



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

FIRST SECTION

Application no. 69997/11
Galina Konstantinovna GVOZDEVA
against Russia
lodged on 27 September 2011

STATEMENT OF FACTS

1. The applicant, Ms Galina Konstantinovna Gvozdeva, is a Russian national, who was born in 1954 and lives in St Petersburg. She is represented before the Court by Mr V.A. Andreyev, a lawyer practising in St Petersburg.

The circumstances of the case

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

3. The applicant is the mother of Mr G., who had been drafted in the rank of private to military service to rapid reaction airborne forces on 20 November 2008 and within two months promoted to the position of a squad leader.

4. On 6 March 2009 Mr G. together with his battalion was taking part in the military field exercise in the Pskov Region. Around 11.45 p.m. on that day he left his tent in the unknown direction.

5. Around 9.20 a.m. on 7 March 2009 he was found dead hanging from the tree on the belt tied around his neck. The body was located by his fellow military servicemen in the woods several hundred metres away from the field camp of the Military Division 32515.

6. In the pocket of his trousers a notebook was found, which had the following text on one of the pages:

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

Further, a short note stating “Long lives the Satan!” was found in his personal belongings.

7. On 10 March 2009 a criminal investigation was initiated by an investigator of the Military Investigations Unit of Pskov Garrison in respect

of Mr K. (the victim's sergeant major) on the suspicion of instigation of suicide.

8. On 2 April 2009 an extensive and detailed post mortem medical expert examination report was issued. The expert concluded that the cause of death was mechanical asphyxiation caused by hanging (as confirmed by diagonally rising strangulation ligature marks on the deceased's neck).

9. Apart from the injuries related to strangulation, the report mentioned bruises on the right buttock, left shoulder, left leg, abrasions on the hands, left knee and right ankle.

10. On 7 May 2009 the investigator of the Military Investigations Unit of the Investigative Committee for the Pskov Garrison decided to terminate further criminal investigation in respect of Mr K. due to absence of criminal actions on his part. The investigator concluded that Mr K.'s actions were in compliance with internal regulations and did not include violence, abuse or humiliation, and that the suicide of Mr G. was caused by severe depression due to the failure to perform his duties.

11. The decision was based on the following evidence:

(a) Statements of Mr Er., Mr F., Mr I., Mr. B, and Mr Ef. (five fellow military servicemen of the deceased). They positively characterized sergeant major Mr K. as demanding, but fair and attentive military superior, who strictly followed internal regulations and never used violence or degrading language towards his subordinates. The same witnesses characterized the deceased as secretive, unsociable person with weak personality, who systematically failed in his duties of a squad leader, was unable to ensure compliance with his orders and was troubled by this fact.

(b) Statements of Mrs A. and Mr V. (friends of the deceased), who kept contact with him after he was drafted to the army. These witnesses stated that the deceased Mr G. was generally in a positive mood during phone conversations and personal encounters, did not complain about use of violence or any other abuse, and never mentioned his sergeant major Mr K.

(c) Statements of the applicant and Mrs T. (the mother and sister of the deceased), who also stated that Mr G. never complained about any abuse, extortion, use of violence, degrading or humiliating treatment. Further, they stated that the deceased continuously contemplated extending his service on a contractual basis or military studies in a military academy.

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

(e) Statement of Mrs S. (former school teacher of the deceased), who stated that Mr G. was unsociable person with weak personality unable to demand others to act in a certain way. At the same time she noted that he was a very responsible person, and failing in his duties might have led him to suicide.

(f) Statement of Mr K. (interrogated as a suspect), who stated that he did not feel any animosity towards the deceased and that all of his actions as a military superior were in compliance with internal regulations.

(g) Results of post mortem psychiatric examination of Mr G. The report stated with a high degree of probability that the deceased entered

the period of “major depressive episode” before his suicide and that the condition was caused by a discomfoting situation of deep suffering due to lack of authority in his relations with the peers and subordinates, failure to duly perform his duties as a squad leader, and guilt caused by these failures. All these factors in the opinion of the experts might have led him to general psychological exhaustion and prolonged frustration leading to suicide.

(h) Results of forensic expert examination of the suicide note, which demonstrated that the note was written by Mr G. himself and that it was written under normal conditions (no excessive tiredness, intoxication, or unusual posture).

(i) Results of post mortem medical expert examination (paragraphs 8-9 above).

12. The applicant complained about the decision to court, but on 5 February 2010 the Military Court of Pskov Garrison dismissed her complaint as unsubstantiated and merely aimed at reconsideration of the investigation results.

13. The applicant appealed and on 26 April 2010 the Military Court of the Leningrad Command ruled in her favour and ordered reconsideration of her complaint. The appeal court highlighted the following defects of the investigation:

(a) the decision to terminate criminal investigation does not take into account any injuries apart from those directly caused by the suicide, while they had appeared within the period of up to nine days before the event; moreover, the statement of Mr K. that he did not observe any bodily injuries on the deceased during daily check-ups contradicts the results of the expert examination.

(b) the post mortem psychiatric examination was conducted in an institution, which is not authorised to perform forensic examinations, and that its results did not consider personal records of the deceased.

(c) several inconsistencies in witness statements were not resolved. During initial questioning Mr Ka. And Mr Ef. (military servicemen) stated that the sergeant major Mr K. made the squad do push-ups and stand on knuckles as punishment for failures of the deceased and that the mobile phone of the latter was taken by sergeant Mr Sh. Later they stated that Mr K.’s actions were fully compliant with internal regulations, however these contradictions were not addressed. Moreover, sergeant Mr Sh. was never questioned and no decision was made regarding him taking the mobile phone of the deceased.

(d) while it was established that a private Mr B. was the main social contact of Mr. G. during his service, he had not been questioned at all.

14. On 20 May 2010 the Military Court of Pskov Garrison upon reconsideration of the case ruled in favour of the applicant’s complaint, annulled the decision to terminate criminal investigation on the grounds mentioned above, and ordered the defects to be rectified.

15. On 6 August 2010 the second post mortem psychiatric examination report was issued. The report stated that while Mr G. had no chronic mental disorders, he was temporarily suffering from an adjustment disorder with mixed anxiety and depressed mood, which predisposed him to suicide. The experts also established that while Mr G. was well-adjusted to maintain

proper social contacts in familiar environments, he had problematic adaptive strategies in unfamiliar military context. He had diminished capacity to make “difficult decisions” and to organize behaviour of the others and at the same time sufficiently strong feeling of responsibility and diligence. Combination of these psychological factors with failures in performance of his junior command duties led to prolonged stress and frustration and resulted in an altered psychological state. In this state he committed suicide.

16. During the additional interrogation the sergeant major Mr K. supported his previous testimony and stated that the injuries not related to strangulation most probably appeared during military and physical training during the field exercise or maintenance works. Further he stated that he did not notice them during daily check-ups due to poor lightening in the tents.

17. Repeatedly questioned fellow military servicemen of the deceased essentially supported their previously given testimonies. Sergeant Mr Sh. who allegedly took the mobile phone from Mr G. and private Mr B., who was the main social contact of Mr. G. during his service were not questioned.

18. On 7 September 2010 the criminal investigation against Mr K. was repeatedly terminated on the basis of evidence mentioned above due to absence of criminal actions on his side.

19. The applicant’s representative complained about the decision to court. On 17 January 2011 the Military Court of Pskov Garrison dismissed the complaint. The applicant’s appeal was dismissed on 11 April 2011 by the Military Court of the Leningrad Command.

COMPLAINTS

20. The applicant complains under Article 2 that the national authorities failed to comply with their obligation to protect life of her son by exerting excessive psychological pressure on him during his military service and thus leading him to suicide. Further, she complains under Article 2 that the national authorities failed to conduct an effective investigation into her son’s death.

QUESTIONS TO THE PARTIES

1. Has the applicant’s son’s right to life, ensured by Article 2 of the Convention, been violated in the present case?

In particular, considering the applicant’s allegations that her son’s suicide was caused by excessive psychological pressure exerted on him by his military superiors, did national authorities comply with their positive obligation to protect life?

Did the Russian legislation in force and relevant internal military regulations prescribe monitoring of psychological state and mental well-being of persons performing their military service? If yes, did the national authorities exercise such monitoring in respect of the applicant's son?

2. Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention?