



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

THIRD SECTION

CASE OF GVOZDEVA v. RUSSIA

(Application no. 69997/11)

JUDGMENT

Art 2 (substantive) • No positive obligation on authorities to take operational measures to prevent risk to life of conscript, given unforeseeability of circumstances leading to his suicide

Art 2 (procedural) • Ineffective investigation into possibility of incitement to commit suicide by other servicemen • Investigator's failure to elucidate origin of injuries found on conscript's body, unexplained lack of questioning of two witnesses despite domestic court instructions to that effect, and unresolved discrepancies in other witness statements

STRASBOURG

22 March 2022

FINAL

22/06/2022

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

In the case of Gvozdeva v. Russia,

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

Georges Ravarani, *President*,

Georgios A. Serghides,

María Elósegui,

Anja Seibert-Fohr,

Andreas Zünd,

Frédéric Krenc,

Mikhail Lobov, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application no. 69997/11 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 Galina Konstantinovna Gvozdeva (“the applicant”), on 27 September 2011;

the decision to give notice of the application to the Russian Government (“the Government”);

the decision to grant priority to the case under Rule 41 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The application concerns an alleged failure by the national authorities to protect the life of the applicant’s son during his military service and to conduct an effective investigation into his death.

THE FACTS

2. The applicant was born in 1954 and lives in St Petersburg. She was represented before the Court by Mr S.A. Golubok and Mr V.A. Andreyev, lawyers practising in St Petersburg.

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 this office, Mr M. Vinogradov.

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

I. THE CIRCUMSTANCES OF THE APPLICANT'S SON'S DEATH

5. The applicant is the mother of Mr G., who was drafted into compulsory military service on 20 November 2008 and assigned to the airborne forces. He served in military unit no. 32515.

6. A medical examination, which included a psychological test, that Mr G. took before his military service, assigned him to category "A", which meant that he was fit for military service without duty limitations. A subsequent psychological test found no pathologies and indicated that Mr G. was not a suicide risk.

7. Within two months of starting his service, Mr G. was promoted to the position of squad commander, subordinate to the sergeant major Mr. K.

8. On 6 March 2009 Mr G. was taking part with his battalion in a military field exercise in the Pskov Region. At around 11.45 p.m. on that day he left the field camp in an unknown direction.

9. At around 9.20 a.m. on 7 March 2009 Mr G. was found dead in the woods two hundred metres away from the field camp. He was hanging from a tree from the belt of his gas-mask bag which was tied around his neck.

10. A notebook was found in the pocket of his trousers, which had the following text on one of the pages:

"Dear mother! Forgive me for everything and do not scold me for this act, I am not able to endure such an attitude any more; the sergeant major does not give me time even to shave and wash my face, while demanding that I do it. You will see yourself what I look like and that is sad. Maybe you will consider this action to be a sign of weakness, but this is what I have been afraid of the most. I will not write any more about this, do not be too disappointed."

On the back of the page had been written "to my beloved mother".

II. SUBSEQUENT PROCEEDINGS

A. First round of criminal investigation

11. On 10 March 2009 an investigator, Mr S. of the Military Investigations Unit of the Investigative Committee in the Pskov Garrison ("the Garrison Investigations Unit"), initiated a criminal investigation in respect of the sergeant major Mr K. on suspicion of incitement to suicide.

12. According to a post-mortem medical expert examination report of 2 April 2009, the cause of death was mechanical asphyxiation caused by hanging. Apart from the injuries related to strangulation, the report mentioned bruises on the right buttock, left shoulder, and both legs, and abrasions on the hands, left knee and right ankle, sustained from blunt trauma between one to nine days prior to Mr G.'s death.

13. On 7 May 2009 the investigator decided not to proceed with any further criminal investigation in respect of Mr K. on account of the absence of any criminal acts on his part. The investigator concluded that the sergeant

major's actions had been in compliance with internal regulations and had not included violence, abuse or humiliation, and that Mr G.'s suicide had been caused by severe depression due to a failure to perform his duties.

14. The decision was based on the following evidence:

(a) statements of six fellow military servicemen of the deceased. They characterised Mr K. in a positive way, as a demanding, but fair and attentive military superior, who strictly followed internal regulations and had never used violence towards his subordinates. The same witnesses characterised the deceased as a secretive, unsociable person with a weak personality, who had systematically failed in his duties as a squad leader, and who had been unable to ensure compliance with his orders and had been troubled by this fact. In the course of the investigation, at least seven other servicemen were questioned, whose statements largely corroborated the above. Some of those servicemen also asserted that they had seen that Mr G. had fallen from a military vehicle during maintenance work around a week before his death. They further stated that it was normal for soldiers to sustain minor injuries when splitting firewood what they did routinely;

(b) statements of two friends of the deceased, who had kept in touch with him after he had been drafted into the army. These witnesses stated that Mr G. used to be in a positive mood during telephone conversations and personal encounters, had never complained about the use of violence or any other abuse, and had never mentioned his sergeant major, Mr K;

(c) statements of the deceased's mother and sister, who also stated that Mr G. had never complained about any abuse, extortion, use of violence, or degrading or humiliating treatment. They further stated that the deceased had continuously contemplated extending his service on a contractual basis or undertaking military studies in a military academy;

(d) the absence of any reference to abuse in the deceased's letters to his mother;

(e) a statement of a former schoolteacher of the deceased, who stated that Mr G. had been an unsociable person with a weak personality, who had been unable to require that others act in a certain way. She also noted, however, that he had been a very responsible person, and failing in his duties might have led him to commit suicide;

(f) a statement by Mr K., questioned as a suspect, who stated that he had not felt any animosity towards the deceased and that all of his actions as a military superior had been in compliance with internal regulations;

(g) the results of a post-mortem psychiatric examination of Mr G. The report stated with a high degree of probability that the deceased had entered into a "depressive episode" before his suicide and that that condition had been caused by a discomforting situation of deep suffering due to a lack of authority in his relations with his peers and subordinates, a failure to duly perform his duties as a squad leader, and guilt caused by these failures. All

these factors, in the opinion of the experts, might have led him to general psychological exhaustion and prolonged frustration, leading to suicide;

(h) the results of a forensic expert examination of the suicide note, which demonstrated that the note had been written by Mr G. himself under normal conditions (no excessive tiredness, intoxication, or unusual posture);

(i) the results of the post-mortem medical expert examination (see paragraph 12 above);

(j) an inspection report of the scene of the incident, which found no signs of a fight.

15. On 5 February 2010 the Military Court of the Pskov Garrison dismissed a complaint by the applicant about the decision.

16. The applicant appealed and on 26 April 2010 the Military Court of the Leningrad Command ordered the fresh consideration of her complaint. The appeal court highlighted the following defects of the investigation:

(a) the decision to terminate the criminal investigation did not take into account any injuries apart from those directly caused by the suicide; the statement of Mr K. that he had not observed any bodily injuries on the deceased during daily check-ups contradicted the results of the expert examination;

(b) the post-mortem psychiatric examination was conducted in an institution which was not authorised to perform forensic examinations, and its results did not take into consideration the personal records of the deceased;

(c) some inconsistencies in witness statements were not resolved. In particular, during initial questioning two military servicemen stated that Mr K. had made the squad do push-ups and take their belongings out of and back into their tents as a punishment for failures of the deceased, and that some sergeant Mr Sh. had taken the deceased's mobile telephone. However, they later stated that Mr K.'s actions had been fully compliant with internal regulations. Mr Sh. was not questioned;

(d) The private, Mr B., who was Mr G.'s main social contact during his service, had not been questioned.

17. On 20 May 2010 the Military Court of the Pskov Garrison, upon fresh consideration of the case, ruled in favour of the applicant, quashed the decision to terminate the criminal investigation largely on the grounds mentioned above, and ordered the defects to be rectified. The court did not refer to the lack of questioning of Mr B.

B. Second round of criminal investigation

18. On 7 June 2010 the head of the Garrison Investigations Unit, in compliance with the above court order, revoked the decision to terminate the criminal investigation and assigned the case to another investigator, Mr N.

19. On 6 August 2010 a state medical institution issued a second post-mortem psychiatric examination. The report, having studied the personal

records of the deceased and other material, stated that while Mr G. had had no chronic mental disorders, he had been temporarily suffering from an adjustment disorder with mixed anxiety and depressed mood, which had predisposed him to suicide. The experts also established that although Mr G. had been well-adjusted so as to be able to maintain proper social contacts in familiar environments, he had had problematic adaptive strategies in an unfamiliar military context. He had had a diminished capacity to make “difficult decisions” and to organise the behaviour of others, and had had at the same time sufficiently strong feelings of responsibility and diligence. The combination of these psychological factors with failures in the performance of his junior command duties had led to prolonged stress and frustration and had resulted in an altered psychological state. In this state he had committed suicide.

20. During the additional questioning, Mr K. maintained his previous testimony and stated that the injuries not related to strangulation had most probably appeared during military and physical training in full gear during the field exercise or maintenance works. He further stated that he had not noticed those injuries during check-ups because of poor lighting in the tents. He lastly stated that he had ordered the squad to do push-ups and move their belongings from the tents only in the context of their physical and fire safety training.

21. The investigator also repeatedly questioned the deceased’s fellow servicemen, who had already been discharged from military service. They also generally denied that Mr K. had ever abused his subordinates or used violence. Some of them also stated that it had been normal for them to sustain minor injuries from military gear. Mr Sh. and Mr B. were not questioned, for an unspecified reason.

22. On 7 September 2010 the criminal investigation in respect of Mr K. was once again terminated on the basis of the evidence mentioned above because of the absence of criminal acts on his part. That decision was further validated by the military prosecutors of the Pskov Garrison and the Western Military Circuit.

23. On 27 December 2010 the applicant complained about that decision to the Military Court of the Pskov Garrison. She did not refer to the lack of questioning of Mr Sh. and Mr B. On 17 January 2011 the court dismissed the complaint. On 11 April 2011 the Military Court of the Leningrad Command dismissed an appeal by the applicant. The courts relied on the statements of numerous witnesses and found that inconsistencies in their statements had been resolved. They also noted that the investigation had duly addressed the cause of the injuries found on Mr G.’s body. They lastly referred to the second post-mortem psychiatric examination which had established that there were no grounds to believe that the suicide had been caused by any actions of Mr K.

24. Following the communication of the present case to the Government, on 28 November 2013 another post-mortem psychological and psychiatric expert examination report was ordered. The report was prepared by the leading national expert institution, the Serbskiy Centre of Social and Forensic Psychiatry. In particular, the report stated that Mr G. had had an adjustment disorder with mixed anxiety and depressed mood, resulting from the hardships of military service and his character traits, which might have predisposed him to suicide. It further stated that there were no reasons to conclude that the suicide had resulted from any actions of Mr K. or any other officers of the military unit.

RELEVANT LEGAL FRAMEWORK

25. For the relevant provisions of domestic law on the prevention of suicide and psychological assessment and assistance in the military forces, see *Khabirov v. Russia* (no. 69450/10, §§ 52-70, 12 October 2021).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

26. The applicant complained under Article 2 of the Convention that the authorities had not protected her son's life during his military service and that the criminal investigation into his death had not been effective. She relied on Article 2 of the Convention, which in the relevant part reads as follows:

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

A. Admissibility

27. The Court notes that the application 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*

28. The applicant submitted that the respondent State had failed to establish an effective framework for monitoring conscripts' psychological state and providing relevant support. Thus, the applicant's son, who had found himself in an unfamiliar and stressful environment, had not had an opportunity to request the necessary assistance. His distress had been exacerbated by his character traits.

29. She further considered that the investigation into her son's suicide had not been thorough. In particular, referring to the decision of the Military Court of the Leningrad Command dated 26 April 2010 (see paragraph 16 above), she pointed out that the investigation had not resolved inconsistencies between the statements of witnesses. She further noted that the sergeant Mr Sh. and the private Mr B. had not been questioned. Lastly, she complained that the investigation had not sufficiently established the cause of the injuries found on her son's body.

30. The Government submitted that the criminal investigation had concluded, relying on extensive evidence, that Mr G.'s suicide had resulted from a depressive mood caused by his inability to perform his duties. It had not found any fault on the part of the sergeant major Mr K. Furthermore, Mr G. could have been provided with the necessary medical treatment but had never attempted to bring his concerns to the attention of the authorities. The medical tests he had undergone prior to his military service had not established any pathologies either.

31. The Government further argued that the investigation into Mr G.'s death had been effective. The decision to close the criminal case was based on an extensive body of evidence. It was further confirmed by the national courts. The applicant had had full access to the material of the criminal investigation.

2. *The Court's assessment*

(a) **General principles**

32. For a summary of the applicable general principles, see *Boychenko v. Russia* (no. 8663/08, §§ 76-84, 12 October 2021) and *Khabirov v. Russia* (no. 69450/10, §§ 86-96, 12 October 2021).

(b) **Application to the present case**

(i) *Substantive aspect*

(α) **Obligation to put in place a regulatory framework**

33. The Court reiterates that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant or the deceased gave rise to a violation of the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 188, 19 December 2017). Therefore, the mere fact that the regulatory framework may be deficient in some respects is not sufficient in itself to raise an issue under Article 2 of the Convention. It must be shown to have operated to the person's detriment (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 107, 31 January 2019).

34. The Court has recently examined the system of regulatory measures on prevention of suicide in the Russian military forces in a similar context

and found no issues in that regard (see *Boychenko*, cited above, §§ 86-87). Nothing in the present case allows the Court to arrive at a different conclusion. It observes that Mr G.'s psychological assessment did not reveal any issues or suicide risk which would have required his subsequent supervision and treatment. He also did not seek psychological assistance on his own initiative. Thus, there is no evidence of any deficiencies in the system of psychological assessment and assistance in the military forces which could have contributed to his death. Accordingly, the Court discerns no issue under Article 2 of the Convention in this respect.

(β) Obligation to take preventive measures

35. In the present case the Court observes that Mr G.'s psychological state was subject to medical examination twice prior to him being drafted for military service. None of the tests established any suicide risks (compare *Tikhonova v. Russia*, no. 13596/05, § 74, 30 April 2014). Several post-mortem psychiatric reports conducted by reputable medical expert institutions indicated that Mr G. had only had an adjustment disorder, and not that there had been a risk of suicide.

36. Furthermore, Mr G. never asked for psychological assistance and did not inform the senior officers or anyone else about any complaints or difficulties. On the contrary, he used to describe his military service in a positive way, and even expressed his willingness to extend his service on a contractual basis (see paragraph 14 above, point (c)). Even if his behaviour changed, it appears that there were no particular instances which could have alerted the military authorities to the fact that that change was so radical as to endanger his life. In the circumstances, there is insufficient evidence to conclude beyond a reasonable doubt that the authorities knew or ought to have known of the existence of a real and immediate risk to Mr G.'s life (see *Tikhonova*, cited above, § 75). The Court therefore finds that the particular circumstances leading to Mr G.'s death were not foreseeable to the domestic authorities. Thus, no obligation to take operational measures to prevent a risk to life arose in the present case.

37. In view of the above, the Court finds that there has therefore been no violation of Article 2 of the Convention in this regard.

(ii) Procedural aspect

66. The Court notes from the outset that the investigation identified two plausible lines of inquiry to follow, namely, that Mr G.'s suicide resulted from his own actions, or that he had been incited to commit suicide by other servicemen. In view of the timeline of the proceedings and various decisions taken by the domestic authorities, it does not appear that the authorities did their best in addressing serious concerns raised by the evidence collected in respect of the second theory.

67. In the decision of 26 April 2010 (see paragraph 16 above) the Military Court of the Leningrad Command found that the authorities had failed to carry out a number of investigative measures in the initial round of inquiry. In the Court's opinion, the subsequent investigation did not rectify those deficiencies.

68. First, the investigator failed to elucidate the origin of the injuries found on Mr G.'s body. He plainly referred to witness statements and the post-mortem report which had only recorded the existence of those injuries but had not sufficiently established their cause (see paragraphs 14 and 20 above). In particular, the investigator relied on Mr K.'s explanation of the injuries he had provided only during the additional questioning, that is more than a year after the incident, which thus was problematic to verify forensically due to the passage of time. It is not clear why he did not promptly order a pertinent forensic examination, which might have shed more light on the matter, even after the domestic court had later highlighted this shortcoming (compare *Tikhonova*, cited above, § 92).

69. Moreover, in spite of the instructions given by the domestic court, Mr Sh. and Mr B. were not questioned. The Court observes that although the investigator had gathered statements of certain of Mr G.'s fellow servicemen, Mr B.'s testimony could have been of crucial significance. Being the main social contact of the deceased during his military service, Mr B. could have possessed important information unavailable to Mr G.'s friends and family, and might have divulged it with more candour in comparison to other soldiers (see, *mutatis mutandis*, *Chember v. Russia*, no. 7188/03, § 62, ECHR 2008). Remarkably, the authorities never explained this omission in the domestic proceedings or before the Court (see, *mutatis mutandis*, *Malik Babayev v. Azerbaijan*, no. 30500/11, § 86, 1 June 2017).

70. Lastly, the Court notes the discrepancies in the witness statements concerning the allegations that Mr K. used to punish the whole squad for failures of Mr G. (see paragraph 16 above, point (c)). In the second round of inquiry, Mr K. denied those allegations and stated that the activities in question had been carried out only in the context of formal physical and safety training. The investigation clearly fell short in resolving that contradiction. It could, for example, have put specific questions in this regard to other witnesses or have conducted confrontations with them. It remains unexplained why the investigator failed to do so.

71. Thus, the investigation authorities' reluctance to follow the guidance of the domestic courts prevented them from dispelling certain doubts stemming from the evidence collected in the present case. On the basis of the foregoing, the Court takes the view that, notwithstanding the important measures taken by the authorities in the domestic proceedings, the investigation, tainted with the above-mentioned shortcomings and seen against the gravity of the incident at stake, fell short of the procedural requirements of Article 2 of the Convention in the present case. There has

accordingly been a violation of the procedural limb of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government considered that amount to be excessive.

75. The Court observes that the failure of the authorities to give satisfactory answers to the questions raised by Mr G.’s death must have caused the applicant acute mental suffering. At the same time, the Court’s findings under Article 2 of the Convention in the present case are of a procedural nature. In the light of all the material in its possession and making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 on account of non-pecuniary damage, plus any tax that may be charged on this amount.

B. Costs and expenses

76. The applicant also claimed EUR 14,775 for the costs and expenses incurred before the domestic courts and the Court.

77. The Government considered that amount to be unsubstantiated.

78. 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 14,775 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

79. 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 no violation of Article 2 of the Convention under its substantive limb;
3. *Holds*, by five votes to two, that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds*, by five votes to two,
 - (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, EUR 15,000 (fifteen thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Holds*, by six votes to one,
 - (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, EUR 14,775 (fourteen thousand seven hundred and seventy-five euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

GVOZDEVA v. RUSSIA JUDGMENT

Done in English, and notified in writing on 22 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Georges Ravarani
President