



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

THIRD SECTION

CASE OF FILIPPOVY v. RUSSIA

(Application no. 19355/09)

JUDGMENT

Art 2 (substantive and procedural) • Failure to comply with positive obligations by taking appropriate regulatory and operational steps to safeguard life of military conscript, who committed suicide after bullying by fellow conscripts • Ineffective investigation into death

Art 3 (substantive and procedural) • Positive obligations • Failure to effectively protect military conscript against ill-treatment at hands of other conscripts over protracted period of time, causing constant mental anxiety • Ineffective investigation with failure to lay responsibility on upper hierarchical levels of authority, in general context of endemic hazing practices within Russian military forces

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 Filippovy 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,

Peeter Roosma,

Andreas Zünd,

Mikhail Lobov, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 19355/09) 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 two Russian nationals, Mr Aleksandr Vasilyevich Filippov and Mrs Nadezhda Anatolyevna Filippova (“the applicants”), on 17 March 2009;

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

the parties’ observations;

Having deliberated in private on 7 December 2021 and 1 March 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The present application concerns the ill-treatment and death of the applicants’ son, Pte Ye.F., during his compulsory military service, and the subsequent investigation.

THE FACTS

2. The applicants were born in 1956 and 1959 respectively and live in Ulyanovsk, in the Ulyanovsk Region. The applicants were represented by Ms T.I. Sladkova, a lawyer for the Mother’s Right Foundation, an NGO based in Moscow.

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

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

I. THE APPLICANTS' SON'S MILITARY SERVICE AND DEATH

5. On 22 June 2006 the applicants' son, Mr Ye.F., began his compulsory military service. He initially served in military unit no. 83421. On 11 October 2006 another military serviceman, Pte K., hit Pte Ye.F. in the face with his fists at least three times, breaking his jaw. On 28 November 2006 Pte K. was convicted for a breach of the rules governing relations between servicemen of equal rank (Article 335 § 2 of the Russian Criminal Code (the "CC")) and sentenced to serve in a disciplinary unit for a year. Details regarding the incident involving the applicants' son and Pte K. were posted on noticeboards at military unit no. 83421 after the incident. Because Pte Ye.F. had testified against Pte K., attitude of his fellow servicemen towards him grew worse.

6. In order "to improve the conditions of [Pte Ye.F.'s] military service in view of the situation in the collective", on 4 December 2006 the applicants' son was transferred to another unit, no. 83420, an infantry squadron. However, as military unit no. 83421 was the training centre for military unit no. 83420, the two units were interconnected. As a result, the details of the conflict with Pte K. became known among the members of Pte Ye.F.'s new unit as well and he became shunned as a "rat". People ignored Pte Ye.F., extorted money from him and beat him up. He wrote to the applicants about the bullying, insults and beatings that he constantly had to endure. According to those letters, Pte Ye.F. could not find protection by appealing to his senior officers, as some incidents took place in front of them and they had not protected him.

7. On 6 April 2007 Pte Ye.F. complained to the medical treatment wing of his unit about a leg injury (specifically, pain that he was suffering in the left hip and knee). The relevant entry in Pte Ye.F.'s medical record entry indicated the reason for that pain as his having fallen down a flight of stairs on 10 March 2007. However, Pte Ye.F. wrote to his parents that he had been beaten. It appears that an investigator carried out an inquiry into that incident and on 13 April 2007 refused to open a criminal investigation because Pte Ye.F. had explained to him that he had fallen after tripping on the stairs.

8. Between 23 April and 17 May 2007 Pte Ye.F. was treated at a hospital for the above-mentioned leg injury and between 17 and 30 May 2007 he was treated as an inpatient in the medical treatment wing of his unit.

9. On 30 May 2007 Pte Ye.F. was assigned to another squadron in military unit no. 83420 whose task was to ensure the provision of supplies.

10. On 1 June 2007, while on an assignment outside the military unit, Pte Ye.F. went absent without leave. He wrote later to his parents that he had done it because he had been afraid to return to his unit, as there was "no life for [him]" there.

11. After he was located and taken back to his unit, Pte Ye.F. had a discussion with Colonel F., a deputy commanding officer of unit no. 83420, during which he allegedly asked to be transferred back to military

unit no. 83421. On 2 June 2007 Pte Ye.F. was transferred back to military unit no. 83421. When, during a phone call with Colonel F. on 4 June 2007, the second applicant learned of the transfer, she asked him not to send her son back to his original unit, as it had been there that Pte K. had beaten him.

12. On 4 June 2007 Pte Ye.F. lodged an application with the medical unit's doctor, seeking to be sent for a reassessment by a panel of his fitness for military service in view of his leg injury (see paragraph 8 above). His transfer to the hospital for that reassessment was scheduled for 13 June 2007.

13. On 5 June 2007 at about 6.40 p.m. Pte Ye.F. was found in a dormitory hanging from a noose. The first applicant was informed by phone of the death of his son on the next day, at about 8.30 a.m.

II. INVESTIGATION OF THE APPLICANTS' SON'S DEATH

14. On 5 June 2007 at 8 p.m. a criminal investigation under Article 110 of the CC (Incitement to suicide) into the applicants' son's death was initiated. The investigator inspected the incident scene and the deceased's body. The military unit's doctor also participated in the latter inspection. The body inspection record indicated a strangulation line on the neck and no other injuries.

A. Witness statements and forensic expert reports

15. A number of military servicemen and other witnesses were questioned during the investigation.

1. Lieutenant Ya. and Lieutenant P. of military unit no. 83421 (the first and also the last unit where the applicants' son served)

16. On 5 June 2007 Lieutenant Ya., the interim head of Pte Ye.F.'s squadron in unit no. 83421, stated that on 2 June 2007 Senior Lieutenant L. had brought Pte Ye.F. to his unit. Senior Lieutenant L. had informed Lieutenant Ya. that the soldier's relations with his fellow servicemen in the unit no. 83420 "had not worked out" – other soldiers had extorted money from him and had subjected him to violence. According to Senior Lieutenant L., Pte Ye.F. had been absent without leave during his above-mentioned assignment away from the unit and, at the time that he had been found, had been asking for money from passers-by. Lieutenant Ya. had invited Pte Ye.F. for a discussion on the evening of his transfer on 2 June 2007 in order to get to know him better. Pte Ye.F. had been uncommunicative; he had talked a little about his family and not much about himself. He had not had "any philosophical thoughts", and had not "reflected on the meaning of life" or "expressed any suicidal thoughts". Pte Ye.F. had, albeit unwillingly and without going into much detail, admitted having been bullied by his fellow servicemen – he had said that he had been beaten up, but had not mentioned

any extortion of money. During the following two days Lieutenant Ya. had not noticed anything out of the ordinary in the conduct of Pte Ye.F. Lieutenant Ya. denied knowing the reasons that could have prompted Pte Ye.F. to take his life. He noted that they had not found any suicide letters, and he did not know whether Pte Ye.F. had been subjected to physical or psychological violence before his death. Lieutenant Ya. excluded the possibility that he had been murdered.

17. Lieutenant P., the officer responsible for educational activities in the military unit, gave similar testimony to that of Lieutenant Ya. During his talk with Pte Ye.F. the latter had looked unhappy; his gaze had been empty, but he had not talked about the “meaning of life” or suicide.

2. Colonel F. (military unit no. 83420 – the second military unit in which the applicants’ son served)

18. On 5 June 2007 Colonel F., deputy commanding officer of military unit no. 83420, stated as follows. Pte Ye.F.’s duties within unit no. 83420 had been in the area of food delivery. On 1 June 2007, when the car in which Pte Ye.F. had been travelling had broken down and the driver had begun repairing it, Pte Ye.F. had left to go to a shop and had not returned by the time the car had been repaired and driven off. When he had been found later, the conscript had explained that he had gone to a shop to buy an ice-cream and had become lost. At the same time Pte Ye.F. had asked to be transferred to military unit no. 83421 because he did not want to work in the area of food delivery, had poor relations with the other servicemen, had no friends and was an outcast. During his talk with Colonel F. Pte Ye.F. had not confirmed that he had been the victim of any unlawful conduct, but had nevertheless insisted on being transferred to military unit no. 83421 and not some other unit. His request had been granted. Colonel F. had not been aware that Pte Ye.F. had earlier served in unit no. 83421 and that he had been the victim in the above-mentioned criminal case against Pte K. Colonel F. stated that Pte Ye.F.’s transfer had been implemented solely on the basis of the soldier’s request and that there had been no other reasons for the transfer.

3. Pte Ye.F.’s aunt

19. On 7 June 2007 Pte Ye.F.’s aunt stated that in November or December 2006 she had learned that her nephew had defended someone who was being bullied and that another soldier had broken his jaw. After Pte Ye.F. had testified against that soldier during the respective criminal proceedings and the latter had been sent to serve in a disciplinary unit, other servicemen had started bullying her nephew and calling him a “rat”. In December 2007 Pte Ye.F. had been transferred to military unit no. 83420. When he had called his aunt, he had complained that in his new unit military his fellow servicemen had also mistreated him because he had testified against Pte K. In

May 2007 Pte Ye.F.'s aunt had gone to his unit and had asked his immediate superior, Major N., to transfer her nephew to another posting. Major N. had promised her that Pte Ye.F.'s commanding officers would decide on whether he was fit for military service and would in fact probably discharge him. At that time Pte Ye.F. had been receiving treatment in hospital in the town of Podolsk for his leg injury. When his aunt had visited him there, he had told her that a soldier had hit his leg with a stool. When she had suggested that he lodge a complaint with his senior officers, Pte Ye.F. had replied that he had been beaten in front of Major N., who had not intervened, so it was useless to complain. After Pte Ye.F.'s unauthorised absence on 1 June 2007 his aunt had talked to him by telephone and he had told her that he did not want to return to his unit as "there was no life" for him there.

4. *The applicants*

20. On 7 June 2007 the applicants' representative lodged a complaint with the Lyubertsy Garrison military prosecutor's office, seeking the opening of a criminal investigation into negligence on the part of Major N. and Colonel F., as well as into the circumstances of and reasons for their son's transfer to military unit no. 83421 and his suicide. The applicants wanted to know, *inter alia*: why Pte Ye.F.'s senior officers, given that they had been fully aware of the fact that he was being bullied and ill-treated in unit no. 83420, had done nothing to protect him from it; why they had not transferred Pte Ye.F. to another military unit instead of unit no. 83421; why other soldiers from unit no. 83420 had been transferred alongside with him to unit no. 83421; and why their son had not remained in the hospital or in the medical treatment wing of his unit until such time as a medical panel decided on whether he should be discharged from military service on account of his leg injury.

21. The applicants also requested that the following information be verified. After his conflict with Pte K., Pte Ye.F. had often complained to his parents about being beaten, harassed and insulted by his fellow servicemen. He had also noted that Major N. had been a witness to such incidents. In addition, he had told his parents that other servicemen extorted money from him – he had asked his mother to send him money on numerous occasions and each time the amount had increased – 400 Russian roubles (RUB), RUB 1,000, RUB 1,500, RUB 2,000. The other conscripts would not let him wash himself or use the communal kitchenware. When his mother had asked Pte Ye.F. if he ever had anything to eat when drinking his tea, he had replied that he could not even have tea because he had to "buy out" his glass and had asked his mother to bring him a cup. The officers had sometimes hid him in their own dormitory for his protection. When, after another beating, in May 2007 Pte Ye.F. had been diagnosed with the above-mentioned leg injury, the doctors had feared that it could develop into a sarcoma and had advised him to apply to be discharged from military service. When the second applicant had visited her son in the hospital, she had also seen a new scar on

his head. Pte Ye.F. had explained that it had been difficult to protect himself when several people had beaten him with a stool. When the second applicant had asked Major N. to transfer her son to another unit, he had replied that he was aware of the fact that other servicemen had been beating and insulting the conscript, and that although a transfer to another unit would not help, he would try to assist. On 4 June 2007, when Colonel F. had telephoned the second applicant in order to inform her that her son had been transferred to military unit no. 83421, she had asked him not to do it, because it had been there where Pte K. had broken her son's jaw. However, Colonel F. had replied that all would be well as there was "a good military spirit" in unit no. 83421; he had also promised to arrange for Pte Ye.F. to appear on 13 June 2007 before a military panel, which would reassess his fitness for military service. When the second applicant had talked to her son on that day, he had said that other conscripts from unit no. 83420 had also been transferred together with him, so he was continuing to be mistreated and beaten.

22. On 8 June 2007 the first applicant lodged a request to be granted the procedural status of victim in the criminal investigation into the death of his son.

23. On 13 June 2007 the investigator refused to grant the first applicant victim status in the criminal investigation into his son's death, but allowed him to read the decision to open that investigation and two forensic expert reports that he (the investigator) had ordered. On 18 June 2007 the investigator refused to admit to the proceedings the first applicant's representative on the grounds that the first applicant had not been accorded victim status in the investigation.

24. On 4 July 2007 the Lyubertsy Garrison military prosecutor's office replied to the applicants that any negligent actions on the part of the senior officers of military unit no. 83420 would be examined within the framework of the criminal investigation under Article 110 of the CC (Incitement to suicide) being carried out in respect of their son's death.

5. Forensic experts' examination of Pte Ye.F.'s body

25. On 28 June 2007 four experts issued a report on the examination that they had carried out of Pte Ye.F.'s body.

26. The experts noted that they had found the following injuries on the body. First, a strangulation line was situated on his neck. Furthermore, there was a bruise on his nose and another one on his right iliac area. An examination of the internal organs had uncovered haemorrhages in the mesocolon and in the liver.

27. The experts concluded that Pte Ye.F. had died from asphyxia, as evidenced by the strangulation line and other signs. As regards the other injuries, the experts considered that they had resulted from blows that the soldier had received while still alive. The bruise on Pte Ye.F.'s iliac area had been caused about seven or ten days before his death, while the bruise on the

nose had been caused between six and forty-eight hours prior to death. While those injuries had not caused the soldier's death, the experts mentioned that the haemorrhage in the liver would have been considered to constitute serious damage to the health of a living person.

6. The soldiers who discovered the applicants' son's body

28. On 5 July 2007 Pte V., who had been on guard duty on the day of Pte Ye.F.'s death, recounted the events before and after he had discovered Pte Ye.F.'s body. He noted that, given that Pte Ye.F. had transferred to their unit only three days prior to his death, Pte V. had not known him well, but he had known from other soldiers in the squadron that a conscript had been sent to prison because of Pte Ye.F.

29. Pte Sh., Pte Kr. and Pte R., who had also been on guard duty on the day of Pte Ye.F.'s death, also described that day, listing people who had been present on the premises.

7. Internal inquiry

30. On 6 July 2007 a military prosecutor with the Lyubertsy Garrison, after the issuance of the results of an internal inquiry, found that Lieutenant Ya., the commanding officer of Pte Ye.F.'s last squadron in military unit no. 83421, had failed to properly organise educational work, ensure military discipline and take sufficient measures to prevent breaches of the rules governing relations between servicemen of the equal rank and to prevent loss of life among the personnel of his squadron. The prosecutor instructed the unit's senior officers to rectify those omissions, conduct training sessions for conscripts on criminal liability for breaches of the rules governing relations between servicemen and decide whether Lieutenant Ya. should be subjected to disciplinary measures.

8. Captain M. (commanding officer of the applicants' son's second squadron in military unit no. 83420)

31. On 10 July 2007 Captain M., the commanding officer of Pte Ye.F.'s second squadron in military unit no. 83420 (in which he had served from 30 May until 4 June 2007), recounted the events surrounding the latter's unauthorised absence on 1 June 2007. He had objected to Pte Ye.F.'s subsequent transfer on 4 June 2007 because his squadron had been understaffed, but Colonel F. had told him that the decision had already been taken. After the death of Pte Ye.F., Major N. and Lieutenant L. had told him that the soldier's "relations with his fellow servicemen had not worked out" and that he had been treated disrespectfully because it had been "his fault" that another military serviceman from unit no. 83421 had been convicted. Major N. had not notified Captain M. of that matter before Pte Ye.F.'s transfer to his squadron. Pte Ye.F. had never complained to Captain M. about

any issues, and the latter had never witnessed anyone taking any unlawful action towards the conscript or seen any injuries on his body.

9. Soldiers who served with the applicants' son in military unit no. 83421

32. On 12 July 2007 Pte T. testified that in 2006 he had served in the same unit as Pte Ye.F. for about two weeks, before the latter's transfer to another unit. He had been aware that Pte Ye.F. had been granted the procedural status of victim in the criminal case against Pte K., as that information had been posted on the unit's noticeboards. After Pte Ye.F. had returned to their unit, Pte T. had recognised him, but had not attempted to talk to him as Pte Ye.F. had looked as though he did not want to talk with anybody. Whenever everybody had gone off to play football, watch television or smoke a cigarette, Pte Ye.F. had not joined them and had remained apart. In the three days that Pte Ye.F. had spent in the squadron after his transfer on 2 June 2007, Pte T. had not observed any injuries on Pte Ye.F.'s body or any unlawful conduct towards him.

33. Junior Sergeant A., Junior Sergeant V. and Junior Sergeant Z. stated that they considered that Pte Ye.F. had been a talkative, impulsive and confrontational person, who had not always been careful with his words. It was he who had provoked the conflict with Pte K. that had led to the latter breaking his jaw and subsequently being sent to a disciplinary unit. Because of that Pte Ye.F. had lost the respect of his fellows and they had had less contact with him thereafter. Sergeant S. mentioned that when Pte Ye.F. had returned to unit no. 83421, a Pte Kr. had asked his opinion of the new soldier, as they had previously served together. Sergeant S. had replied that Pte Ye.F. had not been a trustworthy person because it had been his fault that Pte K. had been convicted.

34. A number of other military servicemen who gave witness statements also stated that, to the best of their knowledge, Pte Ye.F. had not been mistreated.

10. Pte R. (confession)

35. On 24 July 2007 the investigator decided to arrest Pte R. as a suspect in the criminal investigation into Pte Ye.F.'s death. Pte R. affirmed his earlier statement (see paragraph 29 above) and denied having beaten Pte Ye.F. or otherwise humiliated him.

36. On 26 July 2007 Pte R. made a "surrender and confession statement" (*явка с повинной*) admitting that he had beaten Pte Ye.F. not long before his death. On 5 June 2007 at about noon he had given Pte Ye.F. RUB 30 to buy him a beer. At about 5.50 p.m. he had gone to ask Pte Ye.F. why he had not brought him his beer, but the latter had refused to reply. Pte R. had hit Pte Ye.F. twice in the chest area and twice in the stomach area. After that Pte R. had left and had returned to the dormitory only after Pte V. had

discovered Pte Ye.F. there hanging from a noose. Pte R. and Pte Sh. had taken the deceased down and laid him on the floor.

11. Opening of the criminal case against Pte R.

37. On 3 August 2007 a criminal case against Pte R. was opened under Article 335 of the CC (A breach with serious consequences of the rules governing relations between servicemen of equal rank). On the same day the above case was joined to the initial case opened under Article 110 of the CC (Incitement to suicide) in respect of Pte Ye.F.'s death.

12. Detailed post-mortem psychological and psychiatric expert report

38. On 17 August 2007 three experts issued their report on Pte Ye.F.'s psychological state and health before his death, which was based on their assessment of the available documents. According to Pte Ye.F.'s personal service file, he had been declared fit for military service. Having studied the available witness statements the experts considered that the conflict with Pte K. had not initially affected Pte Ye.F. – despite having been beaten, he had attempted to resolve the situation in a straightforward fashion and to present the incident as a fight (rather than as a one-sided attack). Pte Ye.F. had later written several letters asking for the criminal prosecution of Pte K. to be halted because he had no issues with him and they had achieved a reconciliation. However, after the conviction of Pte K., at whose trial Pte Ye.F. had given evidence as a victim, his situation had changed radically: general opinion had held him to be a “rat” – a despised status among servicemen. Information about Pte K.'s conviction had been posted on his military unit's noticeboards, and people had placed the blame specifically on Pte Ye.F. for that conviction. Their attitude had been manifested by the fact that Pte Ye.F.'s fellow servicemen had ignored him, humiliated him by taking his money, forced him to acquire cigarettes for them, and beaten him. Those actions had given rise to intense physical and mental suffering in Pte Ye.F. – especially as he had considered his treatment to be unfair, given the fact that he had done everything possible to help Pte K. The transfer of Pte Ye.F. had not changed the situation because the military units had been interlinked, and the attitude towards him in the new unit had remained the same. Under such pressure Pte Ye.F. had started to behave in an unsatisfactory manner, as his unauthorised departure had demonstrated. Although he had attempted to resolve his problem by asking for another transfer to unit no. 83421, he had met former colleagues there who were aware of his conflict with Pte K. At that point Pte Ye.F. had become passive and alienated. The protracted psychotraumatic situation had depleted Pte Ye.F.'s mental resources and thus his ability to behave properly and to interact socially. He had felt lost, had feared further beatings and had seen his situation as unbearable and hopeless. His beating by Pte R. had been the “last drop” (*последняя капля*), which had

triggered suicidal thoughts on which he had immediately acted. However, the conflict with Pte R. had not had a direct cause-effect link with Pte Ye.F.'s suicide, as the main reason for that had been his mental exhaustion, which had arisen from the psychotraumatic situation.

13. Senior Lieutenant P., Junior Lieutenant G. and other officers of Pte Ye.F.'s second squadron in military unit no. 83420

39. On 14 September 2007 Senior Lieutenant P., an officer from the second squadron in military unit no. 83420 in which Pte Ye.F. served, also recounted events surrounding the conscript's unauthorised absence. He stated that he had not been notified that Pte Ye.F. had been the victim in a criminal case against Pte K. Senior Lieutenant P. was not aware of any violent actions on the part of fellow conscripts or officers towards Pte Ye.F. during the latter's service in his squadron.

40. Junior Lieutenant G. and a number of other officers of the same squadron gave similar statements; for example, they insisted that they had been unaware of Pte Ye.F.'s involvement in a criminal case or that anyone had behaved violently towards him.

14. Major N. (commanding officer of Pte Ye.F.'s first squadron in military unit no 83420)

41. On 19 September 2007 Major N., the commanding officer of Pte Ye.F.'s initial (infantry) squadron of military unit no. 83420, gave his testimony. He stated that the conscript had been transferred because of his involvement in the criminal case against Pte K. in military unit no. 83421. Major N. characterised Pte Ye.F. as a quiet and reserved person and as a dutiful soldier. Major N. submitted that he had asked Pte Ye.F. on many occasions whether he had ever been subjected to violence by anyone in the squadron, and the soldier had always replied in the negative. Pte Ye.F. had never complained to him about any other issues. Major N. asserted that during his routine daily body check-ups (to which all conscripts were subjected) Pte Ye.F. had never had any bruises, injuries or scrapes. Major N. recounted that Pte Ye.F.'s mother had once come to visit her son and had asked him to transfer her son to another squadron because Pte Ye.F. had not enjoyed good relations with his fellow conscripts. Major N. also believed that the members of his squadron had not been aware that Pte Ye.F. had provoked a fight with Pte K. and that the latter had been convicted, because by the time Pte Ye.F.'s transfer to the squadron all older conscripts (with memories of those events) had been discharged from military service. According to a psychological assessment of Pte Ye.F. carried out in April 2007 he had had a high level of neuro-psychological resilience ("NPR") and had been a low suicide risk.

15. Psychologists from military unit no. 83420

42. On 17 September 2007 the investigator questioned Lieutenant Colonel K., who was the head psychologist of military unit no. 83420. He had been aware of the negative attitude of servicemen in his unit towards Pte Ye.F. after the conviction of Pte K., as information and rumours had circulated easily between the two units (83421 and 83420). However, Lieutenant Colonel K. had not been aware of the occurrence of any violence towards Pte Ye.F. The latter had been examined by a psychologist on 17 July 2006 at the moment of his induction into the army and on 23 April 2007 during a regular health check-up. Both examinations had indicated a good level of NPR and a low suicide risk. Pte Ye.F. himself had never requested psychological assistance.

43. On 19 September 2007 Senior Lieutenant Kuz., the psychologist of Pte Ye.F.'s first squadron in military unit no. 83420, stated that no servicemen in that squadron had been aware of the criminal case against Pte K. because by the time that Pte Ye.F. had arrived from the hospital, all senior conscripts had been discharged, having completed their respective obligatory terms of military service. Senior Lieutenant Kuz. said he would have known if Pte Ye.F. had had any difficulties with other conscripts.

44. On 19 September 2007 Major Ak., the head of the military unit's psychological assistance and rehabilitation department, stated that Pte Ye.F. had been judged to be in the category of servicemen with a high NPR and low suicide risk; he had not raised any concerns among his senior officers. He had not requested any psychological assistance. After the episode on 1 June 2007, when he had gone absent without leave, Major Ak. had added him to the list of people under his command requiring a higher level of pedagogical and psychological attention and had scheduled a meeting with him for 3 June 2007. However, that meeting had not taken place because on 2 June 2007 Pte Ye.F. had been transferred to military unit no. 83421.

16. Psychologists of military unit no. 83421

45. On 19 September 2007 Major An. stated that on 2 June 2007 he had learned that Captain Kuk. had been interviewing a newly transferred soldier. When Major An. had joined them, he had recognised the soldier as Pte Ye.F., who had been accorded the procedural status of victim in the criminal case against Pte K. As Pte Ye.F. had been previously transferred from their unit to another unit because of that criminal case, Major An. had been surprised to see him back. During his interview Pte Ye.F. had only replied to questions unwillingly. He had mentioned that he had been subjected to bullying in unit no. 83420 and that his parents had complained about it to his former commanding officer. Major An. had not observed any bruises on Pte Ye.F.'s face, but had not examined the latter's body.

46. On 18 October 2007 Captain Kuk. testified that, as the unit's psychologist, it was part of his duties to conduct preventive and introductory meetings with new military servicemen. Pte Ye.F. had explained his transfer as having been prompted by the poor relations that he had had with his fellow soldiers. He had given an evasive answer when asked whether any violence had been applied to him by fellow servicemen. Captain Kuk. had later reported to Major An. that he had been unable to establish the true reasons for Pte Ye.F.'s transfer, as the latter had evaded answering his questions regarding whether there had been any unlawful conduct on the part of other soldiers. Captain Kuk. had felt that Pte Ye.F. had been depressed. He could not make a guess about Pte Ye.F.'s reasons for committing suicide, especially since the latter had shortly been scheduled to be discharged from military service on health grounds.

B. The applicants' victim status and participation in criminal proceedings against Pte R.

47. On 22 January 2008 the Lyubertsy Garrison Military Court found unlawful the investigator's refusal to grant the first applicant victim status in the proceedings.

48. On 5 March 2008 the investigator granted the applicants victim status in the criminal investigation into their son's death. On the same day he instructed a local military investigator based in the applicants' town of residence to interview the applicants and to inform them of their right to lodge civil claims and to study the case file. If they wished to study the case file, they were to be invited to come to the place where the investigation was taking place (the town of Lyubertsy) not later than 11 March 2008.

49. On 12 March 2008 the applicants were questioned in their hometown by the local military investigator. They also signed a waiver of their right to study the case-file documents. Later that day the applicants retracted that waiver and lodged a request with the investigator to be permitted to study the case-file material.

50. On the same day in Lyubertsy, the investigator separated the case material concerning the injuries to Pte Ye.F.'s nose and iliac area from the material concerning his beating by Pte R. and opened a separate inquiry in respect thereof. The applicants were not kept informed about the progress or the outcome of that separate inquiry. It appears that on 26 March 2008 the investigator refused to open a criminal case for lack of evidence implicating any military servicemen.

51. Furthermore, on the same day the investigator concluded the investigation into Pte R.'s actions and charged him with committing a breach with serious consequences of the rules governing relations between servicemen of equal rank. Lastly, the investigator also closed the

investigation into the possibility of incitement to suicide under Article 110 of the CC for lack of evidence of a criminal event.

52. The applicants' representative was able to study the case file on 15 April 2008, when the case against Pte R. was sent for trial to the Lyubertsy Garrison Military Court.

C. Trial of Pte R.

53. During the trial of Pte R. the applicants asserted that their son had been murdered. They argued, relying on a report that they had commissioned from an independent expert, that after receiving heavy blows Pte Ye.F. could have been in a temporary state of traumatic shock; thus, being unable to resist, he could have been hanged by a third person. The applicants also complained that, as they had been granted victim status only nine months after the opening of the criminal investigation, they had been unable to put questions to the experts before the forensic examinations conducted during the investigative stage of the proceedings. The applicants requested that the court call and examine (i) a number of servicemen who could have witnessed the events that had taken place immediately before their son's death, and (ii) one of the doctors who had participated in the examination of the body. The court dismissed the applicants' requests. The court furthermore deemed the forensic experts' report more reliable than the report produced by the independent expert appointed by the applicants because they were more experienced and because more information and material had been available to them to study.

54. On 20 May 2008 Pte R. was found guilty as charged and sentenced to five years' imprisonment. On 19 September 2008 the Moscow Regional Military Court upheld first-instance judgment on appeal.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW ON PSYCHOLOGICAL ASSESSMENT AND ASSISTANCE

A. Need for a legal framework on prevention of suicide

55. 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 represented a serious problem. 80% of suicides were committed by conscripts or contractual military servicemen during the 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 and poor conditions of military service (various aspects),

interpersonal conflicts, and breaches of rules on relations between servicemen (the phenomenon of “hazing” or *dedovshchina*). According to Directive 18, the effectiveness of suicide prevention was negatively affected by the underappreciation of 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 in order to ensure psychological health and to prevent suicide among military servicemen.

B. The system of psychological assessment and assistance

56. The relevant domestic legislation in force at the material time (the Charter on Sentry Duty, adopted by Presidential Decree no. 2140 of 14 December 1993; the 1997 Guide to Psychological Work in the Russian Armed forces (in peacetime); and 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 upon each transfer. In cases involving psychological issues, including suicide risk, certain limitations were placed on 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

57. 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 their 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.

58. In July 2005 the 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 the deaths and suicides of military servicemen.

59. On 26 March 2006 the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe issued 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”.

60. 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 ARTICLES 2, 3 AND 13 OF THE CONVENTION

61. The applicants complained of their son’s ill-treatment and death during his compulsory military service and of the lack of an effective investigation under Articles 2, 3 and 13 of the Convention, which read, where relevant, as follows:

Article 2

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

Article 3

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

Article 13

“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.”

A. Admissibility

62. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicants

63. The applicants argued that the State authorities had been aware of the problem of hazing in the Russian armed forces in general, referring to the 2004 Human Rights Watch report (see paragraph 57 above). Furthermore, even though the military authorities had been aware that Pte Ye.F. was being bullied and otherwise ill-treated, they had failed to take any steps to protect his life and health in that regard. Even his eventual transfer had been implemented only after Pte Ye.F.'s had himself requested it.

64. As regards the investigation into their son's death, the applicants considered it to have been ineffective for the following reasons. The investigating officer had not examined any other explanation for Pte Ye.F.'s death than that of suicide. The investigation had not been independent because the military unit's doctor had participated in the initial examination of Pte Ye.F.'s corpse and had failed to note the bruises on the deceased's nose and iliac area (these had later been described by the forensic experts). The applicants had been given no information about the investigation and had been afforded no access to the case file because they had been denied victim status. After they had complained about their lack of that status the court had instructed the investigator to grant the applicants victim status. However, they had only been able to study the case file after it had already been sent to the court hearing the criminal charges against Pte R. Thus, they had had no possibility to adduce any additional evidence from other witnesses or to put questions to the forensic experts during the investigation stage. The national courts had not remedied that omission, and the applicants' requests to be allowed to question (expert) witnesses before the courts had been denied.

(b) The Government

65. The Government submitted that the State was not responsible for the death of the applicants' son as it had resulted from his personal decision to take his own life. They furthermore submitted that the State authorities had complied with their procedural obligation under Article 2 of the Convention.

66. Namely, the investigation into Pte Ye.F.'s death had been thorough, quick and independent. It had established that Pte Ye.F.'s death had resulted from suicide, but that unlawful actions on the part of Pte R. had contributed to his decision to kill himself. Pte R. had been convicted for the related offence (namely, a breach with serious consequences of the rules governing relations between servicemen of equal rank). The applicants had been granted victim status, had had access to the case file and had had the possibility to effectively participate in the investigation and in the court proceedings against Pte R. The national courts had examined all their requests and

applications and had allowed some of them. The refusal of the applicants' request to be permitted to question a State forensic expert had been lawful, because the expert report furnished by that expert had been clear and complete. They concluded that the State had complied with its obligations under Article 2 of the Convention.

67. Moreover, Pte K. had also been convicted for his unlawful actions in respect of the applicants' son.

68. Lastly, ss regards the incident concerning Pte Ye.F.'s leg injury, an inquiry had been carried out and Pte Ye.F. himself had asserted that he had fallen from the stairs.

69. The Government also referred to the military prosecutor's report of 6 July 2007 (see paragraph 30 above) instructing the senior officers of military unit no. 83421 to rectify omissions in the organisation of educational work and to take measures to prevent breaches of the rules governing relations between servicemen of equal rank and to prevent loss of life among personnel.

2. *The Court's assessment*

(a) **Article 2 of the Convention**

(i) *Substantive limb*

70. The Court will examine the matter in the light of the relevant general principles, as summarised in *Perevedentsevy 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, §§ 157-60, 15 June 2021.

71. The Court observes that the domestic legislation has established a system for the provision of psychological assessment and assistance in the armed forces (see paragraphs 55-56 above) that is designed, *inter alia*, to identify people suffering from psychological issues, to provide them with psychological assistance and to prevent suicide. Soldiers must pass a psychological assessment before and during their military education or service. In cases involving psychological issues (including suicide risk) certain limitations are to be placed on eligibility for military education or service and on access to weapons. Also, 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 should also be available upon request to all military students and servicemen.

72. The Court observes that according to the available data, the psychological assessment of the applicants' son 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 applicants' 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 death of the applicants' son.

73. However, based on the submissions to it, the Court notes 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 risks of subsequent retaliation, self-harm or other events threatening their safety.

74. 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 each 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 v. Portugal* [GC], no. 78103/14, § 119, 31 January 2019). The deficiency must be shown to have operated to the detriment of the person in question (*ibid.*, § 107).

75. 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 Pte K.'s conviction and in the light of the worsened attitude of Pte Ye.F.'s fellow conscripts towards him, the military authorities transferred him from military unit no. 83421 to military unit no. 83420. As the former unit was the training centre for the latter unit, Pte Ye.F.'s involvement in the criminal case against Pte K. became known and the conduct of his fellow conscripts towards him also became negative there as well. After Pte Ye.F. incurred a leg injury (requiring hospital treatment) and his relatives complained to his senior officers about the fact that he was being bullied, the soldier was transferred to another squadron within the same unit. A day after that transfer, on 1 June 2007, Pte Ye.F. went absent without leave while on an assignment outside the military unit. After he was found, Pte Ye.F. was transferred back to his initial military unit (no. 83421) on 2 June 2007. According to witness statements (see paragraphs 32-33 above), some of the conscripts in unit no. 83421 remembered Pte Ye.F. from his initial service there, and his involvement in the criminal case against Pte K. was discussed within his squadron. On 5 June 2007 Pte R. demanded Pte Ye.F. to buy him a beer and, when Pte Ye.F. did not comply with that demand, hit him four times in the chest

and stomach area. About an hour later Pte Ye.F. was discovered hanging from a noose.

76. The applicants argued (see paragraph 63 above) – and the Government did not disagree – that military servicemen subjected to hazing practices in the armed forces, as well as those denouncing any instances of violence or other ill-treatment, ran a high risk of retaliation and suicide. The respondent State itself had established, on the basis of the statistics available to them, 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 55 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 leading to damage to health and loss of life (see paragraph 58 above).

77. 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). In certain cases the Court has found that the States were required to take appropriate measures to combat hazing practices in their armed forces (see *Mosendz v. Ukraine*, no. 52013/08, § 113, 17 January 2013, and *Perevedentsev*, §§ 99-100, cited above).

78. The Court also takes into account that the Parliamentary Assembly of the Council of Europe called on the member States to ensure genuine and effective protection of the human rights of members of the armed forces (see paragraphs 59-60 above), including, in particular, protection from hazing and other forms of ill-treatment in its armed forces.

79. 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). As regards the particular circumstances of the present case the military authorities were undoubtedly aware that the applicants' son had given evidence as a victim in a criminal case against Pte K. Furthermore, the authorities were also aware of the subsequent bullying of Pte Ye.F. by his fellow military servicemen in retaliation for Pte K.'s conviction (see paragraphs 5-6, 16-17, 19, 21, 38, 42 and 45 above). Therefore, the authorities

knew or should have known that the applicants' son belonged to the category of vulnerable servicemen at high risk of retaliation and of suicide.

80. The Court considers that despite knowing about those risks, the authorities failed to take appropriate measures. There is nothing to show that Pte Ye.F.'s senior officers, even though they were aware that he was a victim of bullying (see paragraphs 5-6, 16-17, 19, 21, 38, 42 and 45 above), did anything to stop that. The only reaction on the part of the authorities was their authorisation – on three separate occasions – of his transfer. However, one of those transfers was carried out allegedly upon the request of the conscript and another one – of his relatives. And in any event, those transfers were implemented with the following deficiencies.

81. Most crucially, none of the transfers actually ensured Pte Ye.F.'s effective separation from those of his fellow conscripts who were aware of his involvement in the criminal case against Pte K. Thus, the transfer from military unit no. 83421 to military unit no. 83420 could not ensure such separation because the former unit constituted the training centre for the latter, which meant that the units' respective personnel were interconnected and circulated among each other and exchanged information between themselves. The second transfer happened within the same unit, and, thus, could similarly not ensure such separation. The third and last transfer returned Pte Ye.F. to military unit no. 83421, where some soldiers who knew about his conflict with Pte K. still served.

82. Furthermore, the fact that Pte Ye.F. had been involved in the criminal case against Pte K. appears to have been either unknown to the senior officers in military unit no. 83420 or not taken into account – most importantly at the time that the transfer decisions were taken. Of all the officers in unit 83420, only Major N. (Pte Ye.F.'s first squadron superior) testified to having been aware of the events in the soldier's previous unit. The other officers stated that they had not been warned about Pte Ye.F.'s difficulties. That was the case of Captain M., the commanding officer of Pte Ye.F.'s second squadron in unit no. 83420, and of other officers of that squadron (see paragraphs 31 and 39-40 above), and, more importantly, of Colonel F., deputy commanding officer of military unit no. 83420 (see paragraph 18 above). Given the latter officer's ignorance of Pte Ye.F.'s conflict-related situation, he could not have been aware of the inherent dangers of Pte Ye.F.'s transfer back to unit no. 83421.

83. At the same time, Pte Ye.F.'s involvement in the criminal case against Pte K. was not kept confidential from other conscripts. On the contrary, information about it was posted on noticeboards (see paragraph 5 above). The decision to make that information publicly available must have been aimed at creating a deterrent effect; however, it obviously failed to take into account the risk of potential retaliation in respect of the applicants' son in the circumstances. In any event, some of the soldiers who had been aware of the criminal case against Pte K. recognised him after his transfer back to military

unit no. 83421 and spread that information to those yet unaware of it (see paragraphs 28 and 32-33 above), recreating the conditions of animosity between Pte Ye.F. and his fellow conscripts. It should be noted that the final incident with Pte R. could have been a part of the bullying related to Pte K.'s conviction or it could have simply been a "standard" act of bullying towards a newly transferred soldier. However, that incident clearly (as noted by the psychology experts – see paragraph 38 above) became "the last drop" when viewed within the larger context of Pte Ye.F. having been regularly subjected to bullying (see *Malik Babayev*, cited above, §§ 72-73, with further references), even if that bullying had not always been violent or in a form punishable by the criminal law.

84. The Court furthermore considers that no adequate psychological assistance was provided to the applicants' son. Although the psychologists of the two military units were aware of the negative attitude towards Pte Ye.F. following Pte K.'s conviction (see paragraphs 42 and 45 above), there is no evidence that anything at all was done to assist Pte Ye.F. in respect of that particular matter, over and above the standard regular examinations and tests.

85. The Court concludes that, although the military authorities knew or should have known that the applicants' son was at risk of suffering retaliation for his involvement in the above-mentioned criminal case and of committing suicide, they failed to take appropriate measures to prevent (or at least minimise) such risks from materialising. Neither of the transfers between or within the two above-mentioned interconnected military units ensured Pte Ye.F.'s effective separation from conscripts who were aware of his situation. The transfer back to military unit no. 83421 was the result of an uninformed decision. The criminal case in which Pte Ye.F. had been involved was not kept confidential from other conscripts. Lastly, no adequate individual psychological support was provided to him.

86. 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 on the part 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).

87. The Court notes in this respect that the above-noted uninformed, uncoordinated and perfunctory actions undertaken in respect of the applicants' son arguably resulted from the absence 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.

88. 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 applicants' son.

(ii) *Procedural aspect*

89. The Court reiterates that an investigation is "effective" if it is independent, adequate, thorough, objective, impartial, open, and prompt (see *Perevedentsevy*, cited above, § 105).

90. The Court notes that the investigation into the applicants' son's death on 5 June 2007 was initiated on the same day. As a result of that investigation Pte R. was convicted for a breach of the rules governing relations between servicemen of the same rank. His conviction was upheld on appeal on 19 September 2008. Thus, the investigation as a whole lasted for about one year and three months without any delays, so it appears to have been sufficiently prompt.

91. The Court furthermore observes that the investigation was carried out by military prosecutors who were not connected hierarchically or institutionally with Pte Ye.F.'s military unit (*ibid.*, § 107). Although the initial examination of the body of the deceased was performed by a military prosecutor in the presence of Pte Ye.F.'s unit's doctor, his actual involvement in the examination appears to have been minimal. Furthermore, no personnel from Pte Ye.F.'s unit participated in the subsequent stages of the investigation (compare *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 70, 4 April 2006). Therefore, the Court accepts that the investigation into the applicants' son's death was performed by an independent authority.

92. As regards the applicants' involvement in the investigation, the Court notes as follows. The applicants were not granted victim status at the beginning of the investigation and their initial complaints regarding their lack of such status were dismissed. The applicants had to contest the investigator's refusal to grant them victim status with the Lyubertsy Garrison Military Court which had found that refusal unlawful on 22 January 2008. Two months later, on 5 March 2008, the investigator finally implemented that court's decision (see paragraph 47 above). However, by that time all the investigative actions, including the securing of forensic expert reports, had been completed; on 12 March 2008 the investigator closed the investigation into incitement to suicide, concluded the investigation against Pte R. by charging him with a breach of the rules governing relations between servicemen of the same rank, and separated the material concerning bruises on Pte Ye.F.'s nose and iliac area for a separate inquiry (see paragraphs 50-51 above). On 26 March 2008 that separate inquiry was also terminated; however, the applicants were never informed of it. On 15 April 2008 they eventually studied the case file against Pte R., but only after it had been already sent for trial (see paragraph 52 above). It would thus appear that the applicants, with a significant delay of about nine months, were granted victim status and had access to the case-file

material, but only the material that concerned Pte R. and only at a late stage of the court proceedings against the latter, when the investigative stage had been completed (compare *Marina Alekseyeva v. Russia*, no. 22490/05, § 130, 19 December 2013). The Court thus considers that the authorities failed to comply with the requirement of public scrutiny.

93. As regards the thoroughness of the investigation, the Court notes that the investigation concentrated, mostly, on the incident between Pte R. and the applicants' son. However, despite the considerable evidence indicating that Pte Ye.F. was the victim of, for instance, violence, extortion and other bullying practices in his first squadron in military unit no. 83420, neither of those factors appear to have been investigated in detail. On the basis of the documents submitted to the Court, it appears that, except for Major N., no other military servicemen from the first squadron in military unit no. 83420 in which Pte Ye.F. served were even questioned. The inquiry relating to Pte Ye.F.'s leg injury appears to have been terminated on the basis of the conscript's statement that he had fallen downstairs without any verification thereof. Moreover, the inquiry into the bruises on Pte Ye.F.'s nose and iliac area was closed for lack of any suspects two weeks after the severance of the case material regarding that matter. Given the fact that the phenomenon of *dedovshchina* was widespread in the Russian army, the Court considers that the authorities failed to thoroughly investigate all the circumstances leading to Pte Ye.F.'s death.

94. The foregoing findings are sufficient to enable the Court to conclude that the investigation of the applicants' son's death was not effective.

(iii) Conclusion

95. There has accordingly been a violation of Article 2 of the Convention under its substantive and procedural limbs.

(b) Article 3 of the Convention

(i) Whether Ye.F. was subjected to ill-treatment falling within the scope of Article 3 of the Convention

96. The Court reiterates that in order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. An assessment of whether this minimum has been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and

physical resistance, may also fall within the prohibition set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015).

97. In the present case Ye.F. repeatedly suffered bodily injuries during his mandatory military service, as recorded by medical and investigative documents. In particular, he required in-patient medical treatment for his broken jaw in October 2006 (see paragraph 5 above) and for his leg injury in April 2007 (see paragraphs 7-8 above). Furthermore, in June 2007 he had bruises on his nose and right iliac area and haemorrhages in the mesocolon and the liver, which are considered to constitute serious damage to the health of a living person by experts (see paragraphs 26-27 above). The causing of physical pain and bodily injury indicates that the treatment complained of went beyond the threshold of severity under Article 3 of the Convention.

98. Furthermore, Article 3 does not refer exclusively to the infliction of physical pain but also to that of mental suffering which is caused by creating a state of anguish and stress by means other than bodily assault (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 202, ECHR 2012), including fear of further assaults (see, *mutatis mutandis*, *Gäfgen v. Germany* [GC], no. 22978/05, § 108, ECHR 2010; *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013; and *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 41, 28 January 2014).

99. Fellow conscripts' continuous insults and episodes of extortion and violence in respect of Ye.F. caused him to fear a repetition of the above (see paragraphs 5-6, 16-17, 19, 21, 36 and 38 above). Evidence of such fear can be found in his several requests to be transferred and even in his unauthorised absence. The passive attitude of the authorities – who, although aware of Ye.F.'s bullying and the *dedovshchina* endemic in Russian military forces – took no steps to protect him must have exacerbated the feelings of anxiety and powerlessness that the applicants' son was experiencing. The Court considers that these psychological aspects were sufficiently serious to amount, in their own right, to treatment falling within the scope of Article 3 of the Convention.

(ii) *Whether the State authorities complied with their positive obligations under Article 3 of the Convention*

100. A Contracting State will be responsible under the Convention for violations of human rights caused by acts carried out by its agents or private individuals when certain criteria established by the Court's case-law are met (see, for instance, *Chernega and Others v. Ukraine*, no. 74768/10, §§ 125-27, 18 June 2019). However, the Court does not need to determine whether Ye.F.'s fellow conscripts' actions can be imputed to the State in the present case because the Court will examine the applicants' complaint from the standpoint of the State's positive obligations under Article 3 of the Convention. The authorities' positive obligations under Article 3 of the Convention comprise, firstly, an obligation to put in place a legislative and

regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of ill-treatment; and thirdly, an obligation to carry out an effective investigation into arguable claims concerning each instance of such ill-treatment. Generally speaking, the first two aspects of these positive obligations are classified as “substantive”, while the third aspect corresponds to the State’s positive “procedural” obligation (see, for instance and, *mutatis mutandis*, *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021).

(α) Substantive limb

101. The Court has already established that although the military authorities knew that the applicants’ son was suffering from insults, extortion and violence at the hands of his fellow conscripts, they failed to take appropriate measures to protect him (see paragraphs 79-80 and 85 above).

102. Furthermore, the Court has concluded that the uninformed, uncoordinated and perfunctory actions undertaken in respect of the applicants’ son arguably resulted from the absence 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 (see paragraph 87 above).

103. Taking into account the violence Ye.F. endured over a protracted period of time despite repeated requests to be transferred and the constant mental anxiety caused by the imminent risk of physical violence by his fellow conscripts (see, *mutatis mutandis*, *D.F. v. Latvia*, no. 11160/07, §§ 85 and 95, 29 October 2013) the Court comes to the conclusion that the failure to provide effective protection amounts to a violation of the substantive limb of Article 3 of the Convention.

(β) Procedural limb

104. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. An obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt

to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Chember v. Russia*, no. 7188/03, § 61, ECHR 2008; *mutatis mutandis*, *Preminyin v. Russia*, no. 44973/04, § 74, 10 February 2011; and *El-Masri*, cited above, §§ 182-85).

105. In the present case the Court has already established that the investigation into events related to Ye.F.'s death was not thorough and did not ensure the applicants' participation in it (see paragraphs 90-91 above). In particular, the investigation concerned only the last incident between Ye.F. and Pte R. and did not address the evidence of the previous continuous bullying of Ye.F. during his mandatory military service. Having regard to the general context of the *dedovshchina* endemic in Russian military forces, the Court reiterates that the failure to lay responsibility for what had happened there on the upper hierarchical levels of authority, rather than simply ascribing it to the wrongdoings of an individual conscript, is especially worrying (see *Mosendz*, cited above, § 113).

106. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(c) Article 13 of the Convention

107. Having regard to the above findings of violations of Articles 2 and 3 of the Convention it does not appear necessary to examine separately the applicants' complaints under Article 13 of the Convention (see *Perevedentsevy*, cited above, § 126).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicants requested the Court to make an award in respect of non-pecuniary damage, in accordance with the Court's established case-law.

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

111. The Court awards the applicants jointly 30,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

112. The applicants did not submit any claims under this heading.

C. Default interest

113. 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, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under the substantive and procedural limbs;
3. *Holds* that there has been a violation of Article 3 of the Convention under the substantive and procedural limbs;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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.

FILIPPOVY 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