



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

FIRST SECTION

Application no. 21024/08  
by Gennadiy Vasilyevich and Natalya Aleksandrovna PANOVY  
against Russia  
lodged on 10 April 2008

**STATEMENT OF FACTS**

THE FACTS

The applicants, Mr Gennadiy Vasilyevich Panov and Natalya Aleksandrovna Panova, are Russian nationals, who were both born in 1962 and live in the village of Arta, Chita Region. They are represented before the Court by Mr M. Bereza, a lawyer practising in the Khabarovsk Region.

**The circumstances of the case**

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

*1. The applicants' son's death*

The applicants, husband and wife, are parents of the late Mr Igor Panov.

On 19 October 2004 the Military Commissariat of the Uletovskiy District of the Chita Region registered the applicants' son for compulsory military service and scheduled his medical examination by a medical commission comprising a number of specialists to determine whether he was fit for the service. The commission diagnosed Mr Igor Panov with "the mixed type of neurocirculatory dystonia, connective tissue dysplasia syndrome [and] mixed astigmatism of the both eyes" and assigned him category "B" on the medical scale of eligibility for service, finding him "fit for military service with minor restrictions". The commission also noted that the correlation

between the applicants' son's height of 187 centimetres and his weight of 64.6 kilograms made him slightly underweight.

On 11 November 2004 Mr Igor Panov was drafted into the army, having been assigned to military unit no. 23506 in the village of Pereyaslovka in the Khabarovsk Region. On admission to the unit on 16 November 2004 the applicants' son was examined by doctors who confirmed the initial diagnosis of the mixed type of neurocirculatory dystonia. The commission also supported the conclusion that the applicants' son was underweight. He was placed under the dynamic medical supervision in respect of the insufficient body weight and was to receive enriched food regimen. According to the applicants, the later requirement was not followed through in view of the failure of the head of the medical division of the military unit, captain C., to comply with the established procedural formalities.

On 17 January 2005 the head of the military unit sent a group of soldiers, including the applicants' son, to an airfield situated outside the military unit. The order, in so far as relevant, read as follows:

“[I order] to release the staff of the gas service unit from any military duties and daily tasks for the period of their service [in the airfield]. The mentioned staff members should be removed from the list of the daily food allowance on the soldiers' regiment and should be given packed meals for nine days, from 18 to 26 January 2005.”

On the following day the applicants' son departed with the military group to the airfield. The applicants insisted that during the service in the airfield soldiers had received food in insufficient amounts. Officers brought additional food from home and distributed it among soldiers. The applicants' son's tasks in the airfield included work at a mechanical oxygen-producing station, refuelling airplanes and various cleaning chores, including those outside in the cold.

On 19 January 2005 Mr Igor Panov was transferred to the reduced food regimen given the fact that he had gained slightly over two kilograms since his service had started. On the following day the applicants' son fell ill, having experienced episodes of severe coughing. On 21 January 2005 his condition got worse with the coughing getting more serious and fever adding up to the cough. He, however, continued performing daily military tasks. On 22 January 2005, during the morning line-up, major M. noticed the applicants' son's poor state of health. In response to major M.'s inquiries Mr Panov noted that he was feeling well and that he did not have any health problems. After daily tasks had been assigned, a number of soldiers complained to the supervising warrant officer S. that the applicants' son was seriously ill. Approximately at 1.00 p.m. Mr Panov was taken to the head of the medical unit, captain C. A medical examination revealed that he had a fever of 39.8 degrees Celsius, elevated pulse and respiratory rates and high blood pressure. The preliminary diagnosis was “acute respiratory disease, intoxication syndrome”. Having noticed the redness in Mr Panov's throat and given his complaints of fever, fatigue and coughing blood streaked sputum, captain C. did not exclude that he suffered from pneumonia. His condition being considered “mildly severe” the applicants' son was immediately taken to the Pereyaslovka District hospital. An X-ray chest examination performed in the hospital showed that the applicants' son had acute double-sided pneumonia. That diagnosis led to Mr Panov's

transfer to Circuit Military Clinical Hospital no. 301 in Khabarovsk. The applicants submitted that the transfer had been delayed for more than two hours because an ambulance had been broken and it had been necessary to find a personal car to transport their son.

The trip to the hospital in Khabarovsk took an hour and a half. On admission to the hospital Mr Panov was examined by the attending doctor. Another chest X-ray examination was also performed. The applicants' son's condition was found to be severe. Having been questioned by the doctor on the origin of his illness, Mr Panov replied that he had been exposed to excessive cold when refuelling airplanes with liquid nitrogen. In the evening on the same day the head of the pulmonological department of the hospital was called to attend on the applicants' son. Having examined Mr Panov, the department head concluded that he was underweight with the height and weight correlation of 188 centimetres against 64 kilograms, that his skin was pale, he had blue lips, marked hyperaemia of the throat, diminished breath sounds, elevated pulse and respiratory rates, shortness of breath. The final diagnosis was "severe form of the community-acquired double-sided poly-segmented pneumonia, infection toxic shock syndrome of the 2<sup>nd</sup> degree, respiratory failure of the 2<sup>nd</sup> degree, malnutrition, myocardiodystrophy". The applicants' son was prescribed treatment.

On 23 January 2005, at 5.40 a.m., the applicants' son died in the hospital resuscitation unit.

On the following day the applicants were served with the death certificate which indicated that their son had died from "a non-work-related accident" and that the autopsy showed the following sequence of pathological processes leading to the death: acute respiratory failure, intoxication and double-sided total focal pneumonia.

## *2. Investigation into the death*

Administrative inquiry initiated in respect of the applicants' son's death led to a decision imposing a disciplinary penalty on the head of the medical unit, captain C., and the head of the airfield, major M., for "the lack of medical control over soldiers' health" as captain C., aware of the applicants' son's malnutrition problem, had failed to issue an official order placing Mr Panov on enriched food regimen and major M. had failed to organise a system of effective health control. At the same time the investigator noted that despite the absence of such an order Mr Panov had been provided with additional food, his weight had been controlled daily and he had gained almost two and a half kilograms since his draft. The conclusion of the inquiry was that the applicants' son's death was the result of his failing to promptly complain about his illness and absence of effective control over the state of his health.

At the same time criminal inquiry was open into Mr Panov's death. On 25 January 2005 a senior investigator of Military Prosecutor's office no. 57 authorised a medical forensic examination to determine the cause of death.

The expert's conclusions issued in a report in February 2005 were as follows:

"On the basis of the forensic medical examination of Mr Panov's body on 25 January 2005, information contained in medical documents (record no. 535 of 24 January 2005 of Mr Panov's autopsy, Mr Panov's medical history no. 1849...),

taking into account the circumstances of the case [and] responding to the questions posed [by the senior investigator], [we] conclude as follows:

1. Mr Panov's death was the result of acute inhalation intoxication with a substance (in vaporous state or in the state of small drops) containing petrochemicals which is shown: (a) in the presence of oil distillates in the brain, liver and gland tissues discovered during a forensic chemical examination (report... no. 195 of 28 January 2005); (b) fibrino-ulcerative tracheobronchitis, double-sided total pneumonia complicated by an abscess (with tissue disintegration cavities)..., double-sided serohemorrhagic pleurisy/ pulmonary edema connected to pneumonia...; (c) toxic changes of the hepatic and kidney cells...

1.2. The biological death of Mr Igor Panov was registered in the anaesthesiology and resuscitation department of Cuircuit Military Hospital no. 301 at 5.40 a.m. on 23 January 2005 following a full hour-length complex of resuscitation measures performed [in the hospital].

2. It is impossible to establish the exact type of the petrochemicals discovered in Mr Panov's tissues in the view of reduction, to the stage of disappearing, of the small particles of the petrochemicals the main characteristic of which is evaporation and because there is a large variety of petrochemicals and their components. Patrol, carbon oil, diesel and other petrochemicals containing oil particles could have served as a substance which led to the development of the toxic lesion of the respiratory tracts after Mr Panov had been exposed to that substance.

2.1. The analysis of the clinical morphological history of the development of Mr Panov's illness and his death allows concluding that petrochemicals entered in contact with the surface of the victim's bronchopulmonary system when he inhaled the toxic vapour or during his aspiration of the small drops [of that toxic substance]. This is confirmed by the morphological changes of the trachea and bronchus epithelium which were accompanied by the development of ulcers, redness and oedema of the mucous membrane (fibrino-ulcerative tracheobronchitis) with the subsequent fast involvement of the entire pulmonary tissue into the inflammatory process, and also by the intact character of the mucous membrane of the gullet, stomach and other parts of the digestive tract discovered during the victim's autopsy performed within the post-mortem and forensic medical examinations.

2.2. It follows that the objectively established presence of the petrochemicals in Mr Panov's body, the typical clinical picture (lesions of the upper airways, rapid massive development of the inflammatory process in the pulmonary tissues accompanied with by signs of destruction, pronounced intoxication and respiratory failure) and the malignant course of the pneumonia confirm that the victim had so-called "benzene" pneumonia.

3. The forensic medical examination of Mr Panov's body did not discover any traumatic injuries of the soft tissues, viscous and bones which could have independently led to Mr Panov's death.

4. The forensic medical examination of Mr Panov's blood and urine samples of which were taken in hospital no. 301 on 22 January 2005 did not discover presence of alcohol belonging to the aliphatic series, including the ethanol, as well as drugs (hemp cannabinoids, morphine, codeine, ephedrine, promedol [and] cocaine), ethylene glycol... [etc.]. This fact shows that before his admission to the hospital Mr Panov did not use those substances and was sober during the placement in the hospital.

5. Mr Panov's belated request for medical assistance and, as follows, belated discovery of the victim's pulmonary tissue involvement led to the lack of timeous specific antibacterial therapy which negatively affected the prognosis of the pulmonary illness (an eight-hour delay in prescribing the antibacterial therapy aggravate the prognosis and outcome of the illness).

6. Specific medical literature... shows that in severe cases of community-acquired pneumonia among young population the lethality rate reaches 1 to 3 percent even when the correct treatment is provided timeously."

On 28 March 2005, having studied results of the forensic medical examinations and having questioned a large number of witnesses, including the applicants' son's commanding officers, captain C., major M., etc., Mr Panov's fellow soldiers and doctors who had attended him before his death, the senior investigator closed the criminal investigation. The senior investigator reasoned that there was no evidence of criminal act or conduct as the applicants' son's death was the result of acute inhalation poisoning by petrochemicals and belated application for medical assistance by Mr Panov. The decision was based, to a significant extent, on the witnesses' statements who had all testified that the commanding officers had instructed the soldiers, including the applicant's son, on safety regulations established for the work with fuels at the airfield, had supervised that the regulations had been complied with, had approached the applicants' son with questions about his state of health, had offered him to stay inside if he had felt unfit, had urged him to visit a doctor and had offered assistance. However, the applicants' son had refused until he had collapsed in a barrack and had been transported to the hospital.

On the same day the senior investigator issued a report addressed to the head of military unit no. 23506 which, in so far as relevant, read as follows:

"In violation of Articles 75, 77 [and] 79 of the Military Service Charter the head of the fuel refilling group, major M., did not fully instruct the staff on safety regulations when using [fuel] and did not take the entire set of measures to preclude the death of a staff member.

On 19 January 2005, when distributing tasks (cleaning of the adjacent territory, cleaning of the premises) among staff members of the group, including Mr Panov, major M. did not fully verify that safe conditions had been created for the work and that his subordinates had fully understood the safety regulations and had acquired full set of practical skills to enforce those regulations.

Major M. did not take all possible measures to safeguard and promote soldiers' health [and] to improve medical assistance provided to staff members, including Mr Panov; when instructing the staff members [he] did not order that they should immediately seek medical assistance in the medical division of the unit if they felt sick, and [he] did not [warn] them about consequences of possible violations of the safety regulations when using [fuel]; that [failure] led to a violation of the safety regulations by Mr Panov when he worked with the [fuel].

The head of the medical division of the unit, captain C., did not organise medical assistance for the staff members of the group in violation of Articles 112 [and] 341 of the Military Service Charter, did not participate in setting the food regimen for "underweight soldiers", [and] did not assess the illnesses of the staff members. There are no monthly data on assessment of the [illnesses] with the proposals for the prevention of those illnesses and improvement of the sanitary conditions in the unit. [He] also did not carry out daily medical examinations of the staff members during their [military] service and daily tasks. There are also no lists or schedule of examinations of soldiers who work in potentially dangerous conditions and also of soldiers who were under dynamic medical supervision."

The report proposed to take steps for elimination of the discovered defects in the organisation of the military service.

On an unspecified date the senior investigator's decision of 28 March 2005 was quashed by a higher-ranking prosecutor and the criminal investigation resumed.

On 15 June 2006 the applicants were assigned victim status in the criminal proceedings and instructed on their procedural rights.

On 5 July 2006 another forensic medical examination of the applicant's son's body was performed by the State Bureau of Forensic Medical Examinations in the Khabarovsk Region. The expert group, comprising a number of leading specialists in the field of medicine, toxicology and pathologic anatomy, concluded that there was no evidence that the applicant's son's death resulted from the intoxication by petrochemicals. The experts insisted that the results of the chemical examinations of the tissues of the applicants' son's body did not attest to the presence of any toxic substances, including the petrochemicals, and that there was no link between Mr Panov's pneumonia and his work with fuels. The final conclusion of the expert commission was:

“... the examination [and] treatment of Mr Panov during his stay in the hospital were complete and corresponded to the gravity of the patient's condition. The resuscitation actions were also carried out in the full amount according to the conventional standards. It follows that the patient's death is directly linked to the severity of the illness against the background of the immunodeficiency state of [the patient].

However, there were defects of medical assistance in the period preceding [Mr Panov's] admission to hospital no. 301, including assistance provided in the medical division of the military unit: [there were] defects in the organisation of the medical preventive measures, belated admission of [the victim] for the inpatient treatment, [incorrect] filing of medical documents, improper transport of [the victim to the hospital], belated request for medical assistance by the patient, [and] limited diagnostic possibilities. The abovementioned defects could have had a decisive impact on the unfavourable outcome of such an illness as the acute double-sided multisegmental distal pneumonia which also affected the middle lobe and lingular segment when the proper complex treatment had not been promptly prescribed.

At the same time the present expert commission considers it necessary to note that even in the circumstances when timeous and proper medical assistance in specialised hospitals is provided to patients with such a serious form of pneumonia as Mr Panov had, the favourable outcome is not always possible in view of the fulminate and aggressive character of the inflammatory process which lead to such complications as the development of the immunodeficiency state, clinical picture of the bacteriemic shock, etc.”

In November 2006 the Main State Centre of Forensic Medical and Criminological Examinations in Moscow performed a complex medical examination which was meant to resolve differences between the findings of the two previous expert examinations. The Moscow experts' answers to the three questions put before them by the senior investigator read as follows:

“1. *Answer to question no. 1: 'What was the cause of Mr Panov's death?'*

The cause of Mr Panov's death was the staphylococcal double-sided total pneumonia with confluent foci, abscess formation and destruction zones of the pulmonary tissue accompanied by the double-sided serohemorrhagic pleurisy (in the right and left pleural cavities [there were] 300 ml of hemorrhagic fluid), purulo-necrotic tracheobronchitis and complicated infection toxic shock, shock kidney, brain oedema, myocardiodystrophy, acute heart failure, lung oedema, acute respiratory failure.

2. *Answer to question no. 2: 'Were there defects of medical assistance during [Mr Panov's] stay in the hospital (examination, treatment, resuscitation measures, etc.) which could have had a decisive effect on Mr Panov's death?'*

The commission of the forensic medical experts does not see any defects in the medical assistance provided to Mr Panov in hospital no. 301...

The diagnosis established in that medical facility should be considered correct and corresponding to Mr Panov's pathology.

The treatment afforded to Mr Panov in the hospital was proper, pathogenically correct, directed against the infection and clinical features of the pathology; [the treatment] was complete.

3. *Answer to question no. 3: 'Were there defects in medical assistance before [Mr Panov's] placement in the hospital (defects in making treatment and prophylactic arrangements: belated admission to the hospital for inpatient treatment; transport of the patient to the hospital in violation of the established regulations; belated request of medical assistance by the patient; limits to diagnostic possibilities, etc.) which could have had a decisive impact on Mr Panov's death?'*

The presented materials of the criminal case file do not disclose any defects in the medical assistance provided to Mr Panov in the medical division of the military unit...

The diagnoses given to Mr Panov in the medical division was correct."

The Moscow expert commission also confirmed the finding of the Khabarovsk Regional Expert Bureau that there was no objective evidence of the applicants' son's intoxication with the petrochemicals. The Moscow expert commission insisted that the etiological cause of the pneumonia was bacterium of staphylococcus aureus.

On 25 December 2006, having cited the most recent findings by the forensic medical experts, the senior investigator closed the criminal proceedings in the absence of any *prima facie* evidence of a criminal act or conduct leading to the applicants' son's death.

In March 2007 the Prosecutor of Military Prosecutor's office no. 57 refused to reverse the decision of 25 December 2007, having held that the senior investigator's findings were based on a thorough and correct assessment of evidence.

### 3. *Tort action against military officials*

In 2006 the applicants lodged an action against military unit no. 23506, seeking compensation for non-pecuniary and pecuniary damage sustained as a result of their son's death.

On 20 February 2007 the Lazo District Court of the Khabarovsk Region partly accepted the action, having awarded the applicants 300,000 Russian roubles (RUB) in compensation for non-pecuniary damage and RUB 21,936 in pecuniary damage and court expenses. Having examined a large number of statements made by the military and civilian personnel of the unit, as well as the expert reports and results of various additional forensic medical tests, the District Court made the following findings:

"The court considers that the administration of the military unit did not take measures to preserve and improve soldier Panov's health. The court's findings are based on the following:

A it follows from the meaning of the examined legal norms Mr Panov, having been registered as an underweight person, could not be assigned a task of special gas production... and could not be stripped of the normal food regimen and provided with packed meals in violation of the law. Those actions violated the soldier's right to health.

Witness [captain] C., heard in open court, explained that he is the head of the medical division in military unit no. 23506.... He had not performed a medical

examination of Mr Panov on his admission to the military unit as he had been on annual leave... Having returned to the unit after the leave captain C. had not paid attention to Mr Panov's state of health. He had subsequently learned that Mr Panov had been underweight and that, in fact, it had been necessary to provide Mr Panov with additional food which had not been done and for that failure he had been punished after Mr Panov's death.... On 23 January 2005, at 5.00 a.m., Mr Panov had died. The autopsy which [captain] C. had attended had showed pneumonia. On the way to [the hospital] in Khabarovsk Mr Panov had told [captain C.] that he had not informed [the authorities] about the beginning of the illness as he had been afraid of a transfer to another military unit. [Captain] C. considers that the cause of Mr Panov's illness was his possible exposure to cold. Bacterium of staphylococcus could have pushed the illness even further leading to the death in view of [Mr Panov's] weakened immune system.

Witness C.'s statements confirm that Mr Panov was not subjected to a regular medical supervision; that his physical capacity to work and his need for additional food regimen were not properly assessed...

The cause of Mr Panov's death was the staphylococcal double-sided total pneumonia with confluent foci, abscess formation and destruction zones of the pulmonary tissue accompanied by the double-sided serohemorrhagic pleurisy, purulonecrotic tracheobronchitis and complicated infection toxic shock, shock kidney, brain oedema, myocardiodystrophy, acute heart failure, lung oedema, acute respiratory failure. Mr Panov's diagnosis pronounced in hospital no. 301 on 22 January 2005 should be considered as the correct one corresponding to the pathology of the patient. The treatment afforded to Mr Panov should be considered proper.

Neither the materials of the criminal case file, nor the materials of the administrative inquiry contain any evidence revealing the possible place or time when Mr Panov could have been intoxicated with petrochemicals. The two abovementioned expert reports deny the possibility of the intoxication which the court takes into account as the more reliable evidence establishing the cause of Mr Panov's death. The court does not take into account the expert opinion which diagnosed Mr Panov with the benzene pneumonia as that opinion was not confirmed by any other evidence examined by the court.

As follows from the service capacity report, Mr Panov was found fit for the military service; that means that Mr Panov's state of health made him capable to perform the military service.

In the court hearing the representatives of the defendants did not deny and dispute that Mr Panov was healthy on his arrival to the military unit.

As it follows from report no. 11 of 24 January 2005 issued in military unit no. 23506, soldier Panov... was excluded from the list of the unit's personnel... in view of **his death connected to his performing the military service.**

Taking into account the abovementioned circumstances of the case, the court concludes that Mr Panov's death resulted from the failure of the administration of military unit no. 23506 to perform their official functions [and] to create the safe environment preserving life and limb of the soldier which demonstrated itself through the following:

- assigning Mr Panov, an underweight person, with tasks of working with equipment and cleaning snow although he... should have been assigned to the lighter regime of the military service until his body weight was to reach the required level. That conclusion is also supported by the finding of the medical expert... who also did not exclude that the conditions of the military service during [Mr Panov's] adaptation (general exposure to cold and insufficient food) were the factors in the development of the illness;
- improper fulfilment of official functions by the medical staff – lack of daily medical examinations of the military staff, lack of individual food regimen for underweight soldiers; absence of the schedule for medical examinations of the



soldiers who worked in conditions which could have negatively affected them and soldiers who were on the list for regular medical check-ups (Mr Panov was among such individuals as he was placed on that list on his admission to the unit).

Moreover, the court accepts the forensic medical expert report that Mr Panov's death is in the direct causal link with the gravity of the illness developed against the background of his immunodeficiency state which is confirmed by Mr Panov's diagnosis and the accompanying illnesses from which Mr Panov suffered and which, in the court's opinion, also contributed to the development of [the main] illness."

On 13 July 2007 the Khabarovsk Regional Court upheld the judgment of 20 February 2007, having endorsed the District Court's reasoning that "the commanding officers' failure to effectively perform their official duty to safeguard the soldier's health had led to the development of the serious illness, its belated discovery and the subsequent failure to promptly provide medical assistance and the resulting death."

#### *4. Reopening of the criminal investigation*

On 7 December 2007 a deputy president of the Military Court of the Krasnorechenskiy Garrison accepted the applicants' complaint about the senior investigator's decision of 25 December 2006, quashed it as unlawful and ill-founded, noting the judgments of the Lazo District and Khabarovsk Regional Courts, and ordered the military prosecution authorities to correct the defects of the previous investigation.

On 24 February 2008 the senior investigator closed the criminal inquiry in the applicants' son's death, having found no *prima facie* evidence of a criminal offence. That decision was annulled by the head of the investigating department of the military prosecutor's office and the criminal investigation resumed. The senior investigator was to assess, in particular, the lawfulness of the commanding officers' decisions to assign the applicants' son to the airfield, given his low body weight, and their failure to provide him with additional food and to place him under the regular medical supervision.

On 14 April 2008 the senior investigator explained in a sixteen-page decision that the applicants' son's death was not linked to any criminal action or inaction and discontinued the criminal proceedings. Responding to the applicants' complaints, on 1 August 2008 the head of the investigating department quashed the decision of 14 April 2008. He once again noted that the senior investigator should subject actions by the commanding officers to a more thorough assessment. That finding was confirmed three days later by the Military Court of the Krasnorechenskiy Garrison.

Another decision by which the senior investigator closed the criminal inquiry on 24 October 2008 was found to be unlawful and unsubstantiated by the Military Court and was quashed on 2 December 2008. The outcome of the new round of the investigation is unknown.

## COMPLAINTS

1. The applicants complained under Articles 2 and 13 of the Convention of their son's death and the authorities' failure to investigate it effectively.

2. The applicants further complained under Articles 3 and 13 of the Convention that they had been victims of inhuman and degrading treatment as a result of their son's death in the army and the authorities' reluctance to investigate it.

### **QUESTIONS TO THE PARTIES**

1. Having regard to the circumstances surrounding the death of the applicants' son during his military service, has his right to life, guaranteed by Article 2 of the Convention, been violated in the present case?

2. Having regard to the procedural protection of the right to life (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I), was the investigation by the domestic authorities in the present case compatible with Article 2 of the Convention?