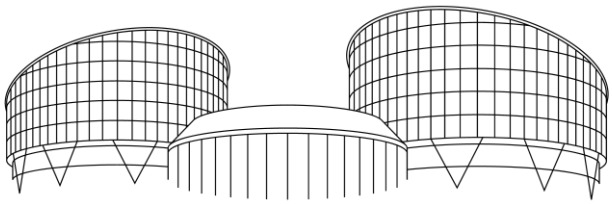

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PUTINTSEVA v. RUSSIA

(Application no. 33498/04)

JUDGMENT

STRASBOURG

10 May 2012

FINAL

10/08/2012

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

In the case of Putintseva v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 33498/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Svetlana Valeryevna Putintseva ("the applicant"), on 3 September 2004.

2. The applicant was represented by Ms T. Nikobova and then by Ms T. Sladkova, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that her son had been killed during his military service and that the authorities' response to the incident had been inadequate.

4. On 16 September 2008 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in the town of Beloyarskiy in the Tyumen Region.

6. On 8 June 2001 the applicant's son, Mr Valeriy Putintsev, was called up for two years of mandatory military service. He was assigned to serve in military unit no. 39982 in the town of Uzhur.

7. On the evening of 9 February 2002 Mr Putintsev left the military unit without permission. Three days later he was arrested in a local village and his detention for ten days on a charge of absence without leave was authorised. He was placed in a disciplinary cell at the Uzhur Town Garrison.

8. On 14 February 2002 junior sergeant L. took up convoy duty in the detention unit of the Uzhur Town Garrison. On the following day, on an order from the commandant of the garrison, junior sergeant L. attempted to search the applicant's son. Mr Putintsev headbutted the junior sergeant, hurting Mr L.'s lip. Mr L. did not fight back. In view of the incident, the commandant ordered a medical examination of the applicant's son and junior sergeant L. While escorting the applicant's son from a military hospital back to the garrison's detention unit, Mr L., in an attempt to prevent the applicant's son from escaping, fired at him and wounded him in the right buttock. On the morning of 27 February 2002 the applicant's son died from the gunshot wound, which had caused injuries to internal organs and extensive bleeding.

9. The commandant of the Uzhur Town Garrison immediately reported the shooting to the military prosecutor's office of military unit no. 56681. A criminal investigation was opened into the reported incident. On 15 February 2002, at 3.10 p.m., an acting assistant to the military prosecutor examined the scene of the incident. Junior sergeant L. participated as a witness. The record showed that the grounds adjacent to the military hospital were surrounded by a concrete fence. A road between the hospital building and the fence led to metal gates guarding the entrance to the hospital grounds. A used cartridge from an automatic gun was found on the road approximately twenty-five metres from the entrance gates. The plan of the scene drawn up by the investigator showed that the applicant's son had started running along the road towards the gates from thirty metres back. He had passed the gates without any attempt being made to stop him. The plan also indicated that junior sergeant L. had also passed the gates in pursuit of the applicant's son and, having run another seven metres beyond them, had stopped and shot Mr Putintsev. A blood stain measuring sixty by forty centimetres was discovered seventy-three metres from the place where Mr L. had started shooting, on the road between two fences separating the main grounds of the military unit and the grounds of the disciplinary division where the applicant had been detained. The plan also included a drawing of the applicant's son's path from the place where he had started running to the blood stain. According to the drawing, having passed the gates of the hospital grounds, he had been running towards the checkpoint of the main grounds of the military unit situated right across from the

hospital gates and then, having turned, had sprinted along the road between the two fences.

10. The investigator seized the applicant's son's uniform and underwear, having made photos of the clothes and a detailed description of the stains and damage to them. The photos showed a blood-soaked undershirt and winter underpants. The investigator also took possession of Mr L.'s AK-74 automatic machine gun and the ammunition, including fifty-seven live cartridges and two used ones, collected by officer K. and other soldiers after the shooting.

11. Several hours later Mr L. was interrogated as a witness. He described his dispute with the applicant's son which had caused him a lip injury and their subsequent visit to the military hospital for medical examinations. Junior sergeant L. insisted that on the way to the hospital officers had warned the applicant's son that he would be shot should he attempt to escape. That had not stopped the applicant's son from running away on their way back from the hospital. Mr L. stressed that despite his warning shouts and his firing two warning shots into the air, Mr Putinstev had continued running away, at the same time inviting Mr L. and accompanying officer K. to catch him. Mr L. had shot at the applicant's son once, aiming at his legs. Approximately seventy metres had separated the applicant's son from Mr L. at the moment of the shooting. At the same moment in time, officer K. had been approximately twenty metres away from the applicant's son, having continued to run after him. The applicant's son had fallen to the ground and officer K. had ordered Mr L. to call for an ambulance. After the applicant's son had been taken to hospital, officer K. had told Mr L. to collect the used cartridges. They had been able to recover two of them: one from the two warning shots and one from the target shot.

12. A search for the bullet with which the applicant had been shot, including with the use of mine detectors, did not produce any results.

13. On 16 February 2002 the investigator ordered a report from the military unit's psychologist to address the applicant's son's psychological condition preceding the incident. The psychologist indicated that during interviews the applicant's son had "hinted at the presence of hazing in the unit directed towards him by junior commanding officers (sergeants) [whose] last names he [had] not mentioned [and] [had] complained of the impossibility of establishing social contacts and friendly relationships within his military unit". At the same time, the psychologist described Mr Putintsev as a psychologically settled, stubborn and determined person, able to defend his opinion "until the very end by any means". Having observed during an interview the applicant's son's breaking down and developing signs of depression, the psychologist recommended his transfer to another military unit without giving him access to firearms and placing him under psychological supervision in the new unit.

14. In the days following the shooting the investigator interviewed the applicant's son's fellow soldiers, including those who had been on duty at the checkpoint of the military unit on 15 February 2002 and had witnessed the incident, personnel of the military hospital and the unit's commanding officers. The witnesses described Mr Putintsev as a calm, but unsociable, person and denied subjecting him or witnessing his being subjected to any form of harassment or ill-treatment. Certain witnesses had seen the applicant's son on the ground after the shooting with his hips and stomach covered in blood. Several of them had helped to transport him to the hospital.

15. The commandant of the garrison stated that he had had a talk with the applicant's son following his unauthorised leave. Mr Putintsev had allegedly confided to him that he had had problems with fellow soldiers from the Caucasus but had refused to identify them. The commandant insisted that while giving the evening's instructions to the convoy groups he had paid particular attention to Mr Putintsev, having heard that he had been "mentally unbalanced". On the morning of 15 February 2002 the officer had received a report of a dispute between the applicant's son and a convoy soldier, Mr M., following Mr Putintsev's refusal to submit to a search. The officer had had a talk with the applicant's son, during which the latter had complained that convoy soldiers had been beating him up. The commandant had called the officer in charge of the convoy unit, junior sergeant L., and soldier M. and had ordered junior sergeant L. to examine the applicant's son in their presence to verify whether he had had any injuries. Having complained of insufficient space in the office to perform the examination, Mr L. had asked for the commandant's permission to do it in another room, where he had then taken Mr Putintsev. On their return only a few minutes later, Mr L. had had an injured lip and had complained of the applicant's son having attacked him. The commanding officer had authorised a medical examination of the applicant's son and Mr L. by hospital doctors. He had offered Mr L. the opportunity to step down from convoy duty but the latter had assured him that he had no hard feelings towards the applicant's son and that he was willing to escort Mr Putintsev to the hospital.

16. The investigator also studied materials of an internal inquiry into the applicant's son's unauthorised leave. The case file included Mr Putintsev's explanation of his decision to leave the military unit. He stated that he had felt lonely and depressed and had been tired of military service. The inquiry had led to a decision refusing the institution of criminal proceedings against Mr Putintsev in view of his sincere remorse and the fact that his decision to leave the premises of the military unit had been no more than an attempt to cast off the difficulties of life in the army.

17. On 27 February 2002 the investigation into the shooting took a new turn in view of the applicant's son's death. The investigator of the military prosecutor's office authorised a post-mortem forensic examination, having

asked experts to identify the cause of Mr Putintsev's death and the distance from which the shot had been fired. The experts were also to list any injuries present on the applicant's son's body and to determine their nature. In report no. 945 experts identified a perforating wound from the gunshot as the cause of the applicant's son's death.

18. Another expert examination was meant to determine whether Mr L.'s actions had complied with military regulations, in particular whether the use of a gun had been lawful. An expert report issued on 9 March 2002 confirmed that Mr L. had been under an obligation to open fire at Mr Putintsev during his escape. Mr L. had complied, to the letter, with the rules regulating the use of firearms in such a situation. He had only shot at the applicant's son after he had exhausted other means of preventing an escape. He had warned Mr Putintsev that the firearm would be used and had made warning shots.

19. On 1 March 2002 the investigator seized the applicant's son's personal belongings, including a number of letters to him from family members and letters in which Mr Putintsev had complained of being in poor health, extremely homesick and depressed, experiencing difficulties in adjusting to the army, degrading treatment of soldiers by officers, and forced labour for the officers' benefit to the point of being treated like a slave.

20. On 11 March 2002 the military prosecutor of military unit no. 56681 assigned a group of investigators to take over the applicant's son's case.

21. In March 2002 the investigators performed additional interrogations of a large number of witnesses, having attempted to clarify certain aspects of the applicant's son's military service, his relations with fellow soldiers and commanding officers, and so on.

22. A month later the criminal proceedings were closed in view of the absence of criminal conduct on Mr L.'s part. The investigator concluded that Mr L. had followed, to the letter, the rules regulating the use of firearms to prevent the escape of an arrestee. On 28 June 2002 the military prosecutor for the First Supervisory Division quashed that decision and re-opened the criminal proceedings, having considered that the investigators had not sufficiently thoroughly studied alternative versions of the events of 15 February 2002, including one of intentional murder as a result of hazing in the military unit, and had omitted to perform a number of important investigative steps, including an expert examination of the machine gun and used cartridges seized from the scene, a reconstruction with the participation of Mr L., an expert examination of the applicant's son's clothes, and an assessment of the quality of the medical assistance provided to him in hospital after the shooting.

23. Having fully complied with the instructions laid down in the decision of 28 June 2002 and having re-interviewed a large number of witnesses, on 14 September 2002 the investigator again closed the criminal

proceedings, having considered that there was no evidence of a criminal offence. The final reasoning of the decision read as follows:

> "[T]he actions of Mr L., who on 15 February 2002, while being on convoy duty... preventing the escape of Mr Putintsev, a detainee for a disciplinary offence, having [the character of] "shoot to kill", [and] as a result of which Mr Putintsev was injured and soon died, contain the formal features of the criminal offence proscribed by Article 111 § 4 of the Russian Criminal Code. However, taking into account the fact that Mr L. used the weapon in compliance with Article 201 of the Statute of Garrison and Sentry Service in the Military Forces of the Russian Federation [...] and that he did not violate his responsibilities imposed on him by the [...] Statute, it is necessary to conclude that his actions do not constitute criminal conduct".

24. On 10 February 2003, following the applicant's complaint, a deputy military prosecutor overturned the decision of 14 September 2002 and reopened the investigation. The deputy prosecutor held that the investigator's decision had been premature and ordered him to take a number of additional investigative measures.

25. On 7 May 2003 a deputy military prosecutor of military unit no. 56681 closed the criminal proceedings, finding no case to be answered. The relevant parts of the decision read as follows:

> "On 15 February 2002, at 2.10 p.m., on an order of the military commandant [the applicant's son] was escorted by junior sergeant L. and an assistant to the head of the convoy regiment, senior lieutenant K., to the military hospital of military unit no. 93421 for a medical examination.
>
> On their way back to the detention unit, at 2.30 p.m., [the applicant's son] absconded near isolation wards situated in the grounds of the military hospital. In order to prevent [the applicant's son] committing any criminal acts, junior sergeant L. warned [him] by shouting: 'Stop, [I] will shoot', but the [applicant's son] did not obey the order. [Junior sergeant] L. disabled the safety device of his AK-74 submachine gun and changed the gun lever to trigger single shots. He put a bullet in the firing chamber and fired two warning shots in the air. [The applicant's son] did not react in any way and continued running.
>
> [Senior lieutenant] K. ran after [the applicant's son] to try to catch him, but he tripped and fell. Then junior sergeant L. ran after [the applicant's son] and, realising that he could not catch up with [him], stopped near the entrance gate to the military hospital and fired one shot at [the applicant's son], as a result of which [the applicant's son] sustained a bodily injury in the form of a perforating bullet wound to the right buttock, causing injuries to the main blood vessels, right hip and bone structure, accompanied by a disturbance of the blood flow to the right lower extremity with subsequent necrobiotic changes in the crus muscles and complications in the form of acute renal failure, the appearance of stress ulcers on the large and small intestines and their subsequent perforation, [and] the development of fecal peritonitis and general poisoning of his system, [resulting in] serious damage to his health.
>
> An ambulance took [the applicant's son] to the surgical department of the military hospital of military unit no. 93421, where he underwent surgery.

On 18 February 2002 [the applicant's son] was taken to Krasnoyarsk Regional Hospital no. 1 where on 27 February 2002, at 8.45 a.m., he died from his injuries.

[Junior sergeant] L., questioned as a witness during the pre-trial investigation, stated that ... on 14 February 2002 he had taken up convoy duty in the detention unit of the Uzhur Town Garrison. [The applicant's son], a soldier in military unit no. 39982, had been kept in the detention unit as a disciplinary detainee. On 15 February 2002, at 2.10 p.m., on an order from the military commandant, [the applicant's son], escorted by Mr L. and [officer] K., had been taken to the military hospital of military unit no. 93421 for a medical examination. After the examination, at 2.30 p.m., they had left the hospital and had headed back to the detention unit. Officer K. had slipped near the hospital isolation wards and at that moment [the applicant's son] had started running towards the checkpoint yelling 'try to catch me'. Mr K. and Mr L. had run after him. In order to prevent [the applicant's son] from committing any criminal acts, Mr L. had warned [him] by shouting: 'Stop, [I] will shoot'. However, [the applicant's son] had not complied with the order. Then Mr L. had stopped, disabled the safety device of his submachine gun, changed the gun lever to trigger single shots and fired a warning shot in the air. [The applicant's son] had not reacted and had continued running. Mr L. had run after him again. After ten metres, he had fired another warning shot in the air. [The applicant's son] had continued running. Then Mr L. had fired a single shot at him, aiming at his legs. [The applicant's son] had fallen down after the shot. Officer K ... had approached [the applicant's son] and had told Mr L. to call an ambulance. Junior sergeant L. had run to the hospital and then, together with a doctor on duty, had run to the place where [the applicant's son] was lying. The doctor had examined [the applicant's son], [had] placed him in the ambulance and [had] taken [him] to the hospital.

Junior sergeant L. confirmed his statements during a reconstruction [conducted as part of the] investigation on 16 August 2002.

Officer K., questioned during the pre-trial investigation as a witness, stated that he had been in contractual military service in military unit no. 12440. At night on 14 February 2002 he had gone on duty as a garrison guard in the detention unit of the Uzhur Garrison in the capacity of an assistant to the head of the convoy regiment ... On 15 February 2002, at 2.00 p.m., on the commandant's order, he and junior sergeant L. had escorted [the applicant's son] to the military hospital of military unit no. 93421 for a medical examination. After the examination, he, Mr L. and [the applicant's son] had left the hospital and had headed back to the detention unit. On their way to the detention unit, near the hospital isolation wards, [the applicant's son] had suddenly started running towards the hospital entrance gates and had yelled: 'Try to catch and hit me'. At the same moment officer K. had slipped and had been unable to apprehend [the applicant's son]. Junior sergeant L. had immediately shouted to [the applicant's son]: 'Stop, [I] will shoot', but [the applicant's son] had continued running. Mr L. had fired a warning shot in the air and had run after [the applicant's son]. [The applicant's son] had not reacted in any way and had run through the hospital entrance gates and had continued running along the fence. Mr L. had stopped near the gates and had fired a second warning shot in the air. [The applicant's son] had continued running, not paying attention to the shots and shouts. After Mr L. had run through the hospital gates, he had fired at [the applicant's son] and had wounded him. At that moment officer K. had been 15-20 metres away from [the applicant's son]. After that he had approached [the applicant's son] and had immediately called an ambulance, which had taken [the applicant's son] to the hospital.

Officer K. confirmed his statements during a reconstruction [conducted as part of the] investigation on 16 August 2002.

N., questioned as a witness during the pre-trial investigation, stated that he had been in mandatory military service in military unit 12463. On 14 February 2002 he had taken up guard duty at the checkpoint. That checkpoint was situated opposite the military hospital of military unit no. 93421. On 15 February 2002, at 2.30 p.m., he had been outside, near the entrance gates of checkpoint no. 4, and had been inspecting ... cars ... He had been alone outside. When he had once again closed the gates ... he had heard someone shout 'Stop, [I] will shoot', from the direction of the hospital. He had noticed a soldier running from the hospital and two people, an officer and a soldier with a gun, running after him. The fleeing soldier had not reacted to the shouts ... and had continued running, then the soldier with the gun had fired a shot in the air, but [the applicant's son] had continued running and had not reacted in any way. Then [Mr N.] had heard another shot in the air but the situation did not change. The fleeing soldier had started running on the road alongside the fence and Mr N. had no longer been able to see [him] from where he had been standing at checkpoint no. 4; he had only been able to see when the soldier with the gun had run through the hospital gates and had fired at the fleeing [soldier]. [Mr L.] had fired once. After that Mr N. had gone onto the road and had looked in the direction where the soldier with the gun had fired. Mr N. had seen that the [soldier who had been fleeing] was lying on the verge of the road and that the officer was standing near him; [the officer] had told the soldier with the gun to run to the hospital for an ambulance. Approximately 5 or 10 minutes later a doctor, and then an ambulance, had arrived. Mr N. remembered clearly that the soldier with the gun had only fired an aimed shot once and had wounded the fleeing soldier with the third shot, as the first two shots had been fired in the air.

The head of military unit no. 39982, Lieutenant Colonel B., questioned as a witness in the criminal case, stated that he had only known [the applicant's son] from 6 to 12 February 2002. He described him as a reserved, unsociable person. [The applicant's son] had overreacted to commanding officers' remarks. He had had no friends. On 9 February 2002 ... [Mr B.] had been informed that [the applicant's son] had left the military unit without permission. A search had produced no results. On 11 February 2002, at 11.00 a.m., Mr B. had been notified that the Koptevo District Police Department had apprehended a soldier who had identified himself as Mr Ivanov and had refused to show a military card. It had turned out that that apprehended person had been [the applicant's son]. [Mr Putintsev] had refused to explain the reasons for his absence without leave. Mr B. had brought [the applicant's son] back to the military unit, had authorised his disciplinary detention and had had him detained in the garrison's detention unit. [The applicant's son] had had no injuries on his face. He had had a dry abrasion which, according to him, he had sustained during work in a study unit in the town of Pereslavl-Zalesskiy.

Mr Ko., questioned as a witness in the criminal case, testified that he worked as a surgeon at Regional Clinical Hospital no. 1. On 18 February 2002 he had been working, and sometime after 3.00 p.m. he had been called to the hospital admissions room. A soldier, [the applicant's son], who had suffered a gunshot wound, was lying on a stretcher. During an examination no injuries, save for a gunshot wound, had been discovered on his body.

...

According to forensic medical examination no. 945 of the corpse of [the applicant's son]:

1. The death of [the applicant's son] resulted from a perforating bullet wound to the right buttock, causing injuries to the main blood vessels, right hip and bone structure ... The conclusion made as to the cause of death was confirmed by the presence of entrance and exit wounds on the skin, [and by] gross and microscopic impressions.

2. According to the medical documents submitted, death was pronounced at 4.45 a.m. on 27 February 2002.

...

It was impossible to identify from what distance the gunshot was fired and to give a detailed description of the exit and entrance wounds because they were treated surgically.

The injury caused severe damage to the [applicant's son's] health, which endangered his life at the moment when it was sustained and had a direct causal link with [the applicant's son's] death.

...

According to the results of outpatient complex forensic psychiatric examination no. 209 performed on 12 April 2002 in respect of the period prior to [the applicant's son's] absence without leave from the military unit and his subsequent escape from the detention unit, [the applicant's son] had not exhibited any signs of a psychiatric illness; he had exhibited the following personality traits – attention seeking, stubbornness, a tendency to hysteria, unwillingness to comply with commonly accepted norms and rules and to serve in the army, persistent desire to achieve goals by any means, tendency to overestimate his abilities, and lack of control over his actions in emotionally meaningful situations, [but] which did not render him incapable of fully understanding the actual nature and dangerousness of his actions or controlling them. During his escape from the guard he had not exhibited signs of any temporary mental disorder ..., his actions were committed deliberately, for a purpose and [the applicant's son] was capable of fully understanding the nature and dangerousness of his actions and of controlling them.

According to the results of the forensic medical report on the medical assistance provided to the [applicant's son]:

1. The cause of [the applicant's son's] death was a single gunshot wound to the right buttock and iliac region with gunshot fractures of the right trochanter, pubic and ischial bones, an injury to the right iliac arteries and vein accompanied by massive blood loss, extensive haemorrhaging in the retroperitoneal space, traumatic and hemorrhagic shock and complicated multiple organ failure.

2. [The applicant's son's] surgical treatment in the hospital ... was necessary, technically correct and timely.

3. [The applicant's son's] postsurgical treatment in the hospital and subsequently in the Krasnoyarsk Regional Clinical Hospital was performed correctly and to the necessary extent.

4. No mistakes during the surgical and postsurgical treatment of [the applicant's son] in the hospital and subsequently in the Krasnoyarsk Regional Clinical Hospital were detected.

According to the results of ballistic examination no. 1478:

...

3. Three cartridge cases submitted for examination are constituent elements of live cartridges ... for an AK-74 submachine gun ...;

4, 5, 6. There are two holes [in the clothes (an overcoat, pants, coat) submitted for examination] caused by mechanical force: those holes were caused by a gunshot; one is the entrance hole and the other is the exit hole.

...

9. If the overcoat was not buttoned up, the gunshot holes in the military clothes ... submitted for examination were caused by a single bullet fired once;

...

11. The holes in the clothes submitted for examination were caused by a gunshot fired from a distance of no less than 30 centimetres;

...

13. The three cartridge cases submitted for examination were fired from the same AK-74 submachine gun (no. 896397250 4) presented for examination.

A senior expert, Mr V., stated that the distance from which the shot had been made was more than 30 centimetres. It was impossible to identify the distance precisely because the submachine gun presented for examination had a flash hider....

According to military statute examination no. 101 on 9 March 2002:

1. Section 11 of Protocol No. 14 and Article 9 of Section 201 of the Statute of Garrison and Sentry Service in the Military Forces of the Russian Federation determine the procedure for using firearms; they state that a sentry should use a firearm after warning an arrestee (a detainee) who is attempting to escape with a peremptory shout: 'Stop or [I] will shoot', and if the order is not complied with, then [the sentry] should shoot.

2. The sentry, junior sergeant L., did not violate the procedure for using firearms in his use of the gun and complied with the requirements set out in Section 201 of the Statute.

3. When a detainee is attempting to escape, a sentry should not run after him; after giving the warning 'Stop or [I] will shoot', he must shoot at the detainee.

4. By virtue of Article 24 of Protocol no. 14 of the Statute ... detained soldiers, in a group of no more than fifteen, are to be sent from a detention unit to other [points] in the grounds of a military unit under the guard of one sentry ... On an order of the garrison's military commandant, officer K., an assistant to the head of the convoy regiment, was also sent to accompany [the applicant's son] because the latter was liable to leave the military unit without permission. While accompanying [the applicant's son] Mr K. did not violate any requirement of the Statute.

...

While escorting [the applicant's son] junior sergeant L. complied with the established procedure, walking three steps to the left behind [the applicant's son], and [officer] K. walked ahead of the detainee, not violating the requirements of the Statute...

According to statements by soldiers in mandatory military service in military units nos. 39982 and 40250, [the applicant's son] was not subjected to acts of violence or harassment by other soldiers or officers in the aforementioned units; no one beat him up or intimidated or insulted him or forced him to do any work for them.

Captain Sh. stated ... that on admittance to the detention unit he had examined [the applicant's son], who had not had any injuries or bruises on his body save for a bruise on the left shank which, according to [the applicant's son], he had sustained as a result of a fall during his absence from the military unit ... In the detention unit [the applicant's son] had been given food according to the established regulations; he had not made any complaints concerning the conditions of detention in the detention unit. While Mr Sh. had been on duty no one had committed acts of violence or harassment towards [the applicant's son].

...

A medical officer in military unit no. 39982, Ms F., stated ... that on [the applicant's son's] arrival from the study unit in the town of Pereslavl-Zalesskiy she had examined him ... During the first examination she had not noticed any injuries or bruises or any other signs of possible beatings on [the applicant's son's] body. When she had examined [the applicant's son's] head she had noticed an infected injury on his scalp; as per [the applicant's son's] explanations he had sustained that injury when he had hit his head on a low door frame in Pereslavl–Zalesskiy. She had examined soldiers every day, and during [the applicant's son's] service in military unit no. 39982 she had not discovered any injuries, bruises or other signs of beatings on his body. [The applicant's son] had not made any complaints about the state of his health.

A medical officer in military unit no. 40250, Ms O., made statements identical to those by Ms F., and she additionally stated that ... in January 2002 [the applicant's son] had been admitted to hospital in military unit no. 93421 with a diagnosis of "difficulty in adapting". During a conversation with a doctor, T., she had found out that [the applicant's son] had wanted to be transferred to a communication centre of military unit no. 39982 as he had been unable to adapt in military unit no. 40250. At the same time, [the applicant's son] had not told doctor T. that he had been harassed by his fellow soldiers or other individuals.

Major A. stated that ... at approximately 2.20 p.m. [on the day of the shooting] [the applicant's son] and Mr L. had been brought for a medical examination. During the examination [the applicant's son] had stripped naked and Mr A. had examined him, searching for injuries, bruises, scratches, etc. He had performed the examination starting from [the applicant's son's] head and face and finishing with his legs. During the examination he had discovered an injury covered by a brown scab on [the applicant's son's] scalp. He had concluded that the injury had been sustained 4–5 days before. He had also discovered a small injury on [the applicant's son's] left shank which could also have been sustained 4–5 days before. He had not discovered any other injuries on [the applicant's son's] body. When he had examined Mr L., he had discovered a lacerated wound, measuring approximately 1 centimetre, on the inner side of the upper lip. That injury could have been sustained 30 minutes before their arrival at the hospital. Subsequently, [major A.] had recorded [the applicant's son's] and Mr L.'s injuries in letters of referral for medical examinations.

According to [the applicant's son's] written statements, he had sustained an injury to his scalp in the study unit in Pereslavl-Zalesskiy in October 2001.

During the pre-trial investigation, the allegations that [the applicant's son] had been subjected to acts of violence or harassment by other servicemen during his service in military units nos. 39982 and 40250 were not confirmed. The allegations of extortion of money, personal and military belongings from [the applicant's son] were not confirmed either. It is established that [the applicant's son] had sustained an injury to the scalp during his service in the study unit in Pereslavl-Zalesskiy; he had sustained an injury to the left shank as a result of a fall during his absence without leave from the military unit between 8 and 12 February 2002; a bruise on [the applicant's son's] right eye had been sustained as a result of resuscitation actions taken in Krasnoyarsk Regional Hospital no. 1; no-one is responsible for causing injuries to [the applicant's son].

Thus, it is necessary to conclude that [the applicant's son's] attempt to escape from the detention unit was caused by his own disorderly actions and lack of understanding of the actual nature and social harmfulness of his actions; it had a purposeful and conscious character and was not caused by any external factor.

In his use of the gun, junior sergeant L. did not violate the procedure on the use of firearms; [he] complied with all the necessary requirements set out in Section 201 of the Statute."

26. The applicant appealed against the decision of the deputy military prosecutor to the Military Court of the 61st Garrison. Amongst other things, she asked the Military Court to grant her victim status in the criminal case concerning her son's death to enable her to claim compensation later on for the pecuniary and non-pecuniary damage which had resulted from his death.

27. On 3 July 2003 the Military Court, endorsing the findings made by the deputy prosecutor in his decision of 7 May 2003, dismissed the applicant's complaint. As regards the applicant's request for victim status, the Military Court held:

"By virtue of Article 42 of the Code of Criminal Procedure, a victim is a person who sustained physical, pecuniary or non-pecuniary damage as a result of a crime. As [the deputy military prosecutor] refused to institute criminal proceedings against junior

> sergeant L., and the criminal case concerning the death of [the applicant's son] was closed because there was no evidence of a crime, it is necessary to state that [the applicant's] request for victim status due to the death of her son is unfounded."

28. On 27 August 2003 the Military Court of the 3rd Command quashed the judgment of the Military Court of the 61st Garrison and remitted the case for fresh examination. A copy of the decision of 27 August 2003 was not submitted to this Court.

29. On 28 January 2004 the Military Court of the 61st Garrison, again relying on the deputy military prosecutor's decision of 7 May 2003, found that the use of firearms against the applicant's son had been lawful. The court noted that the applicant's son had been aware that he was under arrest and had understood the consequences of his attempt to escape, including the possible use of firearms, and that junior sergeant L. had had no choice but to follow the rules on the use of firearms laid down by the Statute of Garrison and Sentry Service. The Military Court also dismissed the applicant's request for victim status.

30. On 24 March 2004 the Military Court of the 3rd Command upheld the judgment of 28 January 2004, endorsing the reasoning of the first-instance court.

II. RELEVANT DOMESTIC LAW

A. Disciplinary Statute

31. The Disciplinary Statute of the Military Forces of the Russian Federation, adopted by Presidential Decree no. 2140 on 14 December 1993 and in force until 1 January 2008, laid down grounds for the imposition of disciplinary penalties on servicemen, including soldiers performing mandatory military service. In particular, the Disciplinary Statute permitted detention for up to ten days of a soldier for a breach of military discipline or public order (§ 51). A decision authorising the detention was to be taken by the commandant or head of the unit involved (§ 85). An inquiry into the circumstances of an alleged disciplinary offence was to precede a decision by which a disciplinary penalty was imposed. The inquiry was to, *inter alia*, take account of the purpose for which the alleged disciplinary offence was committed, whether the soldier was guilty of the offence, what the consequences of the offence were and whether there were mitigating or aggravating circumstances (§ 86). A decision to impose a disciplinary penalty was ordinarily to be taken within a day after the commandant had learned about the offence (§ 88).

B. Statute of Military Service

32. The Statute of Military Service of the Russian Federation, adopted by the same Presidential Decree as the Disciplinary Statute and in force until 1 January 2008, contained an exhaustive list of cases in which the use of firearms by servicemen was authorised. In particular, the relevant part of the Statute read as follows:

> "11. While performing military service duties and, if necessary, during out-of-office hours, servicemen have the right to store, carry and use firearms.
>
> The procedure for storing and using firearms by servicemen is laid down in the present Statute.
>
> As a measure of last resort, servicemen have the right to use firearms personally or within their military subdivision:
>
> - to repel an attack by a group of persons or an armed person on guarded military or State installations, as well as on military units and divisions, buildings and premises of military units, military echelons, motorcades or single cars and convoy units, if it is impossible to use other means and measures to protect them;
>
> - to prevent an attempt to take possession, by force, of firearms and military equipment, if it is impossible to use other means and measures to protect them;
>
> - to protect military personnel and civilians from an attack posing a threat to their lives and limb, if it is impossible to use other means and measures to protect them;
>
> - to apprehend a person who has committed a crime or is committing a serious or particularly serious criminal offence or an armed person who refuses to comply with lawful orders to disarm, if it is impossible to use other means and measures to suppress the resistance, to apprehend the criminal or to seize the weapon.
>
> Servicemen performing convoy duty have the right to use firearms in the cases and in line with the procedure established by the Statute of Garrison and Sentry Service in the Military Forces of the Russian Federation.
>
> Moreover, a commanding officer has the right to use firearms personally or to order the use of firearms to restore discipline and order in the event of open resistance from a subordinate, when his actions clearly pursue [the purposes] of treason or disruption of a military mission in battlefield conditions.
>
> 12. A warning that a weapon may be used should precede its use. A weapon may be used without a warning [to repel] an unexpected and armed attack [and] an attack with the use of military equipment, vehicles, aircrafts, sea and river vessels; [to prevent] an escape of an armed [detainee] or [when the escape is effected] with the use of vehicles or from moving vehicles, at the night time or in other restricted visibility conditions.

Servicemen have the right to use firearms to make an alert signal or to call for help, as well as [to use the weapon] against an animal which threatens the life or health of individuals...”

C. Statute of Garrison and Sentry Service

33. The Statute of Garrison and Sentry Service in the Military Forces of the Russian Federation, in force at the material time, regulated the use of firearms and force in convoy and sentry service. In particular, Article 201 provided as follows:

“A sentry guarding arrestees (detainees) in a disciplinary unit must:

- warn arrestees (detainees) attempting to escape with an order: ‘Stop, or [I] will shoot’, and if the order is not complied with [the sentry] should use a firearm against them.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

34. The applicant complained under Articles 2 and 13 of the Convention 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 Court will examine the present complaint under Article 2 of the Convention, which provides as follows:

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Submissions by the parties

35. The Government submitted that on 15 February 2002 a sentry, junior sergeant L., had lawfully shot the applicant's son during the latter's attempt to escape. At the time, the applicant's son had been subject to ten days' detention for unauthorised leave from military service. When the applicant's son had started running away while being escorted back from hospital, Mr L. had warned him that he would open fire. He had fired two warning shots in the air. All attempts to force the applicant's son to stop failing, junior sergeant L. had fired a target shot in compliance with the requirements of Article 201 of the Statute of Garrison and Sentry Service. According to the Government, Mr L. had had no intention of killing the applicant's son, having aimed at his legs in order to minimise the damage to his health. The Government stressed that the incident had been thoroughly investigated. The evidence collected by the investigating authorities (witness statements, expert reports, crime scene examinations, and so forth) had corroborated the investigators' finding that Mr L.'s actions had not constituted criminal conduct.

36. The Government further submitted that the applicant's detention and his subsequent placement in a disciplinary cell had been lawful, having complied with the provisions of national law laying down responsibility for disciplinary offences committed by servicemen. The use of force by Mr L. had been absolutely necessary to prevent the escape of the applicant's son, who had been lawfully detained. Thus, Mr Putintsev's loss of life could not be regarded as having been in contravention of the Convention, being covered by the exception in subparagraph (b) of paragraph 2 to Article 2 of the Convention. The Government insisted that, having decided to abscond and having refused to comply with the order to stop, Mr Putintsev had himself placed his life in imminent danger. He had been warned and he had fully understood the consequences of his actions. The deadly force had been used for a lawful purpose and had been a measure of last resort. The Russian Federation could not therefore be held responsible for Mr Putintsev's death.

37. The Government acknowledged that Article 201 of the Statute of Garrison and Sentry Service, in force at the material time, had not indicated that the use of force had to be absolutely necessary. However, that legal norm had indicated that deadly force could only be used in specific cases and as a measure of last resort. The Government observed that the wording of Article 201 of the Statute had afforded the same level of protection of the right to life as Article 2 of the Convention. They further noted that in assessing the circumstances of the case the Court should not overlook the fact that the events in question had occurred in the army, a very specific setting characterised by extreme limitations on the rights and freedoms of individuals performing military service. The specific responsibilities of

servicemen to respect discipline and the regulations of the Statute of Garrison and Sentry Service, as well as the fact that military service was inherently characterised by unquestionable compliance with orders of higher-ranking officers, had justified the use of deadly force against a serviceman to prevent his escape.

38. Finally, the Government addressed the issue of the quality of the investigation into the shooting. They noted that the criminal case had been opened on the same day that the incident had occurred. The investigation had been thorough, complete and independent, having been performed by an independent State body, the military prosecution service. Seven forensic expert examinations had been conducted over the course of the investigation. They had covered various subjects and had pursued various purposes, including those of identifying the cause of the applicant's son's death, reconstructing the events surrounding the shooting, verifying various versions of the events, assessing the quality of the medical care afforded to the applicant's son in hospital following the shooting, and so on. An examination of the scene of the incident had been carried out within hours of the shooting. Reconstructions of the events of 15 February 2002 had been organised with the participation of junior sergeant L. and officer K. More than two hundred interviews to identify possible witnesses to the incident had been conducted. Having provided the Court with a copy of the criminal case file, including the written statements of the witnesses collected by the investigating authorities, the Government argued that the evidence had fully supported the finding of the use of force having been lawful and necessary. At the same time, the Government pointed out that the investigating authorities had not only concentrated on the version of events given by Mr L. They had looked into the allegations of hazing in the military unit, including the possibility of the applicant's son having been subjected to some form of violence or degrading treatment or extortion, and had not found any evidence in support of those allegations.

39. In the Government's opinion, the biggest support to the findings of the investigating authorities had been given by the Russian courts which, having examined the applicant's complaint, had considered that the investigators' decision to close the criminal case had been wholly appropriate. The Government drew the Court's attention to its reasoning in the case of *García Ruiz v. Spain* ([GC], no. 30544/96, §§ 28-29, ECHR 1999-I), having stressed that unless the findings of national courts were clearly arbitrary, the Court had no reason to doubt them. The Government submitted that the Court should not interfere with the national courts' task of examining evidence and assessing the investigators' decisions purely on the basis of the applicant's refusal to accept the outcome of the domestic proceedings.

40. The applicant maintained her complaint, having argued that it had not been absolutely necessary to kill her son, a person who had not

presented any danger and had not committed any criminal offence, and that the investigation into the killing had been performed poorly. She pointed to four defects in the investigation: the failure to attribute particular weight to the fact that only one used cartridge had been found at the crime scene, whereas two cartridges had been produced by Mr L. himself; that the investigators had not clarified the issue of her son's detention in the disciplinary unit; that they had not identified the cause of the injuries on her son's body; and that they had not ordered an expert report as to the authenticity of her son's signature on a written statement explaining the reasons for his unauthorised leave. The applicant further submitted that she had not been afforded victim status in the criminal proceedings, thus having been denied an effective opportunity to challenge the investigator's conduct.

B. The Court's assessment

1. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

42. Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI, and *Huohvanainen v. Finland*, no. 57389/00, § 92, 13 March 2007).

43. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. Any use of force must be no more than "absolutely necessary" for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether

State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 93, 4 May 2001).

44. Accordingly, and with reference to Article 2 § 2 (b) of the Convention, the legitimate aim of effecting a lawful arrest or preventing the escape of a person lawfully detained can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the fleeing person poses no threat to life or limb and is not suspected of having committed a violent offence, even if failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see the Court's approach in *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-50 and §§ 192-214, Series A no. 324, and, more recently, in *Makaratzis v. Greece* [GC], no. 50385/99, §§ 64-66, ECHR 2004-XI).

45. In keeping with the importance of Article 2 in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination. In determining whether the force used is compatible with Article 2, it may therefore be relevant whether an operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins v. the United Kingdom*, no. 50196/99, §§ 135-36, ECHR 2005-II (extracts), and *McCann and Others*, cited above, §§ 150 and 194).

46. In addition to setting out the circumstances in which deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis*, cited above, §§ 57-59). In line with the above-mentioned principle of strict proportionality inherent in Article 2 (see *McCann and Others*, cited above, § 149), the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she poses.

47. Furthermore, national law must ensure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, officials must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant

regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see the Court's criticism of the "shoot to kill" instructions given to soldiers in *McCann and Others*, cited above, §§ 211-14).

48. Finally, the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Makaratzis*, cited above, § 73). What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see *Kelly and Others*, cited above, § 94, and, *mutatis mutandis*, *İlhan v. Turkey* [GC] no. 22277/93, ECHR 2000-VII, § 63).

(b) Application to the present case

49. It is common ground between the parties that the death of the applicant's son, Mr Valeriy Putintsev, resulted from the use of lethal force by a sentry, junior sergeant L. The Court will firstly assess the adequacy of the investigation into the death of the applicant's son. It will then turn to the establishment of the disputed facts and the assessment of the circumstances surrounding the use of force.

(i) Concerning the procedural obligation under Article 2 of the Convention

50. The domestic authorities conducted a criminal investigation into the killing of the applicant's son. The Court must ascertain whether those proceedings were effective for the purposes of Article 2 on the basis of the complete investigation file submitted by the Government,.

51. According to the Court's settled case-law, for an investigation into alleged killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II; and *Öğur v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92). The investigation must also be effective in the sense that it is capable of ascertaining the circumstances in which the incident took place and of leading to a determination of whether the force used was or was not

justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Leonidis v. Greece*, no. 43326/05, § 68, 8 January 2009, and *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV).

52. Turning to the circumstances of the present case, the Court observes that the military prosecutor's office conducted a criminal investigation into the death of the applicant's son. That investigation was at all stages carried out by a prosecutor's office that was not connected to the Uzhur Town Garrison or military unit no. 39982, either structurally or factually. The Court is therefore satisfied that the persons conducting the criminal investigation were independent from the personnel of the Uzhur Town Garrison implicated in the events. It remains to be assessed whether the investigation was thorough and prompt.

53. The criminal investigation was opened immediately after the shooting. On the same day that the incident occurred, the investigator inspected the scene, having drawn up a meticulous plan of the scene, seized and bagged as evidence the applicant's son's clothes, took possession of Mr L.'s submachine gun and ammunition, including the two used cartridges collected by officer K. and one used cartridge found on the hospital grounds, and organised a search for the bullet with which the applicant's son had been shot. Mr L. was interrogated within hours of the incident, having provided his version of events. In the days following the shooting, the investigator ordered a report from the unit's psychologist to understand the reasons behind the applicant's son's unauthorised leave on 9 February 2002, his relations with fellow soldiers and commanding officers and his attempted escape on 15 February 2002. He also thoroughly studied the materials of the internal inquiry into Mr Putintsev's unauthorised leave and interrogated a large number of solders, commanding officers and staff members of the military hospital to indentify possible eyewitnesses to the events of 15 February 2002, as well as to obtain general information on the atmosphere in the military unit and the applicant's son's daily life in the army. An autopsy on the applicant's son's body was performed on the day following his death.

54. Two weeks after the applicant's son's death, a group of investigators from the prosecutor's office took over the case in view of the large amount of evidence that was to be collected and assessed. Several expert opinions were prepared within months. The investigators continued their search for

possible witnesses and re-interviewed a large number of people. The Court does not find the fact that the two investigator's decisions were annulled by a higher-ranking prosecutor to be evidence of the inefficiency of the investigation, as from the materials in the case file it can be seen that the investigating authorities made diligent efforts to establish the circumstances of the case and to examine various versions of events. Having received instructions from the higher-ranking prosecutor, the investigators followed them to the letter in order to eliminate or explain any inconsistencies or discrepancies which could have arisen from their previous decision to close the case. They performed a number of additional expert examinations, including a ballistic test, assessed the quality of the medical services provided to the applicant's son in hospital in the aftermath of the shooting and performed reconstructions at the scene with the participation of all implicated persons. The Court observes that the investigating authorities neither failed to look for corroborating evidence nor exhibited a deferential attitude to the military personnel.

55. The Court is also not convinced by the applicant's argument that the domestic authorities failed to investigate the origin of the bruises on her son's body. It transpires from the documents submitted by the parties that the experts who conducted the autopsy of the applicant's son gave a detailed description of his injuries, and indicated the time and probable manner of their occurrence. Statements by medical personnel who had examined the applicant's son before the incident corroborated the expert opinions. The prosecutor's office also inquired into the origin of the injuries and, relying on the expert reports and witnesses statements, gave an explanation of how they had been caused (see paragraph 25 above). The Court therefore considers that the domestic authorities thoroughly investigated that issue. Nor is the Court persuaded that a forensic examination of the applicant's son's signature on his explanation for his unauthorised leave on 9 February 2002 was required to make the investigation effective. The Court does not consider that such an expert report could have had any evidentiary value for the purpose of the investigation into the events of 15 February 2002.

56. Further assessing the effectiveness of the investigation, the Court observes that the applicant was not granted victim status in the proceedings. While the Court finds this omission on the part of the authorities regrettable, it does not lose sight of the fact that the applicant was interviewed on a number of occasions in the course of the investigation and that she actively made use of available avenues to complain of alleged defects in the inquiry, having successfully challenged the investigator's decisions to close the criminal case. While reiterating the importance of involving the next-of-kin of a deceased in the proceedings (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 109 and 133, ECHR 2001-III (extracts)), the Court is convinced, in the circumstances of the instant case and in particular in view of the applicant's close involvement in the investigation, that the defect

arising from the authorities' failure to assign her victim status was thereby remedied and the capability of the investigation to establish the circumstances of the case was not undermined (see *Golubeva v. Russia*, no. 1062/03, § 91, 17 December 2009).

57. In the light of the above, the Court is satisfied that the domestic authorities took reasonable steps to promptly secure the evidence concerning the incident, including eyewitness testimony and forensic evidence, and to establish the circumstances in which the incident had taken place. The investigation was independent and was conducted with sufficient expedition. The Court does not consider that the various alleged shortcomings in the investigation to which the applicant referred substantially hampered the carrying out of a thorough, impartial and careful examination of the circumstances surrounding the killing of her son.

58. There has accordingly been no violation of the procedural obligation of Article 2 of the Convention.

(ii) Concerning the alleged responsibility of the State for the death of Mr Putintsev

(α) Establishment and evaluation of the facts

59. The Court firstly considers it necessary to reiterate the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see, *mutatis mutandis*, *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Articles 2 or 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see *Imakayeva v. Russia*, no. 7615/02, § 113, ECHR 2006-XIII (extracts)).

60. The Court has found that the domestic authorities conducted a thorough, independent and effective investigation capable of elucidating the circumstances in which the fatal incident happened (see paragraph 57 above). It does not see any reason to depart from the factual findings made by the investigators and domestic courts. Those findings were not arbitrary in the sense of being inconsistent, contradictory or irreconcilable with the evidence. They were based on forensic reports and witness statements. The domestic authorities had the benefit of listening at first hand to the witnesses, observing their demeanour and assessing the probative value of

their testimony. The Court therefore takes their establishment of the facts (see paragraph 25 above) to be an accurate and reliable account of the circumstances underlying the present case.

61. As regards the evaluation of these facts from the standpoint of Article 2, the Court observes that the focus of concern of the criminal investigation was whether the killing of the applicant's son by junior sergeant L. constituted a criminal offence under domestic law. The standard applied by the domestic authorities was whether the use of lethal force was legitimate, as opposed to whether it was "absolutely necessary" under Article 2 § 2 in the sense developed above (see paragraphs 23 to 25). Moreover, it must be borne in mind that the courts' finding was limited to a decision of lawful killing and did not involve the assessment of the legal and administrative framework defining the circumstances for the use of force against a fleeing soldier, subject to detention for a disciplinary offence. Against this background, the Court must make its own assessment of whether the facts of the case disclose a violation of Article 2 of the Convention.

62. The Court, in determining whether there has been a breach of Article 2 in the present case, is not assessing the criminal responsibility of those directly or indirectly concerned. Criminal-law liability is distinct from international-law responsibility under the Convention. The Court's competence is confined to the latter. Responsibility under the Convention is based on its own provisions, which are to be interpreted and applied on the basis of the object and purpose of the Convention and in the light of the relevant principles of international law. The responsibility of a State under the Convention, arising for the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in the national criminal courts. The Court is not concerned with reaching any findings as to guilt or innocence in that sense (see *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII (extracts), and *McCann and Others*, cited above, §§ 170-173).

63. Turning to the circumstances of the present case, the Court observes that the applicant's son, who was serving a disciplinary sentence of ten days' detention for being absent without leave from compulsory military service, was shot and killed by junior sergeant L. in an attempt to prevent his escape from detention. It follows that the case falls to be examined under Article 2 § 2 (b) of the Convention.

(β) Assessment of the relevant legal framework

64. The Court reiterates that the investigating authorities, the Russian courts and the Government cited Article 201 of the Statute of Garrison and Sentry Service as the legal basis for the use of deadly force against the applicant's son. The Court notes that the aforementioned regulation 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. The Court does not lose sight of the extremely concise wording of the regulation which permitted the use of lethal force. Apart from requiring a general warning that a firearm would be used, Article 201 did not contain any other safeguards to prevent the arbitrary deprivation of life. It did not make 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 observes that under the regulation in question it was lawful to shoot any fugitive who did not surrender immediately in response to an oral warning or the firing of a warning shot in the air (see paragraph 33 above). The laxity of the regulation on the use of firearms and the manner in which it tolerated the use of lethal force were clearly exposed by the events that led to the fatal shooting of the applicant's son.

65. Such a legal framework is fundamentally deficient and falls well short of the level of protection "by law" of the right to life that is required by the Convention (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 100, ECHR 2005-VII).

66. The Court reiterates the Government's argument that the requirement of "absolute necessity" was inherent in Article 201. However, it is not convinced by the Government's interpretation. As opposed to the provisions of the Statute of Military Service, which provided for the use of firearms "as a measure of last resort" or only "if it [was] impossible to use other means and measures" in an exhaustive list of cases not covering sentry service (see paragraph 32 above), Article 201 did not make any room for the proportionality requirement.

67. The Court therefore finds that there was a general failure by the respondent State to comply with its obligation under Article 2 of the Convention to secure the right to life by putting in place an appropriate legal and administrative framework on the use of force and firearms by military sentries.

(γ) Assessment of the actual use of force and the authorities' conduct preceding the incident

68. It was undisputed that the applicant's son was subject to ten days' detention for a non-violent offence. On 15 February 2002, following an altercation with junior sergeant L., both the applicant's son and Mr L. were sent to the military hospital for a medical examination. On the way back from the hospital, the applicant's son started running away from his sentry, Mr L., and escorting officer K. His attempt to escape was accompanied by foolishly inviting the officers to catch him but did not involve any use of violence. He was not armed nor did he represent a danger to the convoy or

third parties, a fact of which both Mr L. and officer K. must have been aware.

69. Having regard to the above, the Court considers that in the circumstances of the present case any resort to potentially lethal force was prohibited by Article 2 of the Convention, regardless of any risk that the applicant's son might escape (see, for identical reasoning, *Nachova and Others*, cited above, § 107). It is the Court's long-standing approach not to consider recourse to potentially deadly force as "absolutely necessary" where it is known that a person escaping from lawful detention poses no threat to life or limb and is not suspected of having committed a violent offence.

70. In addition, the conduct of Mr L., the junior sergeant who shot the applicant's son, calls for serious criticism in that he used grossly excessive force. It appears that there were other means available to prevent the applicant's son's escape. The applicant's son began his attempted escape in the grounds adjacent to the military hospital. He passed through the guarded gates of the hospital grounds without any attempt being made to stop him. He then continued running towards the checkpoint of the military unit, being observed by soldiers guarding it. However, once again no one tried to stop him. Furthermore, officer K. was in hot pursuit after the applicant's son, with merely twenty metres separating them when Mr Putintsev was shot. The personnel of the military unit had cars. The applicant's son was running in the middle of the day, along the road between two long fences separating different parts of the grounds of the military unit. He would have been clearly visible for sufficient time to find an alternative solution to the hasty decision to open fire. Moreover, the applicant's son's behaviour was apparently predictable, since, during his previous unauthorised leave, he had been found in the local village closest to the military unit's grounds.

71. Finally, the Court is unable to overlook other aspects of the authorities' conduct preceding the actual use of force. It was known to the commanding officers that the applicant's son, who had experienced psychological problems in adjusting to the life in the army, suffered from depression and had already once left the unit without authorisation, was prone to repeat his attempt to leave military service. While the applicant's son was warned of the consequences of any further attempt to escape, there is no indication that Mr L. received clear instructions about the amount of force necessary in the event that the applicant's son made a repeated attempt to escape or that Mr L. was provided with some guidance to minimise the risk of loss of life. Furthermore, the Court finds it open to criticism that Mr L., the same person with whom the applicant's son had a physical altercation shortly before the shooting, was entrusted with the task of escorting him to the hospital. While the Court is aware of officer K.'s presence in the convoy, it was Mr L. who was performing the duty of an armed sentry and it was he who took the decision to use force to prevent the

escape. Although the Court must be cautious about revisiting events with the wisdom of hindsight (see *Bubbins*, cited above, § 147), it cannot but conclude that the applicant's son's convoy was organised in an unconsidered manner and that the decision taken by the commandant to entrust Mr L. with the task of escorting the applicant's son lacked the necessary degree of caution. It follows from the above that the authorities failed to minimise to the greatest extent possible recourse to lethal force and any risk to the life of the applicant's son.

(δ) The Court's conclusion

72. The Court finds that the respondent State failed to comply with its obligations under Article 2 of the Convention in that the relevant legal framework on the use of force was fundamentally deficient and that the applicant's son was killed in circumstances in which the use of firearms to prevent his escape was incompatible with Article 2 of the Convention. There has therefore been a violation of Article 2 of the Convention under its substantive limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

73. Lastly, the Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

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

76. The Government submitted that a finding of a violation would in itself constitute sufficient just satisfaction in the case.

77. The Court, however, finds that the applicant suffered distress and frustration which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the sum claimed in full, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

78. The applicant did not claim any amount for costs and expenses incurred before the domestic courts and before the Court. Consequently, the Court does not make any award under this head.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's son's killing in the army and the quality of the investigation into the incident admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention under its procedural limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 45,000 (forty-five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on the above amount;
   (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.

Done in English, and notified in writing on 10 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Nina Vajić
Deputy Registrar	President