



Use of a gun against soldier who died trying to escape from military service was unnecessary

In today's Chamber judgment in the case [Putintseva v. Russia](#) (application no. 33498/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights as regards the obligation to protect the life of the applicant's son and **no violation of Article 2** as regards the investigation into the circumstances of his death.

The case concerned the death of a young man during his mandatory military service after being shot by a superior when trying to escape.

The Court was satisfied that the Russian authorities conducted an independent, expeditious and thorough investigation into the incident. However, it found that the legal framework on the use of force to prevent the escape of a soldier had been deficient and that the authorities had failed to minimise recourse to lethal force.

Principal facts

The applicant, Svetlana Putintseva, is a Russian national who was born in 1964 and lives in the town of Beloyarskiy in the Tyumen Region (Russia).

While performing his mandatory military service, her son, Valeriy Putintsev, left the military unit without permission in February 2002. Arrested three days later, he was placed in a disciplinary cell in punishment for absence without leave. During his detention, Mr Putintsev hit a junior sergeant on the head when the sergeant attempted to search him. Following the incident, a medical examination of both men was ordered. While escorting Mr Putintsev from the military hospital back to the detention unit on 15 February 2002, the junior sergeant, in an attempt to prevent him from escaping, fired at Mr Putintsev and wounded him in the buttock. On 27 February 2002, Mr Putintsev died from the gunshot wound.

A criminal investigation into the shooting, which had immediately been reported to the military prosecutor, was opened on the day of the incident. In particular, the investigator inspected the scene, seized as evidence Mr Putintsev's clothes, took possession of the junior sergeant's gun and ammunition, including two used cartridges collected by an officer and one used cartridge found on the hospital grounds, and organised a search for the bullet with which Mr Putintsev had been shot. The junior sergeant was interrogated within hours of the incident. A report from the unit's psychologist, ordered by the investigator to find out about the reasons behind Mr Putintsev's unauthorised leave, and the file of the garrison's internal inquiry into his unauthorised leave indicated that Mr

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Putintsev had stated that he felt lonely and depressed in the military and had hinted at being harassed by his superiors. However, witnesses' statements did not confirm the latter point. Following Mr Putintsev's death, a post-mortem forensic examination was conducted. A perforating wound from the gunshot was identified as the cause of his death.

In April 2002, the criminal proceedings were closed. The investigator concluded that there had been no criminal conduct on the junior sergeant's part, as he had followed the rules regulating the use of firearms to prevent the escape of an arrestee. The proceedings were subsequently reopened and closed on three occasions, after additional investigative steps had been taken, including an assessment of the quality of the medical assistance provided to Mr Putintsev in hospital after the shooting, which was found to be technically correct and timely. Ms Putintseva's request to be granted victim status was refused. The last decision to close the criminal investigation was upheld by a military court in March 2004.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life), Ms Putintseva complained that her son had been killed as a result of the unnecessary use of firearms by a State agent and that the authorities had failed to conduct an effective investigation into her son's death.

The application was lodged with the European Court of Human Rights on 3 September 2004.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 2 (investigation)

The Court observed that the criminal investigation into Mr Putintsev's death had been carried out by people independent from the personnel of the garrison, as the military prosecutor's office was not connected to the garrison or Mr Putintsev's military unit. The investigation had been opened immediately after the shooting and key investigative measures had been taken on the same day or shortly after.

Following the closing and reopening of the investigation, the investigators had followed the instructions from the higher-ranking prosecutor and had performed a number of additional examinations. The investigating authorities had not failed to look for corroborating evidence. While Ms Putintseva had not been granted victim status in the proceedings, the Court observed that she had been interviewed on a number of occasions during the investigation and had actively made use of ways to complain of its alleged defects. In those circumstances, the decision not to grant her victim status had not undermined the effectiveness of the investigation.

The Court was therefore satisfied that the authorities had taken reasonable steps to promptly secure the evidence concerning the incident and to establish the circumstances in which it had taken place. The investigation had been independent and had been conducted with sufficient expedition. There had thus been no violation of Article 2 as regards the obligation to carry out an effective investigation.

Article 2 (Mr Putintsev's death)

Having found that the Russian authorities had conducted a thorough, independent and effective investigation, the Court did not see any reason to depart from their factual findings. As regards the evaluation of those facts under Article 2, the Court observed that the focus of the criminal investigation had been whether Mr Putintsev's killing by the junior sergeant constituted an offence under Russian law. The Russian authorities' finding did not involve the assessment of the legal framework defining the circumstances for the use of force against a fleeing soldier. The Court therefore had to make its own assessment of whether the facts disclosed a violation of Article 2, which was a distinct question from assessing criminal liability.

The Court noted that the legal basis for the use of deadly force against Mr Putintsev, the relevant provision of the Statute of Garrison and Sentry Service, called for nondiscretionary use of lethal force to prevent the escape of a member of the armed forces from detention, to which he could have been sentenced for even a minor disciplinary offence. Apart from requiring a general warning that a firearm would be used, that provision did not contain any other safeguards to prevent the arbitrary deprivation of life. It did not make the use of firearms dependent on an assessment of the surrounding circumstances, and, most importantly, did not require an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. The Court found that such a legal framework was fundamentally deficient and fell short of the level of protection "by law" of the right to life required by the Convention. There was therefore a general failure by Russia to comply with its obligation under Article 2 to secure the right to life by putting in place an appropriate legal framework on the use of force and firearms by military sentries.

As regards the actual use of force, the Court observed that the junior sergeant had to have been aware of the fact that Mr Putintsev had been unarmed and did not represent a danger to the convoy or third parties. Furthermore, other means would have been available to prevent Mr Putintsev's escape, in particular given that he had passed through the guarded gates of the hospital, that he had been running away in the middle of the day and that the personnel of the military unit had cars. It had been known to his superiors that Mr Putintsev, who had psychological problems and had already left the unit without authorisation, was prone to repeat his attempt. There was no indication that the junior sergeant received clear instructions about the amount of force necessary in case of such a new attempt or that he had been provided with some guidance to minimise the risk of loss of life. Finally, it was difficult to see why the junior sergeant, who had been involved in a fight with Mr Putintsev shortly before, was entrusted with escorting him to the hospital. The authorities had thus failed to minimise recourse to lethal force.

The Court therefore concluded that there had been a violation of Article 2 for failure to protect Mr Putintsev's right to life.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay the applicant 45,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.