



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

THIRD SECTION

CASE OF LYUBOV VASILYEVA v. RUSSIA

(Application no. 62080/09)

JUDGMENT

Art 2 (substantive and procedural) • Positive obligations • Failure to take appropriate measures to protect life of applicant's son, who committed suicide during compulsory service against the backdrop of hazing practices • Apparent lack of special mechanisms and safeguards in domestic regulatory framework to protect victims and denouncers of hazing, bullying or other forms of ill-treatment in the armed forces • Effective investigation into the death

STRASBOURG

18 January 2022

FINAL

18/04/2022

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

In the case of Lyubov Vasilyeva v. Russia,

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

Georges Ravarani, *President*,
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Anja Seibert-Fohr,
Peeter Roosma,
Darian Pavli, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 62080/09) 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 Lyubov Mikhaylovna Vasilyeva (“the applicant”), on 5 November 2009;

the decision to give notice to the Russian Government (“the Government”) of the complaint concerning the death of her son during his compulsory military service and its investigation and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 7 December 2021,

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

INTRODUCTION

1. The present case concerns the death of the applicant’s son during his compulsory military service and the subsequent investigation.

THE FACTS

2. The applicant was born in 1960 and lives in Tyrgetuy, Chita Region. The applicant was represented by Mr R.K. Akhmetgaliyev, a lawyer practising in Kazan.

3. The Government were initially represented by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT’S SON’S MILITARY SERVICE AND DEATH

5. On 28 June 2005 the applicant’s son, Pte S.V., was conscripted into compulsory military service. On 7 November 2005 he was transferred to

military unit no. 05651, which was based in Sherlovaya Gora, Borzinskiy District, Chita Region. Senior conscripts of that unit, including Pte B. and Pte Kh., began bullying the applicant's son and other younger conscripts in order to extort money from them. On 13 November 2005 Pte S.V. and two other conscripts, Pte I. (a childhood friend of Pte S.V.) and Pte M., left their unit without authorisation. On 15 November 2005 they and their parents asked the military command for protection from hazing. On 19 November 2005 the three soldiers were placed in transit military unit no. 26001 (a unit in which conscripts serve temporarily while awaiting transfer to another unit) in Ulan-Ude, Republic of Buryatia. The three conscripts saw a psychologist on at least two occasions – on 19 and 20 November 2005 – but did not undergo any psychological tests.

6. It was decided to transfer the applicant's son and two of the above-mentioned three conscripts to separate military units. Also, the three soldiers' former military unit was disbanded, with all its personnel to be transferred to other military units. Some of those servicemen were also transferred to transit military unit no. 26001; on 28 November 2005 several of them saw the applicant's son and Pte I. in the transit unit canteen.

7. On 30 November 2005 Pte S.V. boarded a train bound for Bratsk, Irkutsk Region, where his new military unit was stationed. On 2 December 2005, at about 1.30 p.m., the officer escorting him, Major I., found Pte S.V. in one of the train's toilets hanging from a noose made from Pte S.V.'s own belt. Pte S.V. had a letter to his family on his person. In it he explained that he knew what senior conscripts in Bratsk would do to him for having deserted his military unit and "ratted out" Pte Kh. and others. So the applicant's son had decided to kill himself before his name and honour were sullied.

II. INVESTIGATION OF THE APPLICANT'S SON'S DEATH

A. Criminal investigation into suspected incitement to commit suicide

8. At 4 p.m. on 2 December 2005 a criminal investigation was opened into the suspected incitement of Pte S.V. to commit suicide.

9. On 6 December 2005 Pte I. stated as follows:

"On 7 November 2005 our group of twenty-five people was transferred to serve in the village of Sherlovaya Gora in the Chita Region. Captain G., who accompanied us there, was drunk and told us that he was taking us to a military unit that was ruled by 'the law of the jungle'."

10. Pte I. furthermore testified that upon arrival at military unit no. 05651 senior conscripts had begun bullying them – they had not let them sleep and had demanded money from them. He, the applicant's son and another conscript had deserted the military unit and had called their parents. Their parents had taken them to the Commander-in-Chief of the Siberian Military

Circuit, Major-General Kh. The latter had persuaded them not to complain to the military prosecutor's office and had promised to transfer them to one of the country's best military units. While awaiting the transfer, two soldiers from their former military unit had threatened Pte S.V., Pte I. and Pte M. that if they ended up in the same unit again, it would turn out badly for them. As their sleeping quarters had been separate from those of the other conscripts, they had not been ill-treated. The investigator also added to the case file a letter from Pte S.V. to Pte I. with the following text: "... Hold on, [I.] – I'm sorry I could not see you before leaving. Don't do anything stupid, we will make it through and meet up! ...".

11. Major B., a psychologist with the transit unit, submitted that on 20 November 2005 he had met with Pte S.V. and Pte I. They had told him that they had deserted from military unit no. 05651 because senior conscripts had for four days not allowed them to sleep and had extorted money from them. According to Major B., after that first meeting, he had talked to Pte S.V. and Pte I. on several occasions. He speculated that soldiers from their former military unit could have met Pte S.V. and his friends in the canteen of transit military unit no. 26001. Major B. stated that he had not subjected the three conscripts to any psychological tests.

12. On 11 January 2006 forensic experts concluded that Pte S.V. had died from mechanical asphyxia caused by hanging. The experts also noted the presence of a number of abrasion marks on the soldier's nose, cheek, chest, shoulder, shin, heel and the sole of his foot, which had been inflicted by a hard and blunt object of a limited traumatic surface (*с ограниченной травмирующей поверхностью*). Some of those abrasions could have been caused up to twelve hours before the death of the applicant's son; others could have been caused up to five days before it. The rest of the abrasions were held to have appeared only after Pte S.V.'s death.

13. On 2 March 2006 another psychologist, Lt Colonel G., recounted that on 19 November 2005 he had met with Pte S.V., Pte I. and Pte M. to assess their moral and psychological qualities in order to determine where to send them for the continuation of their military service. Lt Colonel G. had enquired about the reasons for their upcoming transfer and whether it was connected with hazing. According to him, the soldiers had not given him a clear answer. Lt Colonel G. had tried to explain to them that those reasons were important for the choice of a new place for their continued service, because they could get to a unit with good discipline or to a unit where they could find themselves "in shit up to [their] ears". Lt Colonel G. later clarified that he had not meant to humiliate the soldiers' dignity, but had been trying to explain the situation to them in plain language. After the meeting of 19 November 2005 he had suggested that the soldiers be transferred to three separate military units on the basis of staff vacancies. Lt Colonel G. had not seen the three conscripts again.

14. On 17 March 2006 four servicemen (Pte Ye., Pte V., Pte K. and Pte B.), who had had to be transferred to Bratsk together with Pte S.V., had stated that before their departure one soldier had told them to inform everyone in Bratsk that Pte S.V. had been a deserter. On 2 December 2005 they had asked Pte S.V. over breakfast whether the rumour about him was true. The applicant's son had looked surprised and had stopped talking to them.

15. On 29 March 2006 Pte Ka. stated that he had told four conscripts being transferred to Bratsk together with Pte S.V. that the latter had been a deserter:

“During a roll call the head of the transit point announced that four servicemen would go to a military unit in Bratsk and that Pte S.V. would also go with them. We, the group from Sherlovaya Gora, realised that they meant Pte S.V., who had earlier deserted with I. and M. from military unit no. 05651. I told the soldiers going to Bratsk with Pte S.V. that he had left our unit in Sherlovaya Gora without authorisation, so he was a “*sochnik*” [see paragraph 34 below], and that he had then complained to the ... leadership, and that because of that their military unit in Sherlovaya Gora had been disbanded. I told this to those soldiers so that they knew who they were dealing with.”

16. On 25 April 2006 experts issued a report on Pte S.V.'s psychological state before his death. They considered that, generally speaking, the conscript had not had suicidal tendencies and had even disapproved of suicide, including that of his own father in 2000. He had had an acute feeling of justice and sense of responsibility; and had tended to be idealistic and uncompromising in his opinions. The conflict between him and senior conscripts, as well as the subsequent involvement of other people in that conflict, had worsened his psychological state. As he had been upset and unable to find a solution, the applicant's son had become depressed and overly sensitive and had begun avoiding contact with other conscripts. The experts believed that the conduct of Pte. B., Pte Kh. and Pte Ka. had caused Pte S.V.'s depression, but had not put his life in danger. At the material time Pte S.V. had not shown signs of harbouring suicidal thoughts. His psychological detachment had increased with physical exertion, social isolation and pressure. It had been further worsened by separation from his friend, Pte I. The experts considered that Pte S.V. had developed a temporary depressive-neurotic disorder of moderate severity which had predisposed him to committing suicide. The experts found no direct link between the hazing and Pte S.V.'s suicide.

17. On 28 April 2006 the Chita Garrison Military Court sentenced Pte B. to two years' suspended imprisonment for extorting money from the applicant's son and other conscripts.

18. On 5 May 2006 the Chita Garrison Military Court sentenced Pte Kh. to one year's imprisonment for breaching the rules governing relations between military personnel by committing acts of violence towards and humiliating Pte S.V. and other conscripts. The applicant was awarded 2,000 Russian roubles (RUB) in respect of the non-pecuniary damage.

19. On 21 June 2006 the criminal investigation into the possibility that Pte S.V. had been incited to commit suicide was closed for lack of *corpus delicti*. The decision was based on: the records of the onsite examination of Pte S.V.'s body; a forensic medical examination report; a psychological report; certain physical evidence, such as Pte S.V.'s suicide note and his letter to I.; a graphological examination report. The decision was also based on the statements of: Pte I. and Pte M.; Privates Shch., B., L., Br., K., Ye., P., Kru., Pa., G., Ka.; Mrs. O, P., L., Z. and S. (fellow train passengers of Pte S.V. on his journey to Bratsk); Major-General Kh., the Commander-in-Chief of the Siberian Military Circuit (*командующий Сибирским военным округом*); two psychologists, Lieutenant Colonel G. and Major B.; Lieutenant Colonel Sh. (the commanding officer of military unit no. 26001); Major I. (the officer who had accompanied Pte S.V. and the above-mentioned four other soldiers to Bratsk); and Pte S.V.'s mother and brother. The investigator concluded that the applicant's son had killed himself because of his fear of being bullied by members of the military unit stationed in Bratsk. The next day the investigator sent a copy of his decision to the applicant.

20. It appears that on 24 April 2009 the applicant lodged a request for the decision of 21 June 2006 to be set aside. On 29 April 2009 her request was dismissed. The applicant then lodged a complaint with a first instance court, seeking the quashing of the decisions of 21 June 2006 and 29 April 2009. However, by the date of the scheduled court hearing the above decisions had already been quashed and the investigation had been resumed. On 12 August 2009 the first-instance court terminated the examination of the applicant's complaint in view of the fact that the contested decisions had been set aside.

21. On 13 November 2009 the investigator again decided to close the criminal investigation on the same grounds. The applicant was informed of that decision, but she did not challenge it before the courts.

B. Pre-investigation inquiry into negligence of military officers

22. On 4 June 2008 the applicant requested that a criminal investigation be opened against Major B., Lieutenant Colonel G. and other unknown persons for the failure to provide proper psychological assistance to her son. She asserted that the failure of the authorities to recognise the psychological state of her son and to provide him with proper assistance had resulted in his suicide. The applicant also blamed the authorities for having allowed servicemen from Pte S.V.'s former unit to meet him again at the transit military unit and to disclose information about his desertion to other military personnel.

23. On 1 July 2008 the investigator refused the applicant's request for a criminal investigation to be opened. He referred to (i) the decision of 21 June 2006 to close the criminal investigation into the possibility that there had been incitement to suicide and (ii) the psychological report of 25 April 2006. The

investigator repeated that Pte S.V. had committed suicide while being in a temporary state of depression. He found no evidence that the persons concerned had failed to fulfil their duties or had otherwise caused Pte S.V.'s suicide.

24. The applicant lodged a complaint regarding the investigator's refusal of 1 July 2008. On 12 March 2009 the Chita Garrison Military Court dismissed her complaint. In concluding that Pte S.V.'s suicide had not been directly caused by the actions of third persons, the Garrison Court referred to the witness statements of Major B. and Lt. Colonel G., the psychological report of 25 April 2006 and the decision of 21 June 2006 to close the criminal investigation. The Garrison Court concluded that the persons concerned had complied with their obligations in respect of the applicant's son. On 12 May 2009 the Eastern-Siberian Circuit Military Court upheld the judgment on appeal, endorsing the reasoning of the Garrison Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW ON PSYCHOLOGICAL ASSESSMENT AND ASSISTANCE

A. Need for a legal framework in respect of the prevention of suicide

25. According to an instruction on the prevention of suicide issued in 1996 by the Ministry of Defence of the Russian Federation ("Directive 18"), suicide in the armed forces constituted a serious problem. 80% of suicides were committed by conscripts or contractual military servicemen during their first year of service. 60% of suicides were committed by hanging, although the number of suicides committed with firearms during sentry duty had also increased. Among the reasons for suicide were the following: poor living conditions, poor conditions of military service (various aspects), interpersonal conflicts and breaches of the rules governing relationships between servicemen (the phenomenon of hazing or *dedovschina*). According to Directive 18, the effectiveness of suicide prevention was negatively affected by the underappreciation of the issue and the lack of a systemic approach to the issue, the lack of relevant statistics, and the absence of proper investigations into and analysis of suicide attempts. Directive 18 instructed the relevant authorities to devise a system of psychological assistance to ensure psychological health and to prevent suicide among military servicemen.

B. The system of psychological assessment and assistance

26. The relevant legal instruments in effect at the material time (the Charter on Sentry Duty, adopted by the President's Decree no. 2140 of

14 December 1993; the 1997 Guide to Psychological Work in the Russian Armed forces (in peace time); the Russian Ministry of Defence's Decree no. 50 of 26 January 2000 on the Introduction of the Guide to Professional Psychological Screening in the Armed Forces of the Russian Federation) established a system of psychological assessment and assistance in the armed forces. It was to be carried out by psychologists and other responsible officers. The system was designed to determine people's ability to perform particular military jobs and, also, to identify people suffering from psychological issues, to provide them with psychological assistance and to prevent suicide. People had to pass a psychological assessment before and during their military education or service, at regular intervals and on each transfer. In cases involving psychological issues, including suicide risk, certain limitations were placed upon eligibility for military education or service and on access to weapons. Moreover, military students or servicemen with psychological issues were to be placed under special supervision and required to follow an individual plan of corrective and preventive activities or treatment. Psychological assistance was also available upon request to all military students and servicemen.

II. RELEVANT COUNCIL OF EUROPE AND OTHER MATERIAL

27. On 20 October 2004 Human Rights Watch, an NGO, published a report entitled "The Wrongs of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces". The report documented hazing practices in the armed forces and its consequences on the basis of three years of research undertaken in several regions across Russia. For more details of the report see *Perevedentsevy v. Russia*, no. 39583/05, § 70, 24 April 2014.

28. In July 2005 the then Human Rights Ombudsman of Russia published a special report on abuse in the armed forces. The report called attention to hazing practices in the armed forces which had resulted in deaths and suicides of military servicemen.

29. On 26 March 2006 the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe prepared a report entitled "Human Rights of Members of the Armed Forces" (Doc. 10861), which described the situation in the Russian armed forces as "extremely worrying". It noted, in particular, that "every year deaths occur among young conscripts who have been ill-treated, subjected to initiation rites, suffered accidents, committed suicide or suffered untreated illnesses".

30. On 11 April 2006 the Parliamentary Assembly of the Council of Europe issued Recommendation 1742 (2006) on the human rights of members of the armed forces, requesting the member States "to ensure genuine and effective protection of the human rights of members of the armed

forces, and ... to urgently adopt ... the requisite measures to put an end to the scandalous situations and practices of bullying in the armed forces ...”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

31. The applicant complained that the State had failed to protect the life of her son and to carry out an effective investigation into the circumstances of his death; she complained in particular of the alleged negligence on the part of her son’s military superiors and of the psychologists. The applicant relied on Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

...”

A. Admissibility

32. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *Submissions of the parties*

(a) **The applicant**

33. The applicant submitted that hazing practices, which incited violence, suicide and other incidents endangering the safety of people, were widespread in the Russian armed forces. At the material time the phenomenon of hazing in the Russian armed forces took the form of so-called *dedovschina*. Referring to the above-mentioned Human Rights Watch report (see paragraph 27 above) the applicant submitted that *dedovshchina* (“the rule of grandfathers”) was a system of interrelations between members of the armed forces that implied that the higher caste – senior conscripts (“*dedy*” – “grandfathers”) had the right to exert force and violence with impunity towards the lower caste – that is to say new recruits. Under the *dedovshchina* system, the life of a young conscript was reduced to being ordered to undertake tasks by senior conscripts – regardless of how degrading or absurd those orders might be. If they refused to comply, they were subjected to extreme violence that sometimes resulted in very serious injuries.

34. The applicant submitted that the system of *dedovshchina* had many features of a prison sub-culture. For instance, for a conscript to make a

complaint to his commanding officers or a military prosecutor was considered to constitute a serious transgression. Servicemen who dared to notify their superiors of violations (that is to say “rat on” their tormentors) were known as “reds”. Those ostracised for breaching those informal rules of conduct also included so-called *sochniki* (derived from the abbreviation “SOCh” – “СОЧ” – an abbreviation of the term *самовольное оставление части*, or “unauthorised leave from one’s unit”). Such people were as a general rule subjected by other members of the armed forces not only to violence, but to particularly degrading “punishments”, including sexual abuse. The repercussions, as well as the passive attitude of commanding officers, had reduced the effectiveness of any early-warning mechanisms.

35. The applicant asserted that the State authorities had been aware of the *dedovshchina* problem within military units all over Russia for years, but had failed to address it. *Dedovshchina* was either simply ignored by the officers or actually encouraged as an alternative means of managing and maintaining discipline. No training sessions were held in an attempt to combat the problem, and nor did the authorities facilitate other means of raising awareness among military servicemen regarding the unacceptability of hazing practices.

36. The applicant furthermore submitted that the system of psychological assessment and assistance within the military was generally not efficient, for the following reasons. Firstly, at the material time that system had only just started to be developed and thus had existed mostly only on paper. It had therefore not been capable of improving the situation regarding suicides, as the available statistics for the period between 2003 and 2008 demonstrated: in 2003 suicides had made up 35% of the 337 deaths in the armed forces; in 2006 they had amounted to 40% of the 554 deaths that occurred; and in 2007 and 2008 they had constituted about 50% of the 442 and 471 deaths in those respective years.

37. Since 2009 Russian authorities had stopped issuing official statistics regarding the number of deaths that occurred in the country’s armed forces, including those resulting from suicide. From 2009 only data from non-governmental organisations had been available. For instance, the Mother’s Right Foundation calculated that by 2015 the number of applications lodged with them by parents of conscripts who had committed suicide had increased – initially such applications had constituted about 49% of all applications and by 2015 that number became 69%. Moreover, suicide attempts were not properly investigated, even if a criminal investigation was initiated at all. The applicant argued that, in the absence of official statistics and proper investigations, the public had no control over the situation regarding suicides in the armed forces.

38. The applicant furthermore submitted that those holding the post of military psychologist were people who often lacked the necessary education and qualifications. Furthermore, a thorough psychological examination of

conscripts was carried out only once or twice during the period of their respective service. In practice, psychological aid amounted simply to talks with military servicemen, which was inefficient in respect of suicide prevention because people usually hid their suicidal intentions during such talks.

39. The applicant submitted that her son had become a victim of the *dedovschina* system and the lack of any effective safeguards and mechanisms (including the absence of proper psychological assistance) to address its negative consequences. The authorities had been aware of the existence of *dedovschina* in military unit no. 05651 even before Pte S.V. had been transferred there (see paragraph 10 above). The authorities had themselves established that Pte S.V. and other young conscripts had been subjected to bullying and extortion immediately upon their arrival at military unit no. 05651. Only five days later her son and other conscripts had been forced to leave the military unit and to seek help from the leadership of the Siberian Military Circuit in an attempt to attain protection from hazing. After that Pte S.V. had exposed himself to an even bigger threat to his safety, given the fact that by leaving his military unit and denouncing the hazing that was prevalent within that unit he had placed himself among an ostracised group of outcasts. Even after that situation had arisen the authorities had done nothing to ensure Pte S.V.'s safety. On the contrary, the information about his being a "red" and a *sochnik* had become known to other people, including those in his newly-assigned military unit (see paragraph 15 above).

40. The applicant submitted that her son had been completely healthy before he had been conscripted into the armed forces. However, in the short time since his transfer to military unit no. 05651 he had developed a depressive neurotic disorder. His depression had grown worse during his time in transit military unit no. 26001, when news of his desertion and denouncement of hazing had become known to other people. Moreover, Pte S.V. had not received adequate psychological assistance. Overall, the authorities' actions or failure to act had left the applicant's son in a psychological state that had rendered him predisposed to suicide.

41. As for the investigation, the applicant submitted that it had not been complete: a criminal investigation had been initiated into the possibility that there had been incitement to suicide, but no attempt had been made to assess the quality of the psychological assistance provided to Pte S.V. by military psychologists or to assess the quality of the actions of his commanding officers – a pre-investigation inquiry in that respect had only been carried out on the applicant's initiative.

42. The applicant concluded that the State had failed to fulfil its positive obligation to take appropriate measures to safeguard her son's life and to investigate his death.

(b) The Government

43. Referring to the relevant legal instruments (see paragraphs 25-26 above), the Government described the psychological services and the system in place that was aimed at the prevention of suicides within the Russian armed forces. They argued that it was adequate and efficient.

44. The Government submitted that Pte S.V.'s commanding officers and other responsible people had taken all necessary steps to safeguard his life: the military draft panel had declared Pte S.V. fully fit for service on the basis of his examination; military units nos. 05651 and 26001 had been staffed with qualified medical personnel and psychologists; during his military service Pte S.V. had not applied for medical or psychological assistance; and before and during his military service the applicant's son had had a high level of "neuro-psychological resilience" and had posed a low suicide risk.

45. The Government furthermore submitted that the military authorities had not been and could not have been aware of any real and immediate risk to Pte S.V.'s life, as no such risk had existed. As a newly arrived conscript Pte S.V. had undergone a psychological assessment and examination in military units nos. 05651 and 26001. The soldier had not demonstrated any primary signs of psychological issues or suicidal tendencies. After the facts concerning the extortion and violence carried out by Pte B. and Pte Kh. towards the applicant's son had been established, he and his fellow conscripts had been transferred to another military unit. Immediately after that transfer Pte S.V. had had discussions with a psychologist and had voiced no complaints. Accordingly, that psychologist, Lieutenant Colonel G., had testified that on 19 November 2005 he had met Pte S.V. and that he had not observed any abnormalities or suicidal tendencies in him. Thus, all information available in respect of the applicant's son had pointed to a low suicidal risk; consequently, there had been no real and immediate risk to his life.

46. As regards the investigation of the deceased's death, the Government submitted that the circumstances of Pte S.V.'s death had been fully and promptly established. Based on witness statements, expert examinations and other evidence the investigating authorities had determined suicide as the cause of death of Pte S.V.

47. On the basis of the above the Government concluded that the State authorities had complied with their obligations under Article 2 of the Convention.

2. The Court's assessment

(a) Substantive aspect

48. The Court will examine the matter in the light of the relevant general principles, as summarised in *Perevedentsev v. Russia* (no. 39583/05, §§ 90-94, 24 April 2014), and, *mutatis mutandis*, *Fernandes de Oliveira*

v. Portugal ([GC], no. 78103/14, §§ 104-12, 31 January 2019), and *Kurt v. Austria* ([GC], no. 62903/15, §§ 157-160, 15 June 2021).

49. The Court observes that the domestic legislation has established a system of psychological assessment and assistance in the armed forces (see paragraphs 25-26 above) which is designed, *inter alia*, to identify people suffering from psychological issues, to provide them with psychological assistance and to prevent suicide. People have to pass a psychological assessment before and during their military education or service. In cases involving psychological issues, including suicide risk, certain limitations are placed on eligibility for military education or service and on access to weapons. Moreover, military students or servicemen with psychological issues are to be placed under special supervision and should follow an individual plan of corrective and preventive activities or treatment. Psychological assistance is also available on request to all military students and servicemen.

50. On the basis of the available data, the Court observes that the applicant's son's psychological assessment did not reveal any issues or suicide risk that would have required his subsequent supervision and treatment and the limitation of his access to weapons. Moreover, the applicant's son did not seek psychological assistance on his own initiative. On the basis of the material provided to the Court, the general system of psychological assessment and assistance in the armed forces as such does not appear to contain any deficiencies that could have contributed to the applicant's son's death.

51. However, the Court notes, on the basis of the material provided to it, that the domestic regulatory framework does not appear to contain any special procedures or safeguards designed to protect victims and denouncers of hazing, bullying or other forms of ill-treatment in the armed forces from the risk of subsequent retaliation, self-harm or other threats to their safety.

52. The Court reiterates that its review of the domestic regulatory framework is not an abstract one, but rather one that assesses the manner in which it was applied in respect of the specific case (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 188, 19 December 2017). The Court also reiterates that the "quality of law" requirements under Articles 3, 5 and 8 of the Convention, where the negative aspect of the respective rights is at stake, aim to avoid all risks of arbitrariness. By contrast, the purpose of the regulatory framework requirement under Article 2 of the Convention is to provide the necessary tools for the protection of a person's life, so the lack of a written policy or another deficiency does not in itself warrant a finding that Article 2 of the Convention was breached (see *Fernandes de Oliveira*, cited above, § 119). The deficiency in question must be shown to have operated to the person's detriment (*ibid.*, § 107).

53. The Court will now examine whether the above-mentioned lacuna in the domestic legislation operated to the detriment of the applicants' son. The

Court first notes as follows. After the applicant's son left his military unit because of hazing and complained of suffering *dedovschina* to his superior officers, they decided to transfer him to another unit (see paragraph 5 above). When Pte S.V. arrived at the transit unit, no information about the circumstances of his transfer was provided to the commanders of that transit unit. The soldier remained with the transit unit for twenty days (see paragraph 6 above). During his stay there the applicant's son had at least two non-individual meetings with psychologists which were attended by all three runaway conscripts; however, those psychologists had not been made aware of his personal situation. Meanwhile, Pte S.V.'s former military unit, where he had been subjected to hazing practices, was dismantled and his former fellow military servicemen were also moved to the same transit unit. Some of his former fellow soldiers saw Pte S.V. during a parade-ground roll call and one of them informed recruits from the applicant's son's newly-assigned military unit of his desertion and denouncement of hazing. When Pte S.V. learned that that information had been spread to members of his new unit, he took his own life, as can be seen from his letter (see paragraph 7 above), out of fear of what senior conscripts in his new unit would do to him for having deserted his military unit and "ratted out" his former bullies.

54. The applicant argued (see paragraphs 33-34 and 36 above), and the Government did not disagree, that military servicemen who left their units without authorisation, as well as those who denounced instances of hazing practices in the armed forces, fell within a group of outcasts who ran a higher risk of retaliation and suicide. The respondent State itself had established, on the basis of the statistics available to it, that breaches of the rules governing relations between military servicemen were one of the reasons for someone running a higher risk of suicide (see paragraph 25 above). The Human Rights Ombudsman of Russia issued a special report in 2005 on the issue of hazing and bullying practices in the armed forces, which were damaging the health of many recruits and leading to deaths (see paragraph 28 above).

55. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are within the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them. However, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 66, 1 June 2017, with further references). The Court has required the States to take appropriate measures to combat hazing practices in their armed forces

(see *Mosendz v. Ukraine*, no. 52013/08, § 113, 17 January 2013, and *Perevedentsevy*, cited above, §§ 99-100).

56. The Court also takes into account that the Parliamentary Assembly of the Council of Europe has called on the member States to ensure genuine and effective protection of the human rights of members of their armed forces (see paragraphs 29-30 above), including, in particular, protection from hazing and other forms of ill-treatment.

57. On the basis of the above the Court concludes that, in general, the State authorities were aware of the issue of hazing (*dedovshchina*) in the armed forces and the risks arising therefrom (including the risk of suicide). In the particular circumstances of the present case the military authorities were undoubtedly aware of the hazing incident involving the applicant's son. Furthermore, they knew or should have known that by denouncing that incident the applicant's son had placed himself in a group of vulnerable servicemen who faced a high risk of retaliation and suicide.

58. The Court considers that despite knowing about those risks, the authorities failed to take appropriate measures. It is true that the authorities transferred the applicant's son to another unit and dismantled his previous unit. However, both the transfer and the dismantlement decisions were implemented with the following deficiencies.

59. Most crucially, no information about Pte S.V.'s reasons for seeking a transfer was provided to the commanders of the transit unit. During the twenty days that he remained at the transit unit no steps were taken to ensure his effective separation from military servicemen with whom he had served in his former unit (see paragraph 10 above). Thus, the delay in his relocation from the transit unit and lack of effective separation allowed the information about the applicant's son's desertion and denouncement of hazing to be spread to other people.

60. The Court furthermore considers that no adequate psychological support was available to the applicant's son. When on 19 November 2005 a psychologist had a discussion with Pte S.V., it appears to have been organised to determine the soldier's subsequent assignment to a new unit rather than to assess his psychological state. Furthermore, the discussion with the psychologist was not a one-on-one meeting, as all three runaway conscripts were invited to attend together. Again, the psychologist was not even informed about the circumstances of the conscripts' transfer, and he did not acquaint himself with their personal files. On the contrary, he attempted to elicit details about their transfer from the conscripts – strikingly, by referring to the possibility that they would face problems if they were transferred to a certain kind of unit (see paragraph 13 above). On the following day, 20 November 2005, the applicant's son and his friends had another joint meeting with another psychologist. That psychologist was also unaware of the circumstances surrounding the conscripts' transfer; after learning about those circumstances from the conscripts themselves, he still took no further

steps (see paragraph 11 above). Lastly, accepting that Major B. talked to the conscripts later, no individual interviews or tests were performed in order to verify Pte S.V.'s psychological state.

61. The Court concludes that, although the military authorities knew or should have known that the applicant's son ran the risk of retaliation and suicide, they failed to take appropriate measures to prevent such a risk from materialising, or at least to minimise such a risk: the applicant's son was not effectively separated from the servicemen from his former military unit; no information about the circumstances of his transfer or other appropriate warnings were provided to the responsible officers; and no adequate individual psychological support was provided to him.

62. While the Court cannot conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, it reiterates that the test under Article 2 of the Convention does not require it to be shown that "but for" the failing or omission of the authorities the death in question would not have occurred. Rather, what is important, and what is sufficient to engage the responsibility of the State under that article, is that the reasonable measures that the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014, with further references).

63. The Court notes in this respect that the above-mentioned uninformed, uncoordinated and perfunctory actions in respect of Pte S.V. arguably resulted from the lack of any special mechanisms and safeguards ensuring the protection of victims and denouncers of hazing, bullying and other forms of ill-treatment in the armed forces.

64. The State has thus failed to comply with its positive obligation under Article 2 of the Convention to take appropriate regulatory and operational steps to safeguard the life of the applicant's son.

(b) Procedural aspect

65. The Court will examine the matter in the light of the relevant general principles, as summarised in *Malik Babayev* (cited above, §§ 79-81).

66. As for the effectiveness of the investigation into the applicant's son's death, the Court notes that the applicant was mostly dissatisfied about the fact that there had been no criminal prosecution of the above-mentioned psychologists and military commanders. However, other than that, she did not indicate any particular omissions or deficiencies that could have rendered the investigation inadequate (see *Baklanov v. Ukraine*, no. 44425/08, § 88, 24 October 2013).

67. The Court observes that the authorities immediately opened a criminal investigation into the applicant's son's death, questioned a significant number of witnesses, and ordered appropriate forensic examinations. The investigation determined no elements of a criminal offence in the

circumstances surrounding Pte S.V.'s death, and the case was closed about six months after being initiated. Thus, the investigation was sufficiently prompt. It established the relevant facts, and there is no reason to doubt the conclusions that it reached. Neither is there any reason to question the independence of the investigation. It appears that the applicant had no problems in accessing the material adduced by the criminal investigation. Following the lodging of the applicant's complaint to the investigating authorities (see paragraph 20 above), in 2009 the investigating authorities reopened the investigation, but found no grounds to reach a conclusion different from the initial one. Lastly, at the applicant's request the authorities carried out an additional inquiry into the quality of the psychological assistance provided to her son. There is nothing to doubt the authorities' finding that there was no sufficient basis to hold criminally liable the psychologists and military commanders with whom the applicant's son dealt. The Court further notes that the two servicemen involved in the incidents of bullying and extortion of money from the applicant's son were convicted for respective criminal offences (see paragraphs 17-18 above).

68. On the basis of the above the Court concludes that the authorities complied with their obligation to carry out an effective investigation into the applicant's son's death.

69. There has therefore been no violation of Article 2 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government submitted that if the Court were to find a violation of the Convention in respect of the applicant, she should be awarded just satisfaction, in accordance with the Court's established case-law.

73. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

74. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the domestic courts and EUR 4,800 for those incurred before the Court.

75. The Government did not comment separately on the above claims.

76. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,300 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

77. The Court considers it appropriate that the default interest rate 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

1. *Declares*, unanimously, the application admissible;
2. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its substantive limb;
3. *Holds*, by six votes to one, that there has been no violation of Article 2 of the Convention under its procedural limb;
4. *Holds*, unanimously,
 - (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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,300 (seven thousand three hundred 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;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Elósegui is annexed to this judgment.

G.R.
M.B.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE ELÓSEGUI

1. The present separate opinion in the case of *Lyubov Vasilyeva v. Russia* has been written in order to explain why I voted with my colleagues in finding a violation of Article 2 of the Convention under its substantive limb but dissent from them in finding that there has also been a violation of the procedural limb of Article 2, for lack of an adequate investigation. In contrast, the majority have concluded that there was no violation of Article 2 under its procedural limb.

2. In my opinion, all the facts in the file indicate that there has been not only a substantive violation of the above provision, but also a procedural one. In contrast to what is stated in the analysis of the procedural aspect (see paragraphs 65-69 of the judgment), I consider that the applicant's observations point to omissions and deficiencies which rendered the investigation inadequate. Although the authorities did open a criminal investigation into the death of the applicant's son and questioned a significant number of witnesses, they did not go deeply into the conclusions that could be derived from certain clear parts of the evidence. The present judgment affirms that there is no reason to doubt the conclusions reached by the investigation. I cannot share this approach, because I see many flaws in the research conducted by the domestic courts and the authorities. One important point, for instance, concerns the fact that "the Chita Garrison Military Court sentenced Pte B. to two years' suspended imprisonment for extorting money from the applicant's son and other conscripts ... and Pte Kh. to one year's imprisonment for breaching the rules governing relations between military personnel by committing acts of violence towards and humiliating Pte S.V. and other conscripts" (see paragraphs 17-18). However, no mention was made of Article 110 of the Criminal Code, namely "incitement to suicide". In my opinion, there is a clear basis for exploring possible charges against the soldiers involved in the first bullying incident. This failure to classify the facts influenced the following stages of the investigation in relation to the crime with which Pte B and Pte Kh. were charged. They were punished because they had committed acts of violence towards Pte S.V. and humiliated him, but the link between these facts and the consequence of incitement of suicide is completely missing from the investigation.

3. The facts were analysed in an isolated manner by the domestic courts, and the majority of my colleagues have accepted that as valid. To do so is to ignore the fact that the phenomenon of hazing or bullying in the military must be addressed through a holistic approach. In the specific case before us, the applicant's son was a victim of the so-called *dedovschina* practice (the "rule of grandfathers"). The distinctive features of this harassment are the right to

use force and violence with impunity. S.V. was subjected to bullying and blackmailing during his first four days in the army, which included being prevented from sleeping. For this reason, and for this reason alone, he tried to leave the army. He was caught and his superiors spread the word about this fact. In consequence, he was treated as a traitor or deserter (a “red”, or *sochnik*) by his army colleagues. The military themselves brought this information to the new military unit to which the applicant’s son was sent, and a fresh round of bullying began.

4. This context was ignored by the judges and the prosecutor during the investigation. They minimised the evidence, avoiding charging the two colleagues of the applicant’s son with having incited suicide. In the same vein, they considered that the psychologists and military commanders had acted properly, although the observations submitted to the Court by the applicant (and not denied by the Government) indicated that the commanders tolerated the bullying or even participated in it. The psychologists also knew about it and did nothing. The applicant provided the Court with many arguments proving that the investigation did not satisfy the requirements of Article 2 of the Convention. All these allegations are very clear from the materials in the file: an investigation was carried out only to examine the version of intentional incitement to suicide, but no formal criminal investigation was initiated with regard to evaluation of the psychological assistance provided to the applicant’s son... The acts (failure to act) of the military psychologists were not subject to an *ex officio* review (see Observations of the applicant, paragraph 5).

5. With regard to the requirement of promptness, it can be noted that the investigation with respect to the officials was not expeditious, in that it was started only at the initiative of the applicant and her lawyer, two and a half years after S.V.’s death (see Observations of the applicant, paragraph 6).

6. The Court has received many applications related to incitement to suicide in the Russian army¹. The Court, the Council of Europe, other international bodies and ONGs have recognised that there exists a systemic problem. That is why investigation at the level of the domestic courts to identify the guilty party (parties) and establish criminal liability is crucial. It is not enough for the Court to declare that there has been a substantive violation without also finding a procedural violation, because the domestic authorities did not attempt to charge the individuals who were responsible. I wrote a joint concurring opinion with judge Lemmens in the case of *Boychenko v. Russia* (no. 8663/08, 12 October 2021) specifically to indicate that, in its judgments addressing this endemic and structural problem, the Court must go deeper in its analysis of the root causes.

¹ See *Filippov v. Russia*, 19355/09; *Khudoroshko v. Russia*, 3959/14; *Nevostruyeva v. Russia* (dec.), 51185/11, 1 June 2021; *Nasibullin v. Russia* (dec.), 64774/09, 7 January 2020; *Pavlova v. Russia* (dec.), 25835/10, 28 January 2020; and *Khabirov v. Russia*, no. 69450/10, 12 October 2021.

7. One aspect which surprises me is the insistence by the Russian authorities and even by the Court on the victim-focused question put to the parties when communicating the case, namely whether a system of assessment is in place to establish whether conscripts have psychological problems before they join the army. No one has mentioned the aggressors. It is crystal clear from the abundant research on bullying (irrespective of whether the context is the army, schools² or the workplace) that victims need not have any previous mental problem. The applicant's son was in perfectly sound psychological health before entering the army (see Observations of the applicant, paragraph 2). His depressive neurotic disorder was caused by the hazing (ibid.).

8. There is much to be done in the introduction of education among all conscripts in order to avoid bullying and hazing. The victim is not the guilty party. Potential aggressors must be educated and special programmes are needed to achieve this. The profile and features of victims of different kinds of harassment are always the same. If they complain, they are subjected to retaliation rather than receiving help. This also explains why, in the present case, the victim said nothing to the psychologist. Furthermore, his own commanding officers contributed to worsening the situation. Nowadays, there is much knowledge and research about the necessity of mediation and educating peers against bullying. A human-rights court should also reflect these factors in its analysis, requiring the member States to fulfil their positive obligations through preventive measures and effective investigation in order to punish persons who are guilty of incitement of suicide. In sum, it is not enough to focus on the need for a better legal framework to protect victims and denouncers of hazing. The Court's assessment should go to the origin of the problem.

² I have a certain measure of experience in this area, having been involved as a Professor of the University of Saragossa (Spain) in conducting assessment of secondary school teachers with regard to human rights education and prevention of bullying in schools. This included the implementation of concrete rules and disciplinary measures in several public schools in the Autonomous Region of Aragón, with the help of the specialist José María Avilés Martínez, Professor of Psychology at the University of Valladolid. He is the author of many articles on this subject, such as: "Positive coexistence and bullying prevention: The contribution of the support system between equals – a study between the Spanish and Brazilian experiences", *Revista Tempos e Espaços em Educação*, ISSN-e 2358-1425, Vol 13, no. 32, 2020.