II. RELEVANT DOMESTIC LAW

A. Supervision of inmates with suicidal tendencies and medical aid

66. Article 20 of the Constitution of the Russian Federation protects the right to life.

67. The Health Care (General Principles) Act of 22 July 1993 provides that persons serving a sentence in prisons are entitled to medical assistance at the State's expense and, as the case may be, at institutions run by the general public health service (section 29).

68. The Correctional Institutions Act of 21 July 1993 provides that correctional institutions are responsible for inmates' security and healthcare (section 13).

69. Article 18 of the 1997 Code on the Execution of Sentences, as it read at the material time, provided that inmates suffering from a psychiatric disorder which did not attain the degree of legal insanity could be subjected to compulsory medical treatment subject to authorisation by a competent court. Such inmates included persons who posed a danger to others or themselves, in which case the prison authorities had to apply for a court order for their compulsory medical treatment.

70. Article 101 of the 1997 Code on the Execution of Sentences, as it read at the material time, provided that medical units and hospitals,

including specialised psychiatric and tuberculosis hospitals, were available within the penal system to provide medical care for inmates (§ 2). Medical aid should be provided in accordance with the laws of the Russian Federation and statutory instruments of the Ministry of Justice and the Ministry of Healthcare (§§ 1 and 5).

71. According to the Internal Regulations of Correctional Institutions, adopted by order no. 330 of the Ministry of the Interior of 30 May 1997, in force in the relevant part until 7 September 2001, a correctional facility provided medical examinations, supervision and treatment of inmates using the means and facilities recommended by the Ministry of Healthcare. In instances where medical aid could not be provided in a medical institution within the penal system the inmate could be transferred to a medical institution within the ordinary healthcare system (section 19).

72. The Internal Regulations further provided that inmates placed in disciplinary cells or solitary confinement could not take foodstuffs and personal items to their cell, except for a towel, a piece of soap, toothpaste and a toothbrush (section 23). Annex 1 to the Internal Regulations listed items whose use was forbidden in a correctional facility, including knives and other sharp cutting or piercing objects.

73. Annex 1 to the Internal Regulations of Correctional Institutions, adopted by order no. 224 of the Ministry of the Interior of 30 July 2001, which from 7 September 2001 (the new Regulations) replaced the Internal Regulations adopted on 30 May 1997, listed items whose use was forbidden in a correctional facility, including knives, straight razors and blades for safety razors. The Internal Regulations were published in the Bulletin of Statutory Acts of the Federal Bodies of Executive Power (no. 35 of 27 August 2001).

74. Under the new Regulations it was permitted to inmates placed in disciplinary cells or solitary confinement to take with them to their cell a towel, a piece of soap, toothpaste and a toothbrush, toilet paper, hygienic items (for women), newspapers and magazines they were subscribed to, religious literature and objects of cult (section 23).

75. The Instruction on Supervision of Inmates held in Correctional Facilities, adopted by order no. 83 of the Ministry of Justice of 7 March 2000, as in force at the relevant time, provided that officers responsible for supervision of inmates held in disciplinary cells monitored the inmates' presence and conduct by means of constant surveillance through inspection holes in the doors of the cells. Officers on duty had to call for a doctor for inmates requiring medical aid (section 5.1.3). In the event of sudden illness, self-mutilation or a suicide attempt on the part of an inmate, a junior officer immediately had to alert the officer on duty and, upon the latter's arrival, and having ensured that it was not a case of simulation, would open the cell and provide the inmate with the requisite

aid. The officer on duty would then decide what further action to take (section 5.1.7).

B. Investigation procedure

76. The 1960 Code of Criminal Procedure of the RSFSR, which was in force until 1 July 2002, required a competent authority to institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to carry out all measures provided for by law to establish the facts and to identify those responsible and secure their conviction. The decision whether or not to institute criminal proceedings had to be taken within three days of the first report on the relevant facts (Articles 3 and 108-109).

77. No criminal proceedings could be brought in the absence of a *corpus delicti* (Article 5). Where an investigating body refused to open or terminated a criminal investigation, a reasoned decision was to be provided. Such decisions could be appealed against to a higher-ranking prosecutor or to a court (Articles 113 and 209).

78. On 1 July 2002 the 1960 Code of Criminal Procedure of the RSFSR was replaced by the Code of Criminal Procedure of the Russian Federation.

79. Article 125 of the new Code lays down a judicial procedure for the consideration of complaints. Orders of an investigator or prosecutor refusing to institute criminal proceedings or terminate a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede a citizen's access to justice, may be appealed against to a local district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

80. The applicant complained under Article 2 of the Convention that the authorities had failed to protect her son's life and were responsible for his death. She also complained that the investigation into Mr Shumkov's death had not been effective. Article 2 of the Convention provides, in so far as relevant:

“1. Everyone's right to life shall be protected by law. ...”

A. The parties' submissions

81. According to the Government's submissions, throughout the period of his detention Mr Shumkov had been under constant medical supervision on account of his psychiatric disorder, which could have been a risk factor for suicide. On numerous occasions he had been admitted to hospital either for regular treatment or following doctors' recommendations when his condition had worsened. Each time, he had been discharged from the hospital following an improvement. During the period preceding his suicide there had been no symptoms of aggravation of his condition, such as delirium, hallucinations or inability to control his actions or realise their meaning. Nor had there been any indications that he might commit suicide. None of the psychiatrists who had examined Mr Shumkov had ever stated that he might make a serious suicide attempt. His previous instances of self-mutilation, including the episode on 1 August 2001, were of a clearly demonstrative nature, as he had not wished to die but simply to attract attention. Therefore, at the relevant time the prison authorities could not have been aware of a real risk of suicide on the part of Mr Shumkov.

82. As regards the medical assistance available to Mr Shumkov, it had been timely and adequate. After the prison warders had found out that he had committed an act of self-mutilation, they had immediately offered him medical aid, which he had refused, only taking the bandages and requesting to be seen by a doctor. The doctor had arrived shortly afterwards and provided him with the requisite aid. However, despite efforts to resuscitate him, Mr Shumkov had died of heavy blood loss, which could not be attributed to any deficiencies in the medical aid provided. Accordingly, the Government argued, there had been no breach of Article 2 of the Convention in this respect.

83. The Government further noted that, following inquiries conducted by the prison administration, the initiation of an investigation had been refused on 10 August 2001. The refusal had been reiterated on 24 August 2001. However, that decision had been quashed by a prosecutor and an investigation had been instituted on 4 June 2002. It had established that the prison officers were not responsible for Mr Shumkov's suicide. Accordingly, on 28 May 2003 the investigation had been discontinued for lack of *corpus delicti*. Following the applicant's appeal against that decision, the domestic courts had found that it was lawful and well-founded since the investigating authorities had established the causes of Mr Shumkov's death and conducted a proper assessment of the actions of the doctors and prison officers. Therefore, the Government concluded that the investigation had been effective for the purposes of Article 2 of the Convention.

84. The applicant contested the Government's submissions. In her view, the Government's argument that the prison authorities could not have been

aware of the risk of Mr Shumkov's suicide was untenable. In particular, Mr Shumkov had suffered from a psychopathic disorder, which was a factor increasing the risk of suicide. Furthermore, the episode of his self-mutilation on 1 August 2001 must have confirmed that the risk was real and immediate.

85. The applicant contended that the medical aid provided to Mr Shumkov could not be considered adequate either. An ambulance had not been called for him and the Government had provided no evidence either that Dr G. had adequate qualifications to perform resuscitation or that appropriate facilities had been available for that purpose in prison. Furthermore, the argument that Mr Shumkov had refused medical assistance from the prison warders could not serve as a justification for their failure to provide him with it.

86. In the applicant's opinion, the investigation into Mr Shumkov's suicide had not been effective. At first it had been conducted by the very prison administration that might have been responsible for the suicide. The decision to open the investigation of 4 June 2002 had referred to a number of deficiencies in the initial inquiries. However, even in the course of the subsequent investigation the authorities had failed to make a proper assessment of the applicant's son's condition prior to his suicide and to establish the responsibility of those who had failed to take measures first to prevent it and then to provide Mr Shumkov with adequate medical assistance. The possibility of Mr Shumkov's having been murdered had not even been considered. Overall, the authorities' actions had been in breach of Article 2 of the Convention.

B. The Court's assessment

1. Admissibility

87. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Positive obligation under Article 2 of the Convention

(i) General principles

88. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the

democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

89. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III). In the context of prisoners, the Court has had previous occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent when an individual dies (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

90. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise regarding a prisoner with suicidal tendencies, it must be established that the authorities knew, or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 92, ECHR 2001-III).

91. The Court has recognised that the prison authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual prisoner concerned. There are general measures and precautions which ought to be available to diminish the opportunities for self-harm, without infringing personal autonomy. Whether any more stringent measures are necessary in respect of a prisoner and whether it is reasonable to apply them will depend on the circumstances of the case (*ibid.*, § 91).

(ii) *Application to the present case*

92. In the light of the above, the Court will first examine whether the authorities knew or ought to have known that Mr Shumkov posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably have been expected of them to prevent that risk. It will then examine whether the medical aid available to Mr Shumkov on the night of his suicide was adequate and sufficient.

(α) Prevention of the risk of suicide

93. It is undisputed between the parties that Mr Shumkov suffered from a psychiatric disorder. The diagnosis of epilepsy, made in 1995, was unconfirmed and was subsequently changed to psychopathic personality disorder (see paragraph 13 above). According to the medical documents, Mr Shumkov had a tendency towards demonstrative reactions with self-mutilation and simulative and blackmailing behaviour (see paragraphs 13 and 29 above). Doctors also stated that he was quarrelsome, irritable and aggressive and had difficulties in communication (see paragraph 29 above).

94. The prison authorities were thus aware that Mr Shumkov suffered from a psychiatric disorder with anti-social traits. In their observations the Government acknowledged that his condition could have been a risk factor for suicide. For this reason Mr Shumkov was under constant medical supervision and was provided with in-patient treatment either on a regular basis or upon a doctor's recommendation where his condition worsened. From the medical documents available to the Court it appears that on each occasion Mr Shumkov was discharged from hospital following an improvement in his condition (see paragraph 13 above). Therefore, the Court finds that throughout the period of his detention Mr Shumkov was provided with regular and adequate psychiatric aid.

95. As regards the period preceding his suicide on 4 August 2001, the Court takes note of the fact that on 1 August 2001 Mr Shumkov committed an act of self-mutilation, having slashed his left wrist. Despite this episode, on 4 August 2001 he was in possession of a blade, which he used to slash his arms. The Court finds the availability of the blade to be a cause for concern. It appears that Mr Shumkov brought a safety razor into his cell and said to the warders that he had thrown the blade in the lavatory pan (see paragraphs 44 and 46 above). The Court considers that in view of the previous incident of self-mutilation by Mr Shumkov three days earlier, the prison authorities should have exercised more caution in this respect. In particular, after finding that the blade was missing from the razor, they should have been expected to take measures to ensure that it could not be used for self-harm.

(β) Sufficiency of medical aid

96. The Court will further examine the timeliness and quality of the aid available to Mr Shumkov on the night of his suicide. From the information available to the Court it follows that at around 2.10 a.m. on 4 August 2001 two prison officers, warder Yu. and Major P., discovered that Mr Shumkov had slashed veins in his elbows. They offered him medical aid, which he refused, but he agreed to take bandages and insisted on being seen by a doctor. The warders then locked the cell and at 2.15 a.m. sent for Dr G., who during night hours was on standby duty outside the prison premises. Dr G. arrived at around 2.40 a.m., dressed the wounds and administered

injections of cardamine and other medicines. Mr Shumkov was then placed on a stretcher and transported to the medical unit, where he was found dead upon arrival as a result of heavy blood loss. He appears to have died between 2.40 and 2.45 a.m., the time of death being entered in the register as 2.40 a.m.

97. The Court considers that in the present case it is not called upon to decide whether the arrangement whereby a doctor is on standby duty outside the correctional facility during night hours is as such adequate. Furthermore, there is no need to decide whether Dr G. arrived sufficiently quickly, for the following reasons.

98. In Dr G.'s explanation of 20 August 2001 (see paragraph 19 above) he stated that when he had arrived Mr Shumkov had been lying motionless on the floor, with blood splashed around the whole cell. He further stated that if he had arrived twenty to thirty minutes earlier he would still have been unable to save Mr Shumkov's life since there were arteries and veins slashed in both his arms. This statement prompts two conclusions. First, the provision of urgent medical aid was of critical importance when the prison officers discovered that Mr Shumkov had slashed his elbows. Second, they were bound to realise this since, given Dr G.'s description of arteries and veins having been slashed and the whole cell being covered in blood upon his arrival, the bleeding from Mr Shumkov's wounds when the warders opened the cell must have been heavy enough to alert them to the gravity of the situation. However, it is common ground that no medical aid was provided until Dr G.'s arrival.

99. The Court notes that the prison officers offered assistance to Mr Shumkov, which he verbally refused, taking the bandages and requiring to be seen by a doctor. However, it finds it difficult to accept Mr Shumkov's verbal refusal as sufficient justification for the warders' failure to provide him with first aid.

100. In the first place, it was known to the prison officers that Mr Shumkov suffered from a psychiatric disorder characterised by demonstrative reactions. Therefore, hardly any weight should be reasonably attached to his refusal of first aid in the circumstances. Moreover, it has not been alleged that Mr Shumkov tried physically to prevent the officers from dressing his wounds and, given his injuries, he would hardly have been capable of resisting them, which makes their compliance with his refusal even harder to explain.

101. Furthermore, section 5.1.7 of the Instruction on Supervision of Inmates held in Correctional Facilities, adopted by order no. 83 of the Ministry of Justice of 7 March 2000, directly required officers to provide inmates with the necessary aid in the event of a suicide attempt. Section 5.1.3 of the Instruction provided that officers were to carry out constant surveillance through inspection holes in the doors of the cells. Given the gravity of Mr Shumkov's injuries and the intensity of his blood

loss, the Court has difficulty in accepting that his verbal refusal of first aid could have justified the warders standing by and watching him literally bleed to death.

102. The Court also notes that it was not alleged by the Government that the first aid required by Mr Shumkov, which would have consisted in dressing his wounds so as to prevent blood loss, was of such a complex nature that it could not have been performed by prison officers. Rather, it would be reasonable to expect the warders to have been trained for such situations, especially given the domestic instruction cited above which required them to be able to provide first aid in the event of a suicide attempt.

103. In view of the above, the Court considers that the circumstances were such as to require the prison officers to take measures aimed at saving Mr Shumkov's life despite his refusal of first aid, yet they failed to take such measures.

(γ) Conclusion

104. Having regard to the authorities' failure to display due vigilance as regards the availability of a blade to Mr Shumkov and the insufficient aid provided by the prison officers on the night of his fatal suicide attempt, the Court finds that the State has failed to comply with the positive obligation to protect life.

105. Accordingly, there has been a violation of Article 2 of the Convention.

(b) The procedural obligation to carry out an effective investigation

(i) General principles

106. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII, and, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

107. In that connection the Court has held that, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an “effective judicial system” does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90, 94 and 95, ECHR 2002-VIII, and *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VII). However, the minimum requirement for such a

system is that the persons responsible for the investigation must be independent from those implicated in the events. This means hierarchical or institutional independence and also practical independence (see *Paul and Audrey Edwards*, cited above, § 70, and *Mastromatteo*, cited above, § 91).

108. The Court further reiterates that, in cases of homicide, the interpretation of Article 2 as entailing an obligation to conduct an official investigation is justified not only because any allegations of such an offence normally give rise to criminal liability, but also because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities. Therefore the applicable principles which the Court has already had occasion to develop in relation notably to the use of lethal force lend themselves to application in other categories of cases (see *Trubnikov v. Russia*, no. 49790/99, § 87, 5 July 2005).

109. Accordingly, where a positive obligation to safeguard the life of persons in custody is at stake, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see, for example, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, 4 May 2001; *McCann and Others*, cited above, § 161; *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII; *McKerr v. the United Kingdom*, no. 28883/95, § 148, ECHR 2001-III; and *Trubnikov*, cited above, § 88).

(ii) *Application to the present case*

110. The Court finds that a procedural obligation arose to investigate the circumstances of Mr Shumkov's death. He was a prisoner under the care and responsibility of the authorities when he died as a result of what appeared to be suicide. The investigation was necessary, firstly, to establish the cause of death and rule out an accident or manslaughter and, secondly, once suicide was established, to examine whether the authorities were in any way responsible for failing to prevent either the suicide attempt or the fatal outcome. The investigation had to fulfil the requirements set out above (see paragraphs 106-109).

111. Initial inquiries were carried out within the days following the incident. On 10 August 2001 the prison governor refused to institute criminal proceedings for lack of *corpus delicti*. The refusal was quashed by the Kazachinsko-Lenskiy District Prosecutor's Office on 17 August 2001.

112. On 21 August 2001 the prison governor again refused to institute criminal proceedings. The refusal was upheld by the prosecutor's office on 24 August 2001. However, on 4 June 2002 the Office of the Prosecutor General quashed the decision of 24 August 2001 and opened a criminal investigation, having found that the district prosecutor's office had failed to investigate, in particular, the circumstances leading to Mr Shumkov's suicide and his mental state and to identify the object with which he had slashed the veins in his elbows.

113. After having obtained another post-mortem report on the basis of Mr Shumkov's medical file and having questioned Dr G., on 15 July 2002 the prosecutor's office again refused to institute criminal proceedings. It appears that this decision was subsequently quashed and that criminal proceedings were instituted; however, they were discontinued on 27 January 2003 and were later resumed.

114. Having obtained a forensic psychiatric report on Mr Shumkov, on 28 February 2003 the prosecutor's office discontinued the criminal proceedings a further time. That decision was also quashed on 31 March 2003 and the proceedings were resumed.

115. The criminal proceedings were finally discontinued on 28 May 2003. The prosecutor's office relied on forensic reports, conclusions of psychiatrists and psychologists, statements by Dr G., the prison officers who had been on duty at the relevant time and an inmate, and the applicable regulations.

116. The Court observes that the initial inquiry into the death was carried out promptly, within several days of the incident. However, it did not satisfy the minimum requirement of independence since the investigating body – the prison governor – represented the authority involved. Furthermore, on 17 August 2001 the prosecutor's office quashed the prison governor's decision of 10 August 2001 not to institute criminal proceedings, on the ground that neither the prison officers nor any other inmates had been questioned.

117. Four days later the prison governor again refused to institute criminal proceedings, a decision which this time was upheld by the prosecutor's office. The inquiry conducted by the prison governor did not comply with the Court's requirements, for the reasons stated above. It is not clear what investigative measures, if any, were performed by the prosecutor's office. However, in any event the refusal to institute criminal proceedings was quashed by the Office of the Prosecutor General on 4 June 2002; its decision pointed out that the inquiry had failed to (i) establish the circumstances leading to Mr Shumkov's suicide and his mental state, and (ii) identify the object which he had used to slash his veins. The Office of the Prosecutor General ordered the opening of an investigation. After several cycles of suspensions and resumptions, the investigation was finally discontinued on 28 May 2003.

118. The Court observes that apart from the institutional defects of the inquiry conducted in 2001, it appears to have been utterly superficial since even basic investigative steps, such as questioning witnesses, were not carried out.

119. The Court also notes that there was a lengthy period of inactivity of approximately one year when no investigative measures were taken at all. After the institution of criminal proceedings in 2002, they were adjourned and resumed several times, which could not but have had an adverse impact on their effectiveness. The object with which Mr Shumkov had slashed his elbow was not identified until over a year after the incident, and it appears that prison officers and another inmate were not questioned by the investigating authorities until 2003.

120. The Court further notes that the investigating authorities did not assess whether the prison officers' actions complied with section 5.1.7 of the Instruction on Supervision of Inmates held in Correctional Facilities, adopted by order no. 83 of the Ministry of Justice of 7 March 2000, which required them, in the event of a suicide attempt, to provide the inmate with the necessary aid.

121. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the suicide of Mr Shumkov, in breach of Article 2 in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

122. The applicant complained that the investigation into Mr Shumkov's suicide had been ineffective, contrary to Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

123. The Court observes that this complaint concerns the same issues as those examined in paragraphs 110-121 above under the procedural limb of Article 2 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 2 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

124. The applicant complained under Article 3 of the Convention that Mr Shumkov had been beaten with rubber truncheons on 1 August 2001 and

that there had been no effective investigation into the matter. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

125. Leaving open the question whether the complaint is compatible *ratione personae* with the provisions of the Convention, depending on whether there was a link between the events of 1 August 2001 and Mr Shumkov’s suicide on 4 August 2001, the Court observes that the applicant failed to appeal to a court against the decision of the Ust-Kuta Prosecutor’s Office of 15 August 2002 not to institute criminal proceedings on this account. Such an appeal constitutes an effective remedy where the prosecution decides not to investigate complaints of this nature (see, among other authorities, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003, and *Knyazev v. Russia*, no. 25948/05, § 86, 8 November 2007).

126. Therefore, the Court concludes that the applicant failed to exhaust the available domestic remedies with regard to her complaint under Article 3 of the Convention.

127. As regards the applicant’s complaint under Article 13 of the Convention, the Court refers to its findings above that she had an effective domestic remedy in respect of the complaint under Article 3, to which she failed to have recourse. Accordingly, the applicant’s complaint under Article 13 of the Convention is manifestly ill-founded.

128. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

129. The applicant also complained about Mr Shumkov’s transfer to prison IK-20 in the town of Ust-Kut, in the Irkutsk Region; his allegedly wrongful diagnosis and the refusal to treat him for epilepsy; his placements in disciplinary cells in prison and in hospitals; and his alleged ill-treatment by prison warders.

130. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols other than those examined above. Accordingly, these complaints must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

132. The applicant claimed 100,000 euros (EUR) in respect of the non-pecuniary damage caused by her son’s alleged ill-treatment, his transfer to a different correctional facility, the violation of his right to life and the absence of an effective investigation into the matter.

133. The Government submitted that the claim should be dismissed since in their view there had been no violation of the Convention in the present case. However, should the Court find otherwise, the finding of a violation would constitute sufficient just satisfaction since the claim made by the applicant was excessive.

134. The Court observes that it has found above that the authorities failed to protect the life of Mr Shumkov or to provide a prompt and public investigation meeting the requirements of Article 2 of the Convention. The applicant must have suffered anguish and distress as a result of the circumstances of her son’s death and her inability to obtain an effective investigation into the matter. In these circumstances, the Court finds it reasonable to award the applicant EUR 24,000 for non-pecuniary damage.

B. Costs and expenses

135. The applicant claimed EUR 33,000, less the amount already paid in legal aid, for costs and expenses incurred in the proceedings before the Court. She enclosed the agreement on legal assistance concluded with her counsel, which provided for remuneration in the amount of EUR 1,000 for assistance in written proceedings before the Court; EUR 5,000 for assistance in oral proceedings before the Court should it decide to hold a hearing; and EUR 27,000 should the Court award the applicant’s claim for non-pecuniary damage in full, or one-third of the amount actually awarded.

136. The Government noted that, in accordance with the Court’s case-law, in order for costs to be included in an award under Article 41 of the Convention, it must be established that they had been actually and necessarily incurred and were reasonable as to quantum (see *Rotaru v. Romania* [GC], no. 28341/95, § 86, ECHR 2000-V).

137. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and were reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court dismisses the claim for costs and expenses in oral proceedings before it since no hearing has been held in the present case. As regards the amount stipulated in the agreement between the applicant and her counsel as a proportion of the Court's award for non-pecuniary damage to be paid to her counsel, the Court does not find it either necessary or reasonable.

138. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 1,000, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to her, the net award to be paid into the representative's bank account, as identified by the applicant.

C. Default interest

139. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 2 and 13 of the Convention concerning Mr Shumkov's death and the ensuing investigation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the authorities' failure to protect the life of Mr Shumkov;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the authorities' failure to conduct an effective investigation into the circumstances of Mr Shumkov's death;
4. *Holds* that no separate issue arises under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 150 (one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President