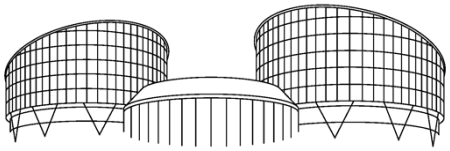

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TIKHONOVA v. RUSSIA

(Application no. 13596/05)

JUDGMENT

STRASBOURG

30 April 2014

FINAL

30/07/2014

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

In the case of Tikhonova v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Paulo Pinto de Albuquerque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 13596/05) 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 Sofiya Nikolayevna Tikhonova ("the applicant"), on 5 March 2005.

2. The applicant was represented by Mr Yu. Nikandrov, a lawyer practising in Teykovo. 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 complained about the death of her son during his mandatory military service and the absence of an effective and prompt investigation into his death.

4. On 10 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Teykovo, a town in the Ivanovo Region.

6. On 25 June 1999 the applicant's son, Andrey Tikhonov (A.T.), was drafted into the army to perform two years' mandatory military service. He was initially assigned to military unit no. 57233 in Teykovo. He was

convicted on 9 November 2000 under Article 334 of the Criminal Code (for violence against his military superior) and sentenced to eighteen months' punishment in a disciplinary military unit. On 27 December 2000 he was assigned to military unit no. 12801 in Mulino, a village in the Volodarskiy District of the Nizhniy Novgorod Region.

7. At 1 a.m. on 14 April 2001 A.T. was found hanging with a belt around his neck in the unit's canteen, with numerous bruises and abrasions to his body.

8. On the same date the Military Prosecutor's Office of the Mulino Garrison ("the Garrison Prosecutor's Office") instituted a criminal investigation into A.T.'s death. An onsite inspection and examination of A.T.'s body were carried out. A table knife was found at the scene of the incident, but no evidence of a violent death. The applicant obtained a copy of the decision to institute criminal proceedings after eight requests to that effect to the Garrison Prosecutor's Office.

9. On 16 April 2001 a post-mortem of A.T.'s body was completed. It established that A.T. had died of strangulation. Apart from visible marks on his neck, the following injuries were recorded: bruising on the outer corner of the right eye and eyelid, bruising on the left cheek, bruising on the left of the neck underneath the belt marks, an abrasion and bruising on the right of the back near the eighth and ninth ribs, three abrasions on the left of the lower spine, bruising with a soft-tissue hemorrhage in the intercostal space (gap) near the ninth left rib, bruising with a soft-tissue hemorrhage on the left collar bone, and twenty-two scratches on the inner left forearm. It was established that the bruises and abrasions had been caused by a blunt hard object with a limited damage-causing surface. Traumatic force (blows and friction) had been applied to the area around the right eye, left cheek, back, intercostal space near the ninth left rib and the area around the left collar bone. All of the abrasions and bruises could have been caused either while A.T. was still alive or within a short period of his death, but there was no causal connection between the injuries and his death. The scratches had been caused by a sharp-edged object (a blade) shortly (up to twenty-four hours) before A.T.'s death. There had been 0.26% of ethyl alcohol found in A.T.'s blood and traces of alcohol in his urine.

10. On 30 May 2001 a psychological autopsy was carried out. It established that A.T. had not been suffering from a psychiatric disorder. Prior to his being drafted into the army, A.T. had been examined by a panel of doctors, including a psychiatrist, and found fit for military service. During psychological aptitude testing he had been assigned to the third (second lowest) group in terms of psychological stability (the lowest group containing the least psychologically stable recruits most likely to suffer a nervous breakdown). In August 1999, during his military service, A.T. had been examined by a psychiatrist and found fit. In September 2000 he had again been examined by a psychiatrist after complaining of low mood,

depression and anxiety for his future. He was diagnosed with "situational neurotic (psychological) reaction". Later that month he had undergone an outpatient forensic psychiatric examination in connection with a crime he had committed on 24 September 2000 (violence against his military superior), which established that he had not been suffering from a psychiatric disorder. Having examined the case material, the expert arrived at the conclusion that A.T. had been emotionally unstable: he had suffered mood swings (as per references from the technical training college where A.T. had studied before being drafted into the army), and had had a history of disorderly conduct (as per police records). During A.T.'s military service this emotional instability had shown itself in repeated breaches of military discipline and in his having committed a crime. The expert concluded that having such a personality, A.T. could have developed "hystero-depressive reaction" and committed suicide. It transpired from the report that A.T.'s elder brother, a military serviceman born in 1974, had himself committed suicide in 1996.

11. On 10 June 2001 an additional psychological autopsy was carried out in respect of A.T. It established that in the time leading up to his death, A.T. had had a buildup of emotional tension which had led to depression and suicide. His emotional state had been affected by an accumulation of negative thoughts and his character traits, which included: a high affiliative need, egoism, heightened sensitivity, impressionability, poor moral and professional judgment, an unwillingness to carry out his military service, a grudge against his parents and girlfriend, a misinterpretation of the federal legislation introducing amendments to the Criminal Code, a tendency to accumulate negative thoughts, vanity, emotional liability, concerns about strict discipline and monotonous activities, a tendency to overdramatise events, mental immaturity, a limited outlook, low adaptability and impulsiveness. The report also mentioned that A.T.'s elder brother had committed suicide in 1996 by hanging himself.

12. On an unspecified date Sergeant V. Kudryashov was questioned. He submitted that on 13 April 2001 he had taken up his duty on watch at the canteen together with nineteen soldiers, including A.T. He had known A.T. to be a quiet, modest soldier who had never been bullied. He had been behaving quietly on duty that night and had been in a normal mood. He had made no health-related complaints and had not had any injuries prior to taking up his duties at the canteen; his appetite had also been good. Kudryashov had never noticed anything odd about A.T.'s behaviour to suggest he had been suffering from any mental health issues. After cleaning up the canteen, he had been lining up the soldiers to send them to their division when he had realised that A.T. had gone missing. He had organised a search of the canteen and had then found him locked inside the toilet. He had called A.T.'s name, but no response had followed. He had then ordered one of the soldiers to force open the door. When soldier V. had broken it

down they had seen A.T. hanging by a belt. His face had been white. Kudryashov had then ordered soldiers V., Kob. and Bak. to remove A.T.'s body from the noose. He had then reported the incident to the duty officer and called for the duty medical assistant. Soldiers V., Kob. and Bak. had removed A.T.'s body and Kob. had attempted to give A.T. mouth-to-mouth, but to no avail. The duty medical assistant had arrived almost immediately and started giving A.T. mouth-to-mouth and injections. However, A.T. had not regained consciousness. His body had been taken to the military hospital. Kudryashov did not know the reasons or motives for A.T.'s death.

13. On an unspecified date soldier V. was questioned. His statement was consistent with that of Sgt Kudryashov.

14. Their statements were later supported by those of A.T.'s fellow recruits, Bak., Kob., Yar., K., Yur., T., Khos., Sh., Bog., Yer., Khal., G., Bor., D. and Vol.

15. On 10 July 2001 a reconstruction of events was conducted, in the course of which Sgt Kudryashov and Pte Bak. showed how they had removed A.T.'s body from the noose.

16. Between 20 June and 22 June 2001 A.T.'s fellow recruits Bak., G., Yer., Yur., T., Sh., Khos., Bor., V., K. and Khal. were subjected to polygraph (lie detector) testing. They were asked the following questions:

"- Have you lied in any part of your testimony on the present case?

- Has anybody ever ill-treated or humiliated A.T.?
- Was anybody arguing with A.T. on 13 April 2001?
- Did anyone assault A.T. on 13 April 2001?
- Do you know what the reasons were for A.T.'s death?
- Were you personally involved in A.T.'s death?"

All of the soldiers interrogated gave negative responses to the questions. The results were interpreted as indicating that all of the individuals interrogated had been truthful, except for witness Bak. in answering his first question and witness Yur. in answering his second question (in both instances the polygraph was inconclusive).

17. On an unspecified date the applicant was questioned. She submitted that A.T. had been healthy as a child and had never suffered any psychiatric problems. He had never suffered any head injuries and had never been monitored by a psychiatrist or a neuropathologist. He had been satisfactory at school, but had been made to repeat sixth grade. After ninth grade he had entered technical training college, and after graduation had been drafted into the army. The applicant further submitted that during his military service A.T. had committed a crime under Article 334 of the Criminal Code. He had

made no complaints about conditions in the disciplinary military unit or about having been subjected to any hazing (organised bullying) rituals there.

18. On an unspecified date A.T.'s father was questioned. His testimony was consistent with the statement made by the applicant.

19. On an unspecified date A.T.'s girlfriend, Yu. Ap., was questioned. She submitted that she had known A.T. since summer 1998. He had always been sensitive and attentive to her, but could be quick-tempered towards others. He could lash out at someone in reply to a joke, especially when it was a slur against his character; he treated friendships seriously and was a leader. Some acquaintances respected him, while others feared him. He had been vindictive. He had been rude to his parents. He had had no particular interests: he disliked reading, had not been interested in either studying or working, and had been unhappy about his military service. In his letters A.T. wrote that he had been unhappy about army discipline, yet he had not mentioned any hazing rituals. In 2000 he had been placed in a disciplinary military unit for having committed a crime. In his letters he wrote that the discipline there had been stricter, but that it had otherwise been okay. His letters from the disciplinary military unit had differed from his previous letters; they had been short, dull and sad, whereas his earlier letters had been more cheerful.

20. On 16 July 2001 investigator Ye. of the Garrison Prosecutor's Office discontinued the criminal proceedings for lack of evidence. It was established that A.T. had committed suicide because he had been suffering from "acute psychogenic depressive reaction" which had led to his consciousness being impaired and him being unable to fully understand the consequences of his actions and control them. The decision relied on the records of the onsite inspection and examination of A.T.'s body, a post-mortem report, two psychological autopsy reports, the statements of Sgt Kudryashov, Ptes V., Bak., Kob., Yar., K., Yur., T., Khos., Sh., Bog., Yer., Khal., G., Bor., D. and Vol., the polygraph test results, and statements by A.T.'s parents and girlfriend.

21. On 23 July 2001, following a complaint by the applicant, the Garrison Prosecutor set aside the above decision and ordered the preliminary investigation to be reopened. The investigator was instructed to question the applicant thoroughly, to find out the circumstances on which she based her claim that A.T. had suffered a violent death, to study A.T.'s personality, and to find out the reason behind his elder brother's death. He was further instructed to question other people referred to by the applicant and to carry out all the investigative measures necessary to ascertain the applicant's arguments; to eliminate any eventual contradictions in the evidence by carrying out confrontation parades; to seize the letters sent by A.T. to his parents, to question the applicant, if necessary, regarding the contents of those letters; to check the statements of those who had been on duty at the canteen with A.T. between 13 and 14 April 2001 more

thoroughly, in particular, to question Sgt Kudryashov and Ptes S., D., Vol., Bog., Sk. and Yar., using a polygraph; and to question the polygrapher about the mechanics of the polygraph machine, the method of questioning used and the reliability of the results. The investigator was further instructed to question the military unit and division command. In addition to standard questioning, the investigator was instructed to enquire, in particular, why the military command had not provided A.T. with increased and more timely attention, and what the essence of the amendments to the Criminal Code were that A.T. could have misinterpreted.

22. On an unspecified date the investigator questioned Sgt Kudryashov and Ptes V., Bak., Kob., Yar., K., Yur., T., Khos., Sh., Bog, Yer., Khal., G., Bor., S., D., Vol. and Sk., who had been on duty at the canteen between 13 April and 14 April 2001. They all denied being involved in A.T.'s death, ill-treating or humiliating him, quarreling with him on duty on 13 April 2001 or beating him up. Their statements were tested with a polygraph and considered to be truthful.

23. The polygrapher, M., submitted that results of polygraph examinations were internationally recognised as being 85 to 90% reliable.

24. On an unspecified date the investigator questioned Commander S. Luzin of military unit no. 12801, who submitted that until 13 April 2001 he had not known Pte A.T., since he had not stood out from the crowd. He had known from the third disciplinary military unit that A.T. had been a calm, quiet person who had behaved normally and manifested no signs of psychiatric problems; he had never been regarded as someone inclined to behave thoughtlessly, whether by running away or committing suicide. After A.T.'s death, his personnel file had been studied more closely, and it had come to light that A.T.'s brother had also committed suicide, which might have suggested that suicidal tendencies had run in his family. In addition, an unsent letter had been found among A.T.'s personal belongings, in which he talked about a grudge he had against his parents and girlfriend. Moreover, for reasons outside command control, A.T.'s conditional release might have been considerably delayed, which might have had a serious effect on his mental state. Cdr Luzin concluded that all the above-mentioned reasons, together with A.T.'s character traits, might have influenced his decision to commit suicide.

25. On an unspecified date the commander of the third disciplinary military unit made a statement consistent with that of Cdr Luzin.

26. On 23 August 2001 investigator Ye. of the Garrison Prosecutor's Office discontinued the criminal proceedings for lack of evidence. It was established that A.T. had committed suicide because he had been suffering from "acute psychogenic depressive reaction" which had led to his consciousness being impaired and him being unable to fully understand the consequences of his actions and control them. The decision relied on the record of the onsite inspection and examination of A.T.'s body, a post-

mortem report, two psychological autopsy reports, statements of Cdr Luzin and the commander of the disciplinary military unit, statements of Sgt Kudryashov, Ptes V., Bak., Kob., Yar., K., Yur., T., Khos., Sh., Bog, Yer., Khal., G., Bor., S., D., and Vol., the polygraph test results, statements by the polygrapher, and statements by A.T.'s parents and girlfriend.

27. The applicant obtained a copy of that decision following a substantial delay, after numerous requests to the Garrison Prosecutor.

28. On 19 June 2002, following a complaint by the applicant, the Chief Military Prosecutor's Office set aside the decision of 23 August 2001 and remitted the case for additional investigation. It was indicated that the investigator had failed to investigate the origin of A.T.'s injuries, including, in particular, the twenty-two scratches found on his inner left forearm, to check whether A.T. could have inflicted the scratches himself with the table knife found at the scene, and to examine the belt from which A.T. had been found hanging. The investigator was instructed, in particular, to arrange a forensic examination to examine the origin of A.T.'s injuries and to find out whether they could have been caused as a result of convulsions, the removal of the body from the noose, the attempts at resuscitation, the transportation of the body or otherwise; to question pathologist L. (who had carried out the post-mortem of A.T.'s body); and to carry out all other necessary investigative measures.

29. On 31 August 2002 investigator Ye. of the Garrison Prosecutor's Office again discontinued the criminal proceedings for lack of evidence. The investigator arrived at the conclusion that A.T.'s injuries had been caused in the process of him hanging himself, when the body had hit the toilet walls during convulsions, and when it had been removed from the noose.

30. The applicant obtained a copy of the decision of 31 August 2002 almost a year later, after numerous requests to the Garrison Prosecutor. She then applied to the Military Court of the Mulino Garrison ("the Garrison Court") seeking to have the decision in question set aside.

31. On 8 October 2003 the Garrison Court dismissed her application.

32. On 16 December 2003, however, the Military Court of the Moscow Command quashed the decision of 8 October 2003 on appeal and referred the matter back to the Garrison Court.

33. On 13 February 2004 the Garrison Court held that the decision of 31 August 2002 had been unlawful and unfounded. The court noted that the investigator had failed to comply with most of the instructions given on 19 June 2002, that the conclusion as to the origin of A.T.'s injuries had been far-fetched and absurd, and that no explanation had been given as to the factual circumstances which had driven A.T. to commit suicide. The court further ordered the Garrison Prosecutor to set aside the decision in question and resume the investigation.

34. On 30 March 2004 the Garrison Prosecutor set aside the decision of 31 August 2002 and resumed the investigation.

35. On 29 May 2004 investigator Ye. of the Garrison Prosecutor's Office once again discontinued the proceedings. As regards the bruises and abrasions to the applicant's son's body, the investigator arrived at the conclusion – on the basis of the results of the additional post-mortem and the statements of experts L. and S., who had carried out the initial and additional post-mortem examinations – that they could have been caused shortly before A.T.'s death or during strangulation, or by his body hitting against blunt objects as a result of convulsive movements caused by mechanical asphyxia. It was further established that the multiple scratches on A.T.'s inner left forearm could have been caused by A.T. himself using the knife examined by the expert (similar to the knife found at the scene).

36. The applicant obtained a copy of the decision of 29 May 2004 after making a written request to the Garrison Prosecutor, and then proceeded to challenge it in court.

37. On 27 July 2004 the Deputy Prosecutor of the Moscow Command set aside the decision of 29 May 2004. He noted that it was necessary to carry out a more thorough investigation into the applicant's son's death, including the circumstances in which he had sustained multiple bruises and abrasions.

38. On 20 October 2004 investigator Shch. of the Garrison Prosecutor's Office discontinued the proceedings for lack of evidence for a fourth time. The applicant was not informed of this decision.

39. On 9 November 2004 the Garrison Court dismissed the applicant's claim regarding the decision of 29 May 2004 on the grounds that it had in the meantime been set aside.

40. On 24 December 2004 the Military Court of the Moscow Command upheld the decision of 9 November 2004 on appeal.

41. Having received no information about how the investigation was progressing, the applicant sent a written enquiry to the Garrison Prosecutor on 25 December 2004.

42. She received a reply dated 31 December 2004 informing her that on 20 October 2004 investigator Shch. of the Garrison Prosecutor's Office had discontinued the proceedings.

43. The applicant did not pursue the domestic remedies any further, and lodged her application with the Court on 5 March 2005.

II. RELEVANT DOMESTIC LAW

A. Russian Code of Criminal Procedure 1960

44. The Code of Criminal Procedure 1960, in force until 30 June 2002, provided that criminal proceedings could be instituted on the basis of letters

and complaints from citizens, public or private bodies, articles in the press or the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed (Article 108).

45. The investigating body had to take one of the following decisions within a maximum period of ten days after a crime had been reported: to open or refuse to open a criminal investigation, or to transfer the information to the appropriate body. Complainants had to be notified of the decision taken (Article 109).

46. Reasons for closing a criminal case included the absence of *corpus delicti*. Such decisions could be appealed to a higher-ranking prosecutor or a court (Articles 208 and 209).

B. Russian Code of Criminal Procedure 2001

47. The Russian Code of Criminal Procedure, in force since 1 July 2002, provides that criminal proceedings should be instituted if there is sufficient evidence to suggest that a criminal offence has been committed (Article 140).

48. Prosecutors, investigators and inquiry bodies must consider reports and information about any crime committed or being planned, and take a decision on that information within three days. In exceptional cases, that time-limit can be extended to ten days (Article 144). The decision should be one of the following: (a) to institute criminal proceedings; (b) to refuse to institute criminal proceedings; or (c) to transfer the information to another competent authority (Article 145).

49. The decision of an investigator or a prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to check the lawfulness and grounds of the impugned decisions (Article 125).

50. In order to terminate the proceedings, the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor's office. The investigator should also notify the victim and the complainant in writing of the termination of the proceedings (Article 213).

51. The prosecutor's office is responsible for general supervision of the investigation. In particular, the prosecutor's office may order that specific investigative measures be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and inquiry bodies (Article 221).

C. Russian Statute of Military Service

52. The Statute of Military Service of the Russian Federation, adopted by Presidential Decree no. 2140 on 14 December 1993 and in force until 1 January 2008, provided that commanders of military units were personally liable to the State for all aspects of the life and functioning of their unit, its subdivisions and each serviceman (clause 30).

53. Commanders were responsible for maintaining strict military discipline at all times and high standards with regard to the morale and psychological well-being of the personnel under their command (clause 76).

54. Commanders were required to assess the personnel under his command thoroughly by way of personal communication, familiarisation with the personalities and psychological traits of their subordinates and to be involved in their day-to-day education (clause 81).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

55. The applicant complained under Article 2 of the Convention about the death of her son during his mandatory military service and alleged that there had been no effective and prompt investigation into his death. Article 2 of the Convention reads, in so far as relevant, as follows:

Article 2

> "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. ..."

A. The parties' submissions

1. The Government

56. The Government argued that the applicant had not sought a judicial review of the lawfulness of the decision of 20 October 2004 discontinuing the criminal proceedings relating to her son's death, and had therefore failed to exhaust domestic remedies.

57. The Government submitted on the merits of the complaint that following the death of the applicant's son on the night of 13 April 2001, the Garrison Prosecutor's Office had initiated a criminal investigation the very next day. The applicant's son's body had been subjected to a post-mortem, which disclosed multiple *ante mortem* injuries. Taking into account the results of that examination, the investigating authority had examined

whether the applicant's son had possibly been driven to commit suicide or whether he was murdered and his death made to look like suicide. The applicant's son's fellow recruits had been subjected to polygraph testing and two independent psychological autopsies had been carried out in respect of the applicant's son. On the basis of that evidence and other material, the investigating authority had established that, being in a state of acute emotional stress which had led to depression, the applicant's son had died from suicide by hanging. Therefore the domestic authorities cannot be held responsible for the violation alleged, namely the applicant's son's right to life.

58. As to compliance with their procedural obligation to investigate the circumstances of the applicant's son's death, the Government submitted that the investigation had been initiated without delay, and that it had been carried out in strict compliance with domestic law and in continuous contact with the applicant. The investigation authority's version of events and the applicant's arguments had been carefully considered. The applicant's complaints had been duly addressed and she had been informed of the procedural decisions taken in the case in due time. The Government concluded, therefore, that the investigation conducted in the present case had been effective and complied with the procedural aspect of the protection of the right to life under Article 2 of the Convention.

2. The applicant

59. The applicant argued that, being a pensioner with a very modest income, she could not have afforded to pursue her case before the domestic courts after 2004.

60. She further maintained the substance of her complaint. She submitted that her son had been found to have sustained multiple *ante mortem* injuries when he had been found hanging in the toilet of the military unit's canteen. In her opinion, the reasons put forward by the domestic authorities to explain the cause and origin of those injuries had lacked sufficient credibility. She noted in this connection that the decision to discontinue the criminal proceedings had been set aside on four occasions, which reflected the poor handling of the investigation into her son's death. The applicant argued that she had not been sufficiently involved in the investigation either. In particular, she had only obtained a copy of the decision of 14 April 2001 to institute criminal proceedings after eight requests to the Garrison Prosecutor's Office. The decision of 31 August 2002 to discontinue the criminal proceedings had only been made available to her almost a year later. Requests she had made for her son's body to be exhumed so that a more comprehensive post-mortem could be carried out had not been granted, and she had never been consulted as to the questions to be put before the experts.

B. The Court's assessment

1. Admissibility

61. The Government pointed out that the applicant had not appealed to a court against the procedural decision of 20 October 2004 by which the Garrison Prosecutor's Office had discontinued the criminal proceedings relating to her son's death.

62. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to first use the remedies that are ordinarily available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

63. The Court further emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others,* cited above, § 69, and *Aksoy,* cited above, §§ 53-54).

64. Turning to the circumstances of the present case, the Court reiterates that, in principle, a judicial appeal against a decision to dispense with or discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul such decisions and indicate the defects to be addressed (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an

appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has strong doubts as to whether this remedy would have been effective in the circumstances of the present case. As mentioned above, prior to the decision of 20 October 2004, the investigating authorities ordered that the proceedings be terminated on four occasions, on 16 July and 23 August 2001, 31 August 2002 and 29 May 2004, referring to the same grounds, namely lack of evidence (see paragraphs 20, 26, 29 and 35 above). Those decisions were subsequently set aside by a higher-ranking prosecutor and, on one occasion, by the court, and the case was repeatedly referred back for further investigation (see paragraphs 21, 28, 33, 34 and 37 above). In such circumstances, the Court is not convinced that another appeal to a court, which could only have had the same outcome, would have offered the applicant any redress. It considers, therefore, that such an appeal would have been devoid of any purpose. The Court finds that the applicant was not obliged to pursue that remedy, and holds that the Government's objection should therefore be dismissed (see, for example, *Ryabtsev v. Russia*, no. 13642/06, § 59, 14 November 2013; *Nitsov v. Russia*, no. 35389/04, § 41, 3 May 2012; *Chumakov v. Russia*, no. 41794/04, § 91, 24 April 2012; and *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008).

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

2. Merits

(a) Positive obligation under Article 2 of the Convention to protect life

(i) General principles

66. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

67. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom,* 9 June 1998, § 36, *Reports* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences

against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual or, in certain particular circumstances, against him or herself (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III; and *Kılınç and Others v. Turkey*, no. 40145/98, § 40, 7 June 2005).

68. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are within the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009, and *Mosendz v. Ukraine,* no. 52013/08, §§ 92 and 98, 17 January 2013). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising.

69. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Shumkova v. Russia*, no. 9296/06, § 90, 14 February 2012; *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 50-51, 15 January 2009; and *Keenan*, cited above, §§ 89 and 92).

70. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody or in the army, strong presumptions of fact will arise in respect of injuries and death occurring during that detention or service. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109−11, ECHR 2002−IV).

(ii) Application to the present case

71. In the light of the above, the Court will examine whether the authorities knew or ought to have known of the existence of a real and immediate risk to A.T.'s life, and, if so, whether they did all that could reasonably have been expected of them to avoid that risk.

72. The Court notes that A.T. was assigned to military unit no. 12801 on 27 December 2000, three and a half months before his death during the night of 13 April 2001. It transpired from his personnel file that prior to being drafted into the army he had been examined by a panel of doctors, including a psychiatrist, and found fit for military service. A.T. was examined again by a psychiatrist in August 1999 and September 2000. Although found fit in August 1999, in September 2000 A.T. had complained of low mood, depression and anxiety for his future and had been diagnosed with "situational neurotic (psychological) reaction". A.T.'s outpatient forensic psychiatric examination carried out later that month established that he had not been suffering from a psychiatric disorder (see paragraph 10 above).

73. It appears from the submissions of A.T.'s superiors and fellow soldiers that A.T. had been a quiet, modest soldier whose behaviour had done nothing to suggest that he had been experiencing any psychiatric problems. He had not stood out from the crowd and had never been perceived or monitored as a person inclined to behave thoughtlessly, for example by escaping or committing suicide (see paragraphs 12-14, 24 and 25 above). He had never been subjected to intimidation while undergoing his military service (see paragraphs 12-14, and 16-19 above).

74. According to the conclusions of A.T.'s psychological examinations, however, he had been emotionally unstable. Indeed, during military psychological aptitude testing A.T. had been assigned to the third group out of four in terms of psychological stability. He had had a history of disorderly conduct before being drafted into the army, and had committed violence against his superior while undergoing his military service, for which he had later been convicted and sentenced to punishment in a disciplinary military unit. Furthermore, his elder brother had committed suicide in 1996 while performing his military service (see paragraphs 10 and 11 above).

75. Regard being had to the foregoing, the Court considers that the domestic authorities were aware that A.T. had been emotionally immature and fragile and had had a history of suicide in his family. The evidence in the Court's possession is, however, insufficient to conclude beyond reasonable doubt that the authorities knew or ought to have known of the existence of a real and immediate risk to A.T.'s life. The Court finds, therefore, that the particular circumstances leading up to A.T.'s death could not have been foreseeable by the domestic authorities. Accordingly, the

Court concludes that no obligation to take operational measures to prevent a risk to life arose in the present case.

76. For the above reasons, the Court concludes that there has been no violation of the Russian authorities' positive obligation to protect A.T.'s right to life under Article 2 of the Convention.

(b) The procedural obligation to carry out an effective investigation

(i) General principles

77. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII, and, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

78. In this connection the Court has held that, if the infringement of the right to life or to physical integrity was not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; and *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90, 94 and 95, ECHR 2002-VIII). However, the minimum requirement for such a system is that the persons responsible for the investigation must be independent from those implicated in the events. This means hierarchical or institutional independence and also practical independence (see *Paul and Audrey Edwards,* cited above, § 70, and *Mastromatteo*, cited above, § 91).

79. The Court further notes that, in cases of homicide, the interpretation of Article 2 as entailing an obligation to conduct an official investigation is justified not only because any allegations of such an offence normally give rise to criminal liability, but also because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities. Therefore the applicable principles which the Court has already had occasion to develop, notably in relation to the use of lethal force, lend themselves to application in other categories of cases (see *Öneryıldız*, cited above, § 93).

80. Accordingly, where a positive obligation to safeguard the life of persons in custody or in the army is at stake, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness.

Thus, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, for example, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, 4 May 2001; *McCann and Others*, cited above, § 161; *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII; *McKerr v. the United Kingdom*, no. 28883/95, § 115, ECHR 2001-III; and *Trubnikov v. Russia*, no. 49790/99, § 88, 5 July 2005).

(ii) Application to the present case

81. The applicant's son, A.T., had been a conscript carrying out his mandatory military service under the care and responsibility of the authorities when he had died as a result of what appeared to be suicide. An investigation was necessary to establish, firstly, the cause of death and to rule out an accident or manslaughter and, secondly, once suicide was established, to examine whether the authorities were in any way responsible for failing to prevent it. The investigation had to fulfill the requirements set out above (see paragraph 80 above).

(α) Independence of the investigation

82. The Court observes that the investigation into the applicant's son's death was at all stages conducted by investigators of the Military Prosecutor's Office, which was not connected to military unit no. 12801 either hierarchically or institutionally. There are also no objective reasons to suggest that the individuals conducting the criminal investigation were not independent in practice (compare *Putintseva v. Russia*, no. 33498/04, § 52, 10 May 2012; *Sergey Shevchenko v. Ukraine*, no. 32478/02, §§ 70-71, 4 April 2006; and, in a different context, *Shumkova*, cited above, § 116). The Court is therefore satisfied that the requirement for the criminal investigation to be independent was complied with in the present case. It remains to be assessed whether the investigation was prompt and thorough and whether there was a sufficient element of public scrutiny.

(β) Promptness of the investigation

83. The Court reiterates that it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably erode the amount and quality of the evidence available and the

appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family (see *Paul and Audrey Edwards*, cited above, § 86, and *Trubnikov*, cited above, § 92).

84. Turning to the circumstances of the present case, the Court notes that the investigation was opened on 14 April 2001, immediately after the authorities became aware of A.T.'s death. An onsite inspection and an examination of A.T.'s body were carried out on the same date. On 16 April 2001 a post-mortem of A.T.'s body was completed. Two psychological autopsies were carried out on 30 May and 10 June 2001. Between 16 April and 16 July 2001 the investigator questioned A.T.'s immediate superior Sgt Kudryashov, sixteen of the eighteen soldiers who had been on watch at the canteen with A.T. on the night of 13 April 2001 and subsequently subjected eleven of them to polygraph testing, conducted a reconstruction of events to ascertain how A.T.'s body had been removed from the noose, and questioned the applicant and her husband and A.T.'s girlfriend. Relying on the evidence collected, on 16 July 2001 the Garrison Prosecutor's Office established that A.T. had committed suicide because he had been suffering from "acute psychogenic depressive reaction" which had led to his consciousness being impaired and him being unable to fully understand the consequences of his actions and control them. The criminal proceedings were discontinued for lack of evidence (see paragraphs 8-20 above).

85. On 23 July 2001, however, the Garrison Prosecutor set aside the above decision and ordered the preliminary investigation to be reopened. Between 23 July and 23 August 2001 the investigator questioned Sgt Kudryashov and the eighteen soldiers who had been on watch at the canteen with A.T. on the night of his death and subjected their statements to polygraph testing, questioned the polygrapher, the commander of military unit no. 12801 and the commander of the disciplinary military unit where A.T. had been serving his sentence. Relying on that and the previously collected evidence, on 23 August 2001 the Garrison Prosecutor's Office again discontinued the criminal proceedings for lack of evidence (see paragraphs 21-26 above). The applicant only obtained a copy of that decision following a substantial delay and after numerous requests to the Garrison Prosecutor (see paragraph 27 above), for which the Government provided no explanation, and which inevitably protracted ensuing proceedings.

86. The proceedings were reopened and discontinued three more times. In particular, they were resumed on 19 June 2002 and discontinued shortly afterwards, on 31 August 2002. Again, the applicant was not provided with a copy of the decision of that date until almost a year later and only after numerous requests to the Garrison Prosecutor, for which the Government provided no explanation and which had substantially delayed the applicant's

application for a judicial review of the above decision (see paragraphs 28-33 and 60 above).

87. Later, on 30 March 2004, following the decision of the Garrison Court of 13 February 2004, the proceedings were again resumed. No explanation was provided by the Government for the month and a half it took the Prosecutor's Office to comply with the court order and resume the proceedings. The proceedings were discontinued again two months later, on 29 May 2004 (see paragraphs 34-35 above).

88. On 27 July 2004 the proceedings were again resumed before being discontinued for a final time on 20 October 2004 (see paragraphs 37-38 above).

89. The proceedings in question, which took place from 14 April 2001 to 20 October 2004, therefore lasted just over three and a half years. Having regard to the overall duration of the proceedings and the fact that they were marked by certain substantial delays for which the respondent Government gave no explanation, the Court concludes that the investigation carried out in the instant case did not meet the requirement of promptness.

(γ) Thoroughness of the investigation

90. As to the thoroughness of the investigation, the Court notes a number of omissions in the investigation which give grounds for misgivings regarding the conduct of the authorities concerned and the genuineness of their efforts to establish the truth.

91. First, the Court observes that during the period April 2001 to October 2004 the proceedings were discontinued and reopened four times until the final decision to discontinue them was taken in October 2004. It notes in this connection that repeated remittals of a case for further investigation may disclose a serious deficiency in the domestic prosecution system (see *Mityaginy v. Russia*, no. 20325/06, § 58, 4 December 2012; *Filatov v. Russia*, no. 22485/05, § 50, 8 November 2011; *Gladyshev v. Russia*, no. 2807/04, § 62, 30 July 2009; and *Alibekov v. Russia*, no. 8413/02, § 61, 14 May 2009).

92. More specifically, the Court notes that, although A.T. was discovered to have sustained multiple *ante mortem* injuries when he was found hanging in April 2001 (see paragraph 9 above), it was not until 2004, almost three years after his death, that the investigating authority carried out the investigative measures necessary to establish the origin of his injuries (see paragraphs 28, 29, and 33-35 above). This was the case even though it would appear crucial for the overall course of the investigation to have determined the origin of the injuries at the very initial stage of the investigation.

93. Furthermore, according to the post-mortem report, there had been 0.26% of ethyl alcohol in A.T.'s blood and traces of alcohol in his urine (see paragraph 9 above). According to the blood alcohol level, such a

concentration (0.20% to 0.29%) corresponds to rather severe alcohol intoxication which, in terms of behaviour, manifests itself in stupor, the loss of ability to understand, impaired sensations and the possibility of falling unconscious, and in terms of impairments – severe motor impairment, loss of consciousness and memory blackouts. Blood alcohol levels exceeding 0.30% are potentially fatal. The Court is struck by the fact that at no time during the investigation did the investigating authority take into account the fact that A.T. had died while severely intoxicated, nor did it try to find out how this had become possible in a disciplinary military unit. It is inexplicable why no questions to this effect had been put before the military unit command, A.T.'s immediate superiors, his fellow soldiers and the experts, and why nobody referred to it during questioning.

94. The Court further notes that, despite explicit instructions given by the supervising prosecutor on 23 July 2001 (see paragraph 21 above), at no stage of the investigation did the investigating authority establish why A.T.'s elder brother, who had also been a military serviceman at the time of his death in 1996, had committed suicide. It appears that some other instructions given on 23 July 2001 had also remained unaddressed. For example, there is no evidence in the material made available to the Court that A.T.'s letters to the applicant had been seized and read and that the applicant had been questioned on their contents, or that any confrontation parades had been carried out in order to eliminate certain contradictions in the evidence.

95. Having regard to the above, the Court considers that the investigation conducted into the death of the applicant's son did not satisfy the requirement of thoroughness.

(ε) Public scrutiny/involvement of the victim's next of kin

96. The Court has stressed on many occasions that the involvement of a next of kin serves to ensure the public accountability of the authorities and public scrutiny of their actions in the conduct of the investigation. The right of the family of a deceased person whose death is under investigation to participate in the proceedings requires that the procedures adopted ensure the requisite protection of their interests, which may be in direct conflict with those of the police or security forces implicated in the events (see *Anusca v. Moldova*, no. 24034/07, § 44, 18 May 2010, and *McKerr*, cited above, § 148).

97. The Court notes the Government's assertion to the effect that the investigation had been carried out in continuous contact with the applicant and that she had been informed of the procedural decisions taken in the case in due time (see paragraph 58 above). It observes, however, that, according to the applicant, that was not quite the case.

98. In particular, the applicant obtained a copy of the decision to institute criminal proceedings after eight requests to that end to the Garrison

Prosecutor's Office. She received copies of the decisions of 23 August 2001 and 31 August 2002 by which the proceedings had been discontinued after substantial delays (in the latter case after almost a year) and after numerous requests to the Garrison Prosecutor's Office (see paragraphs 8, 27, 30 and 60 above). It took the applicant another written request to the Garrison Prosecutor's Office to obtain a copy of the decision of 29 May 2004 by which the proceedings had once again been discontinued (see paragraph 36 above). It appears, furthermore, that she had not been informed of the decision of 27 July 2004 by which the decision of 29 May 2004 had been set aside (see paragraphs 36, 37, 39 and 40 above) or of the decision of 20 October 2004 by which the proceedings had been discontinued for a final time (see paragraphs 38, 41 and 42 above). The Government advanced no specific arguments to disprove the applicant's statements.

99. Having regard to the foregoing, the Court considers that in the present case the applicant's interests as next of kin were not fairly and adequately protected and that the investigation did not ensure sufficient public accountability to provide the investigation and its results with the required level of public scrutiny.

(δ) Conclusion

100. In conclusion, having regard to the manner in which A.T.'s death was investigated, the time it took and the very limited involvement of the applicant, the Court considers that the investigation was not "effective" within the meaning of its case-law. There has accordingly been a violation of Article 2 of the Convention in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

101. The applicant complained that the investigation into her son's death had been ineffective, contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

102. The Court observes that this complaint concerns the same issues as those examined in paragraphs 77-100 above under the procedural limb of Article 2 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusions above, the Court considers it unnecessary to examine the issues separately under Article 13 of the Convention (for a similar approach, see *Shumkova*, cited above, § 123).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

105. The Government submitted that the applicant's claim was excessive.

106. The Court observes that it has found above that the authorities failed to carry out an effective investigation into the death of the applicant's son meeting the requirements of Article 2 of the Convention. Taking into account the nature of the violation found and ruling on an equitable basis, the Court awards the applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

107. The applicant also claimed 16,000 Russian roubles (RUB, approximately EUR 350) for the costs of her legal representation before the Court.

108. The Government noted that the applicant had only submitted receipts to justify RUB 12,000 of expenses.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 350 for the proceedings before the Court, plus any tax that may be chargeable to her on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 2 of the Convention in respect of the authorities' failure to protect the life of the applicant's son;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the authorities' failure to conduct an effective investigation into the circumstances of the applicant's son's death;

4. *Holds* that no separate issue arises under Article 13 of the Convention;

5. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
      (ii) EUR 350 (three hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President