



THIRD SECTION

CASE OF BOYCHENKO v. RUSSIA

(Application no. 8663/08)

JUDGMENT

Art 2 (substantive) • Life • Positive obligations • Suicide of applicant's son during contractual military service • No deficiencies in military forces' system of psychological assessment and assistance • Failure to take appropriate steps to safeguard his life
Art 2 (procedural) • Domestic authorities' failure to conduct an effective investigation

STRASBOURG

12 October 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Boychenko v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

María Elósegui,

Anja Seibert-Fohr,

Peeter Roosma,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 8663/08) 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 Natalya Vladimirovna Boychenko (“the applicant”), on 25 December 2007;

the decision to give notice of the application to the Russian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 24 August 2021,

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

INTRODUCTION

1. The present case concerns the death of the applicant’s son during his contractual military service and the subsequent investigation.

THE FACTS

2. The applicant was born in 1960 and lives in the town of Prokhladnyy, in the Kabardino-Balkariya Republic. She was represented by Mr M. Bereza, a lawyer practising in Khabarovsk, in the Khabarovsk Region.

3. The Government were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and most recently by Mr M. Vinogradov, one of his successors in that office.

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

I. DEATH OF THE APPLICANT'S SON

5. In June 2005 Sergey Boychenko graduated from the St Petersburg Military School of Radio Electronics. He signed an enlistment contract and was assigned to serve in military unit no. 39032 in the Primorye Region of Russia with the rank of lieutenant.

6. On 22 March 2006 the applicant was informed that earlier that day her son had committed suicide.

II. INTERNAL INQUIRY

7. Lieutenant Colonel Ch., a senior assistant to the head of the Division for Educational and Social Work and Prevention of Offences of military unit no. 03103, carried out an internal inquiry into Lieutenant Boychenko's suicide. Between 22 and 24 March 2006 a number of servicemen produced written reports about the circumstances surrounding Sergey Boychenko's death.

8. Major P. reported as follows, in so far as relevant:

“[I] inform you that on arrival from the [Military] School [Sergey Boychenko] was very sociable and honest during personal conversations; he was eager to serve in the Russian army.

When he was appointed to the position of engineer at a radar station... he was constantly working with his equipment, studying it [and] trying to keep it in combat condition.

Upon his arrival in military unit no. 39032, Major D., in his capacity as head of [the military unit], started displaying a prejudicial attitude towards all officers. On a number of occasions Major D. stated during guard mounting that the battalion was full of liars and thieves.

A month after Major D.'s arrival, [Sergey Boychenko] started experiencing mental duress. It took the form of accusations of fuel theft and orders to discard fuel which he had never received.”

9. Sergeant Major A. stated as follows:

“... during the last month, [Sergey Boychenko] complained that he was ‘sick’ of [being spoken to] by Major D. and Major B. about the fuel; [they] accused him of theft; [they] said ‘Where is *our* fuel?’; on a daily basis [they] assessed the quantity of fuel and tried to show that there was a shortage of it. He also complained that he had been unable to sleep [and] had started taking [sedatives]. [He] complained that he had not been allowed to take annual leave, [and] that he had been tired of the ‘bullying’ by [Major D. and Major B., who] found fault with any trifling matter.

[I] cannot say anything bad about [Sergey Boychenko]. [He] was an honest and sociable person. There was ‘fire in his eyes’ and [he] had a great desire to do military service, but that desire had been taken away from him by Major D. and Major B.

... I state that Major D.'s attitude towards subordinate officers is prejudicial. There is no trust, no respect. For no apparent reason he calls certain officers thieves. He does not enter in contact with anyone, save for the head of the radar station ...”

10. Another sergeant major, N., recounted as follows:

“I ... have known [Sergey Boychenko] since his arrival at the unit. [He] wished to serve [in the army] and to learn military equipment; on a number of occasions he told me that he needed help to study the radar station as he had not studied that type of station. However, instead [of helping him] the head of the station reproached and offended him, accusing him of professional incompetence.

... numerous times he applied to [the commanding officers] with proposals to monitor the consumption of fuel and to improve those controls. His efforts were not valued by the acting commander and the head of the radar station.

Having talked to [Sergey Boychenko], I have learnt that on a countless number of occasions he had been accused of theft [and] lack of supervision; [I] could not understand why he had been stripped of [salary bonuses].

[Sergey Boychenko] became agitated. I could not recognise him. He said that he had wished to beat up Major D. and Major B. in response to their insults and accusations. I understood him as those officers had also accused me of theft a number of times ...

After [Sergey Boychenko] death I was told by Mr F., a personal driver, that he had heard Major D. and Major B. discussing their plans to ‘push me to a half-suicidal condition so that I would improve controls over fuel’. I cannot understand that.

...

I did not want to write this and I can only imagine what will happen to me for [this report]. However, I do not want anyone else to become a victim ...”

11. Ms D., the medical officer who had been on duty on the night of Sergey Boychenko’s death, indicated the following in her report as reasons for his actions:

“The cause [of Sergey Boychenko’s suicide]:

1. moral and psychological pressure from the commanding officers;
2. personal qualities [of Sergey Boychenko]: his sense of responsibility and his having taken everything ‘to heart’.”

12. Lieutenant Colonel Ch. completed the internal inquiry by issuing his report. He concluded that Lieutenant Boychenko had taken his life because of the disrespectful behaviour of Major D. and Major B. and the resulting unhealthy environment in the military unit. Lieutenant Colonel Ch. also noted the poor work of the deputy head of the military unit’s educational service, Major P. In particular, Major P. had not sufficiently trained commanding officers in practical methods of psychological work; had not prevented the conflict situation in the unit; and had not studied the individual psychological features of the unit’s personnel sufficiently well. Finally, Major P. had failed to inform the military unit’s commander and other superiors about Lieutenant Boychenko’s suicidal intentions and had not prohibited him from carrying out duties involving access to weapons.

“... I have carried out an internal inquiry into the suicide committed by [Sergey Boychenko].

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On 22 March 2006, at approximately 5.35 a.m., [Sergey Boychenko], who was an officer on duty in the unit, took his own life (shot himself) ...

The analysis of the incident shows that:

for a long time [Sergey Boychenko] had suffered from severe emotional and mental depression caused by the pressure exerted by [Major D. and Major B.] in the form of excessive and unreasonable demands, prejudicial attitude ..., threats, insults to human dignity, blunt rudeness and unfounded accusations of fuel theft.

The main points:

... In the course of the inquiry it was established that during his studies in [the Military School] [Sergey Boychenko] had not studied the type of radar station [he had to work with]; therefore, he had been unable to operate it properly. In their turn, [Major D. and Major B.], being aware of [Sergey Boychenko's] inadequate qualifications, did not arrange for him to study theory and practice in respect of that new type of equipment. This [failure] led to [Sergey Boychenko] developing a feeling of guilt and incompetence as an officer and engineer; [that feeling] was further 'stirred up' by his commanding officers in front of the entire personnel of the military unit and during work meetings when [Sergey Boychenko] was required to [fulfil tasks] which went beyond his theoretical and practical qualifications ...; [he was accused] of having no knowledge of that type of equipment, of being unable and unwilling to lead the subordinate crew and of incorrectly recording the fuel consumption; [he was also blamed] for the station breaking down too frequently.

Almost every day during the three months since December 2005 [Major D. and Major B.] accused [Sergey Boychenko] of having stolen fuel from the station.

... During those three months [the accusations of theft] were repeated on a countless number of occasions during the gatherings of the unit personnel [and] during the visits to the radar station in the presence of the crew. At the same time, [Sergey Boychenko] was constantly described as 'a thief', 'a gawk' and 'an officer unable to master the equipment of the station'.

On 21 March 2006, on the day [Sergey Boychenko] took over sentry duty in the military unit, between 11 a.m. and midday, [Major B.] checked the remaining quantity of fuel and ordered [Sergey Boychenko] to prepare a report demonstrating how the fuel had been consumed.

At 4 p.m. [Sergey Boychenko] took over sentry duty. From 7.30 p.m. to 9 p.m. Major D. and Major B. talked to [Sergey Boychenko] in the administrative office of the station, pinpointing defects in the system for monitoring and recording [fuel consumption] and [noting] the incorrect preparation of the report. Major B. ordered [Sergey Boychenko] to rewrite the entire fuel registration log. As is indicated in witness statements by the soldiers T. and A., the discussion in the administrative office was a screaming match and [Sergey Boychenko] was upset and depressed when he left the office.

On 22 March 2006, at 3.50 a.m., Major B. ... arrived at the unit to see how the sentry duty was being carried out. He discovered a number of defects in the service: in particular, a soldier on company duty was in the recreation room without proper authorisation, watching TV; an employee of the canteen was in the canteen without authorisation [and] no one was guarding the weapons storage room.

From 3.50 a.m. to 4.40 a.m. Major B. discussed the defects in the sentry service with [Sergey Boychenko].

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From 4.40 a.m. to 5.30 a.m. Major B. discussed crucial topics of life with [Sergey Boychenko]; the discussion took place with raised voices, a didactic tone and a rude, reprimanding form, as is confirmed by the soldiers T. and A., who were on the premises.

At 5.30 Major B. accompanied by soldier A. went to the canteen to monitor the cleaning process.

At approximately 5.30 a.m. [Sergey Boychenko] committed an affective suicidal action, shooting himself once in the right temporal region with a personal gun (a Makarov pistol).

The suicidal action [of Sergey Boychenko] was the result of an acute psychological traumatic experience and a rapid increase in emotional psychical tension, caused by the recent emotional and mental pressure coming from Major D. and Major B. which they had exhibited in response to what they saw as defects [on the part of Sergey Boychenko] in his service and his failure to ensure sufficient supervision over fuel consumption ...

That incident of suicide was due to:

1. the commanding officers' failure to comply with the requirements of [various military legal instruments] on prevention of suicide, ensuring safe conditions for military service and the preservation of lives of military personnel;

2. the unhealthy moral and psychological environment for the staff of the military unit; insufficient knowledge of the individual psychological features of the military personnel; the lack of skills to identify signs of suicidal behaviour and the inability to organise preventive work on the part of the head of the military unit, Major D.;

3. the rude attitude of the head of the unit, Major D., towards subordinates; the substitution of care, thoroughness and a helpful and benevolent attitude with blunt management, public dressing-downs and insults;

4. the ineffective actions by the deputy head of the military unit responsible for educational work, Major P., who, while organising educational work, gave insufficient consideration to the individual psychological features of the military personnel, gave the commanding officers insufficient training in the sphere of psychological work, failed to prevent the conflict in time, did not inform the head of the military unit and his superiors of [Sergey Boychenko's] suicidal intentions, did not take any steps to suspend him from military service involving the use of firearms, instead merely limiting his actions to acknowledging the problem."

13. Lieutenant Colonel Ch. suggested that the military unit's commanding personnel should study again and implement fully the legal instruments on prevention of suicides in the military forces (see paragraphs 40–56 below). He further suggested that Majors D., B. and P. should be officially warned about the failure to fully comply with their professional duties. Finally, Lieutenant Colonel Ch. considered that an assessment committee should examine whether Majors D. and B. should continue serving in the military forces.

III. CRIMINAL INVESTIGATION

A. Opening of the criminal investigation

14. On 25 March 2006 military officials brought Sergey Boychenko's body in a closed zinc coffin to the applicant's house. The applicant refused to bury her son and between 28 and 30 March 2006 she requested that a criminal investigation be opened into her son's death, that victim status be granted to her in that investigation and that an autopsy be performed on her son's body.

15. On 31 March 2006 a criminal investigation into Sergey Boychenko's death was initiated under Article 110 of the Russian Criminal Code (incitement to commit suicide). On the same date an autopsy of Sergey Boychenko's body was performed.

16. On 31 May 2006 the criminal case was closed. The applicant learnt about this by accident on 21 September 2006.

17. Following complaints by the applicant, on 31 January 2007 the decision to close the criminal case was quashed and another round of investigation was initiated.

18. In reply to further complaints by the applicant, on 20 February 2007 she was granted victim status in the criminal investigation into her son's death.

B. Decision to terminate the criminal investigation

19. On 2 July 2007 the criminal investigation was again terminated on the grounds that no criminal offence had been committed. The decision relied on records of examinations of Sergey Boychenko's body, his flat and of the incident scene; record of the incident scene re-enactment; forensic medical and ballistics examinations, confirming the hypothesis of suicide as the most probable; a number of witness statements and other evidence. The relevant items of evidence were as follows.

1. Major B.'s witness statement

20. Major B. described his encounter with Lieutenant Boychenko minutes before the suicide, noting that he had discovered certain defects in the organisation of sentry duty by Sergey Boychenko and had pointed out those defects to him. They had gone over each defect discovered by Major B. with the latter explaining to Lieutenant Boychenko that "he had to be a man of principle and to be firmer towards soldiers who easily spot weaknesses and unwillingness to improve oneself". After Sergey Boychenko had disagreed, Major B. had brought it to his attention that they were not friends but were in a hierarchical relationship and that he had to bear responsibility for his actions, to grow up, to develop better qualities

and to counter the poor features of his personality. Major B. insisted that the dialogue had not been an attempt to insult Sergey Boychenko. When Major B. had left Lieutenant Boychenko, the latter had been calm and had not exhibited any signs of nervousness. Merely a few minutes after Major B. and soldier A. had left Lieutenant Boychenko, they had heard “a pop”, which had turned out to have been a gunshot.

21. As to the general relations between Major B. and Sergey Boychenko, the former insisted that they had been purely official. There had occasionally been certain tensions which had not developed into an open conflict. Major B. claimed that he had never overstepped the boundaries of the workplace. Having been notified by Lieutenant Boychenko of authority problems with a group of soldiers who had considered the latter to be more their equal than a commanding officer, Major B. had talked to Sergey Boychenko and had given him leadership advice. Lieutenant Boychenko had never raised that issue with Major B. again. In addition, according to Major B., being aware of Sergey Boychenko’s lack of sufficient knowledge of that particular type of radar station, Major B. and Major D. had helped him to fix technical problems and to repair equipment in the station whenever there had been a problem. However, Major B. was sure that Lieutenant Boychenko had not been interested in the job, had committed a number of mistakes and had clearly exhibited signs of indifference, although he had not accepted the major’s offer of assistance in arranging a transfer to another position. At a certain point, Major B. had had the impression that Sergey Boychenko had no intention to study the station, finding it convenient to have his work done by someone else.

22. Major B. further noted that although, on first impression, Sergey Boychenko had been a sociable person, he had not had any friends and had, in fact, been very reserved. He had reacted in a negative way to Major B.’s and Major D.’s actions when they had supervised his work. At the same time, their supervision had neither been prejudicial, nor had it differed in any way from the supervision they had exercised over other officers in the unit. Major B.’s contact with Lieutenant Boychenko had been very frequent. However, he had never given any unlawful orders to Sergey Boychenko and had never ordered him to falsify the fuel reports. There had, in fact, been no cases of fuel shortage or fraud during Lieutenant Boychenko’s service. Although in November 2005 a loss of equipment valued at approximately 120,000 Russian roubles (RUB) had been discovered and Sergey Boychenko could have been found liable for the loss, of which he had been notified by Major B. and Major D., Lieutenant Boychenko had not suffered any negative consequences as the equipment had soon been found.

23. Major B.’s assumption was that Sergey Boychenko had taken his own life owing to “a certain disorderliness [in his personal life], the remote location of [the military unit], [and the] absence of communication [with the rest of the world]”. According to Major B. Sergey Boychenko had been

extremely disappointed with having been assigned to serve in a small village and had been aware that, even if his transfer to another unit were requested, it would take the military authorities a long time to arrange it. Lieutenant Boychenko had not received sufficient training to work with the type of equipment he had been assigned to and therefore had been unable to perform his tasks properly. Although Sergey Boychenko had wanted to succeed professionally, he had been unable to do so. He had not reacted in any way to the criticism and it had seemed that he had tried to absorb the critical remarks by trying to keep them to himself. Major B. also pointed out that Sergey Boychenko, who had had a fiancée in St Petersburg and had dreamed about marrying her, had been unhappy with his living conditions in the military unit, fearing that his girlfriend would not want to move from St Petersburg to a remote small village. In Major B.'s opinion, all those circumstances taken together could have led to the suicide.

2. Soldiers A. and T.'s witness statements

24. Soldiers A. and T. confirmed Major B.'s testimony regarding the events directly preceding and following Lieutenant Boychenko's suicide. They also stated that they had never witnessed any incident which could have shown a prejudicial attitude on the part of the commanding officers towards Lieutenant Boychenko.

3. Major D.'s witness statement

25. Major D. confirmed having had a number of discussions with Sergey Boychenko regarding the quality of his work and having given him instructions on its proper organisation. He stated that Lieutenant Boychenko had committed a large number of mistakes, and had performed his tasks slowly, considerably delaying their fulfilment. Major D. had publicly criticised his work, including in the presence of other officers during the annual appraisal of the unit's service.

26. According to Major D. Lieutenant Boychenko had responded to the criticism calmly, showing no emotions and occasionally having "a small laugh" about the situation. It had been impossible to identify whether he had been ready to accept the criticism and to act accordingly. Major D. noticed Sergey Boychenko's "lack of efforts and insufficient professional knowledge, [and] inability to fulfil official tasks in view of an absence of knowledge and lack of character". Lieutenant Boychenko had also complained of authority problems with soldiers who had behaved as equals with him. Major D. had responded by having a discussion with the soldiers and assessing the situation, having discovered that Lieutenant Boychenko was insufficiently trained to supervise soldiers and was unwilling to go deep into the heart of the problem.

27. Major D. further described Sergey Boychenko as a calm and psychologically well-balanced person who had had good relations with colleagues and had refused to enter into any conflicts. He had had a “very reserved lifestyle”, had rarely taken part in “entertainment events” with junior officers and had not drunk alcohol. When Major D. had visited Sergey Boychenko in the dormitory, the latter had refused to discuss his living conditions. Major D. stressed that Sergey Boychenko had been a good-natured person, but he had been unable to take decisions on his own. Having noticed Sergey Boychenko’s fear of working on the station equipment, Major D. had offered him a transfer to another position in the unit but had had no response. Major D. disputed having ever responded inappropriately to Sergey Boychenko’s actions or having exceeded the limits of his authority in reprimanding him.

4. Ms D.’s witness statement

28. Ms D., the doctor who had provided first aid on the night of Sergey Boychenko’s death, described him as a “soft and well-wishing” person who had not been strict to his subordinates and had been sociable but not entirely open. She further stated that Sergey Boychenko had been very disappointed with having been sent to a remote village to perform military service. He had been a romantic unfit for the severe daily military life and had had difficulties adjusting to the new conditions. In March 2006 Sergey Boychenko had told Ms D. about his plans to visit his girlfriend in St Petersburg. However, the plans had been cancelled because he had not been allowed to take leave. Ms D. was aware of the financial troubles in which Sergey Boychenko had found himself as a result of the loss of equipment valued at RUB 120,000. The commanding officers had initially decided to hold Sergey Boychenko liable for the loss and to make him repay the cost of the lost equipment. However, that decision had later been withdrawn. Ms D. was unable to recall any instances of abuse of position by Major B. or Major D.

5. Fellow officers’ witness statements

29. Lieutenant Boychenko’s former fellow officers R., P., U. and Po. all confirmed his inability to perform military service to the requisite level owing to his insufficient knowledge of the equipment. They also vouched for the willingness of Major B. and Major D. to assist him in his everyday work assignments. The fellow officers also provided an identical description of Sergey Boychenko’s personality, stating that he had been sociable but reserved to a certain extent, had had an artistic personality, had been moody and disappointed with his transfer to a remote village and the absence of any prospects in life and progress in his work, had been unable to assume full command over subordinates, had been extremely sensitive to any critical

remarks and had been unfit to cope with military life. The officers had insisted that relations between Lieutenant Boychenko and his commanding officers had been purely within work-related boundaries, although those relations had been “complicated”.

30. At the same time the officers commented on the reasons for Sergey Boychenko’s suicide. Officer R. concluded that it had been the result of his “low moral resilience”. Major P. stated that he knew that Sergey Boychenko had been extremely disappointed with the military unit’s distant location and had had difficulties at work. Major P. also knew, from the words of another officer, Mr U., that Lieutenant Boychenko had, on one occasion, expressed thoughts about suicide. When Major P. saw Sergey Boychenko before the latter had taken up sentry duty on 21 March 2006, he had looked joyful and energetic and said that everything was fine when asked by Major P. Officer U., Sergey Boychenko’s flatmate, who had known him since military school, recalled that when they had been travelling to military unit no. 39032, Sergey Boychenko had said: “They will probably take me back home by this same road.”

6. Soldier O.’s witness statement

31. Soldier O. described two instances in February 2006 when Lieutenant Boychenko had threatened to kill himself during sentry service. On one occasion he had said: “I am tired of service; I will take up sentry duty and will shoot myself for sure”. On another occasion Lieutenant Boychenko had said: “I will definitely kill myself because of all these papers.”

7. Ms G. and Ms E.’s witness statements

32. Ms G., the military unit’s accountant, recalled an occasion in the middle of February 2006 when Sergey Boychenko had complained to her about the commanders’ constant monitoring of him and fuel tracking, and had said that “he would do something with himself”. Ms E. remembered that in the middle of December 2005 she had been at Sergey Boychenko’s quarters and the latter had shown her pictures of his girlfriend and had said that he was tired of military service and wanted to hang himself.

8. Other witness statements

33. Twenty-one other witnesses gave similar statements, in particular about the lack of any prejudiced attitude towards Lieutenant Boychenko on the part of the commanders of the military unit.

34. Lieutenant Colonel Ch. repeated his account of events and the conclusions reached in his report in March 2006 on the results of the internal inquiry.

9. Complex forensic psychological and psychiatric post-mortem examination

35. On the basis of the available documentary evidence, a psychological and psychiatric post-mortem report on Sergey Boychenko was produced on 18 May 2006. The conclusions of the experts read as follows:

“[Sergey Boychenko] had the following individual psychological peculiarities: an introvert, sufficiently sociable, selective and particular while choosing friends, [he] preferred a limited circle of acquaintances, he felt at ease with people whom he knew well, [he was] calm, good-hearted, gentle, [he did not like] conflicts, [he] was not a leader, [he] had his own point of view; [he was] emotionally unstable; sensitive, susceptible, hypochondriac, anxious, vulnerable, [he had] a high level of expectations accompanied by low self-esteem; [he] did not develop effective ways of relieving emotional pressure.

In the period preceding the suicide, [Sergey Boychenko] was in a state of long-term emotional pressure (stress).

Reasons for [Sergey Boychenko] suicide could be: his individual psychological features ([listed above]), lack of satisfaction with the place and conditions of his military service; professional difficulties (inadequate professional qualifications); absence of order in his personal life, tiredness, [and] complicated relations with the commanding personnel of the unit.”

36. At the end of July 2007 the applicant requested access to the case file. She eventually received access to the material in the file on 21 January 2008.

C. Judicial examination of the decision to terminate the criminal investigation

37. On 4 July 2008 the applicant applied to the Military Court of the Spassk-Dalny Garrison (“the Military Court”), seeking the annulment of the investigator’s decision of 2 July 2007 to terminate the criminal investigation.

38. On 18 July 2008 the Military Court dismissed the applicant’s complaint, finding that the decision of 2 July 2007 had been well-founded and well-reasoned. The Military Court found no evidence of unlawful actions on the part of Lieutenant Boychenko’s commanding officers which could have been connected to his suicide. It relied on Sergey Boychenko’s autopsy report and the report of his post-mortem psychological psychiatric examination. On 26 August 2008 the Military Court of the Far-Eastern Military Circuit upheld on appeal the judgment of 18 July 2008.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL LIABILITY FOR INCITEMENT TO SUICIDE

39. Article 110 of the Criminal Code of Russia provides that “incitement to suicide or an attempted suicide by means of threats, cruel treatment or systemic humiliation of the victim’s human dignity” is punishable by compulsory labour or a deprivation of liberty.

II. LEGAL INSTRUMENTS CONCERNING PREVENTION OF SUICIDE IN THE RUSSIAN MILITARY FORCES

A. Legal framework on prevention of suicide

40. According to an instruction on prevention of suicide issued in 1996 by the Ministry of Defence of the Russian Federation (“Directive 18”), suicide in the military forces represented a serious problem. 80% of suicides were committed by conscripts or contractual military servicemen during the first year of service. 60% of suicides were committed by hanging, although the number of suicides committed during sentry duty with the use of firearms had also increased. Among the reasons for suicide were the following: poor living conditions and military service (various aspects), interpersonal conflicts and breaches of rules on relationships between servicemen (the phenomenon of hazing or “*dedovschina*”). According to Directive-18, the effectiveness of suicide prevention was negatively affected by the underappreciation of and the lack of a systemic approach to the issue, the lack of statistics, and the lack of a proper investigation and analysis of suicide attempts. Directive-18 instructed the responsible authorities to elaborate a system of psychological assistance to ensure psychological health and to prevent suicide among military servicemen.

B. The system of psychological assessment and assistance

41. The system of psychological assessment and assistance in the military forces at the material time was organised as follows.

42. Most military formations were to be staffed with psychologists. In addition to them, the organisation and performance of psychological work in military formations was to be ensured by the commanders of those formations, doctors, educational service officers, and specialists in professional psychological screening (see below) (generally, “responsible officers”).

1. Professional psychological screening

43. People entering the army (by conscription, contractual enlistment, or for military education) were required to have passed professional psychological screening (“PPS”) (the Russian Ministry of Defence’s Decree no. 50 of 26 January 2000 on the Introduction of the Guide to Professional Psychological Screening in the Armed Forces of the Russian Federation, “Decree 50”). The purpose of the PPS is to find the people who best fit the requirements of a particular military job.

44. As a result of the PPS, people are assigned to one of four categories of eligibility for military service depending on their mental and intellectual abilities to perform a particular military job.

45. The fourth and last category (“not recommended”) implies that the people in this category have unsatisfactory abilities to study and will thus not be able to satisfy the requirements of military jobs.

46. As part of PPS, people’s neuropsychological resilience is also determined. A person with unsatisfactory neuropsychological resilience (“UNPR”) also falls into the fourth category of eligibility for military service.

47. The fourth category precludes a person’s military education or contractual enlistment, but not conscription into the army.

2. Psychological assessment and monitoring

48. In addition to PPS, every military serviceman or student of a military educational facility has his or her psychological state individually assessed and that assessment is recorded in his or her personal and medical files. The assessment is carried out at the following stages: on registration in the military registry; on conscription/contractual enlistment/admission to a military educational facility; at the beginning of the service or studies; at the time of transfers; and at regular intervals during military service.

49. Responsible officers ensure that the initial assessment and medical examination of newly arrived military servicemen is carried out within the first month of their arrival (Decree 50 and the 1997 Guide to Psychological Work in the Russian Military Forces (in peacetime) (“the 1997 Guide”). Before the arrival of new servicemen, the psychologist of a formation has to organise and carry out special professional training for officers, informing them about matters including practical methods of psychological work, identification of signs of UNPR and prevention of suicide.

50. Initial assessment starts with an individual discussion to become acquainted with each new serviceman or student. Responsible officers may also study documents available in respect of each military serviceman or student (family situation, medical history (including that of relatives), school results, work experience, criminal records, and so on). Servicemen fill in questionnaires and take various tests designed to examine their

cognitive abilities, attention span, personality features, the particularities of their nervous system, and their neuropsychological resilience. All the information is to be recorded in a personal file.

51. Responsible officers have a duty to continuously observe personnel (for instance, for bodily injuries, self-mutilation, substance abuse or signs of UNPR or other mental distress) and monitor servicemen individually and in groups (“follow-up assessment”).

52. If at any stages of the initial assessment or at any other moment responsible officers notice any signs of UNPR or some other mental distress, the serviceman in question is to be sent for a medical examination and/or consultation with a psychologist. Also, any military serviceman or student may have a consultation with a psychologist at his or her own request.

53. The doctor and/or the psychologist performs an “in-depth” assessment and, if necessary, may then decide to send the military serviceman or student for a consultation with a psychiatrist. If a military serviceman has been assigned to the UNPR group at or before the time of his conscription, such a consultation upon his or her arrival at a military unit is mandatory.

54. Depending on the diagnosis made after the consultation with a psychiatrist, changes in the serviceman’s or student’s regime, activities, leave, medication or in-patient treatment may be prescribed. If necessary, military servicemen may be sent for re-examination by a panel on eligibility for military service.

55. People with UNPR are placed under special supervision (so-called “preventive dynamic supervision”). An individual plan of corrective and preventive activities or treatment for those people must be drawn up. People with UNPR are prohibited from taking up duties involving access to weapons, such as combat or sentry duty.

3. Psychological work before combat or sentry duty

56. Medical officers and/or psychologists have a duty to verify, two or three days in advance, that the lists of people to be assigned duties involving access to weapons do not contain the names of people who have been assigned to the UNPR group (the 1997 Guide). Those lists should also exclude people who have previously made suicide attempts (Directive 18). In addition, doctors and/or psychologists examine people for signs of mental or physical illnesses before they take up combat or sentry duty – it is prohibited to assign sick people and “other servicemen who are unable to perform sentry duty at [that] time owing to their mental and psychological state” to combat or sentry duty (Article 130 of the then Charter on Sentry Duty, adopted by President’s Decree no. 2140 of 14 December 1993).

III. DISCLOSURE OF INFORMATION CONCERNING THE PRELIMINARY INVESTIGATION

57. Article 161 of the Code of Criminal Procedure provides that data from the preliminary investigation cannot be disclosed. Under Article 161 § 3, information from the investigation file may be divulged with the permission of a prosecutor or investigator, and only in so far as it does not infringe the rights and lawful interests of the participants in criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in criminal proceedings without their permission.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

58. The applicant complained about her son's suicide and alleged that its investigation had been ineffective. She relied on Article 2 of the Convention, which read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

59. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicant

60. The applicant submitted that, apart from the general legal norms and measures referred to by the Government on prevention of suicide, they had provided no information or evidence about any particular steps taken in respect of her son.

61. The applicant further submitted that the Government's assertions that her son had committed suicide owing to psychological problems and that he had had a good level of neuropsychological resilience and had presented a low suicide risk were mutually exclusive. She observed that the Government had not provided any further information after her son's psychological examination on 24 November 2005. The applicant submitted that if her son had indeed killed himself because of problems during his

military service, the investigation had failed to establish the reasons for the suicide. In particular, neither the investigation nor the Government's observations had addressed the actions of Majors D. and B. in humiliating and insulting Sergey Boychenko, accusing him of thefts and pressuring him, which could have led to his suicide. She noted a change in certain witnesses' statements, which could have been explained by Majors D. and B.'s continued service and the witnesses' fear of reprisals.

62. As for the investigation into her son's death, the applicant noted that it had not been opened until a week after the incident, on 31 March 2006, and only following her request to that effect. Furthermore, she had been granted victim status almost a year later, on 20 February 2007. Thus, for eleven months the applicant had had no procedural rights, such as the right to have access to information about the investigation, to participate in investigative activities, submit procedural applications and request a forensic examination. The applicant had not been able to access the documents from the criminal investigation into her son's death until an even later stage, on 21 January 2008. Thus, the investigation had not ensured her involvement or public scrutiny. Without access to the case file, the applicant had been prevented from exercising her other rights in an effective manner. The first decision to terminate the criminal investigation had been quashed as the express result of the failure to recognise her victim status and consequently, to secure her procedural rights. The applicant contested the Government's statements about the examination of hypotheses other than suicide as unsubstantiated. She submitted that the two-year duration of the investigation had been unreasonable and excessive.

(b) The Government

63. The Government submitted that the criminal investigation into Sergey Boychenko's death had concluded, relying on extensive evidence, that it had resulted from suicide. Sergey Boychenko had taken his own life as a result of the "psychological stress caused by low professional skills, disappointment with the location and conditions of his military service, and his unsettled personal life". Also, the investigation had found no fault on the part of any other people, including the command of military unit no. 39032. The above findings had been confirmed by the national courts. Thus, there had been no violation of Sergey Boychenko's right to life under Article 2 of the Convention.

64. The Government also referred to a number of relevant legal instruments (see paragraphs 40-56 above) establishing a system of psychological assessment and assistance in the Russian military forces. Those legal instruments required, *inter alia*, military officers to take measures on prevention of suicide. At special training sessions military officers were regularly reminded about the need to take measures to prevent

suicide and to preserve and strengthen the psychological health of military servicemen.

65. In order to be eligible for military service or military education, a person had to pass a professional psychological screening procedure (“PPS”), which determined the person’s aptitude to study and to be given access to weapons.

66. In accordance with the requirements of the Guide to Psychological Work in the Military Forces of the Russian Federation, newly arrived military servicemen took a number of tests, namely “SR-10” (identification of suicidal tendencies), “Prognoz-2” (mental and psychological state) and “MLO” (ability to adapt), on a monthly basis. On the basis of the test results, people presenting a suicide risk were placed under special supervision by the psychologist and the command of the military unit. In special cases military servicemen were sent for additional examination by a military psychiatrist.

67. All military units were staffed with a psychologist. Psychological assistance to military servicemen was provided upon their voluntary request or with their consent. People experiencing a crisis situation could seek psychological assistance at any time.

68. Sergey Boychenko had successfully passed the PPS and had been admitted to a military school. According to the available data, based on Sergey Boychenko’s psychological examination on 24 November 2005, he had shown a good level of neuropsychological resilience and a low risk of suicide. Thus, he had been allowed to take up duties involving access to weapons.

69. The officers of military unit no. 39032 had followed special training sessions reminding them about the relevant legal documents requiring them to take measures to preserve and strengthen the psychological health of military servicemen.

70. Military unit no. 39032 had been properly staffed with medical personnel and a psychologist.

71. Sergey Boychenko had never sought assistance from doctors or the psychologist of his military unit.

72. The Government refused to provide copies of documents of Sergey Boychenko’s psychological examination upon his admission for education and for service in military unit no. 39032, with reference to Article 161 § 3 of the Code of Criminal Procedure, prohibiting the disclosure of personal information collected during a criminal investigation (see paragraph 57 above).

73. As for the criminal investigation, the Government submitted that Sergey Boychenko’s death had been investigated in accordance with the relevant national procedure. The investigation had been carried out by an independent State authority, namely a military prosecutor’s office. All the necessary investigative activities had been performed speedily. Various

hypotheses, including those of murder and incitement to suicide, had been examined, even if they had eventually been dismissed. The decision to terminate the criminal investigation had been based on witness statements, records of the incident scene examination, forensic expert reports and a psychological post-mortem expert opinion.

74. The Government noted that despite the length of the investigation after its reopening, the eventual conclusion had remained the same. The investigation had been reopened only as a result of the applicant's complaint in order to examine her arguments. The investigator had properly informed the applicant about any procedural decisions taken. As noted above, the decision of the investigator to terminate the criminal proceedings had been confirmed by the national courts.

75. The Government concluded that the investigating and judicial authorities had taken all necessary steps to establish all the circumstances of Sergey Boychenko's death. That being so, the investigation had complied with the requirements of Article 2 of the Convention.

2. *The Court's assessment*

(a) **General principles**

(i) *Substantive aspect*

76. 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).

77. 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 of Judgments and Decisions* 1998-III). This involves a primary duty on the part of the State to adopt and implement a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see, for instance, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII and *Öneryıldız v. Turkey* [GC], no. 48939/99, § 89, ECHR 2004-XII; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 135, 25 June 2019; and *Kurt v. Austria* [GC], no. 62903/15, § 157, 15 June 2021). In the context of persons 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 *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 56, 17 June 2008; *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009; *Mosendz v. Ukraine*, no. 52013/08, §§ 92 and 98, 17 January 2013; *Perevedentsevy v. Russia*, no. 39583/05, § 93, 24 April 2014; and *Tikhonova v. Russia*, no. 13596/05, § 68, 30 April 2014).

78. The obligation to safeguard lives 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*, cited above; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III; *Kılınc and Others v. Turkey*, no. 40145/98, § 40, 7 June 2005; *Durdu v. Turkey*, no. 30677/10, § 62, 3 September 2013; *Yasemin Doğan v. Turkey*, no. 40860/04, § 43, 6 September 2016; *Nicolae Virgiliu Tănase*, cited above, § 136; and *Kurt*, cited above, § 157).

79. Not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. The Court must examine whether 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 and, if so, whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan*, cited above, §§ 89 and 93; *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 50-51, 15 January 2009; *Shumkova v. Russia*, no. 9296/06, § 90, 14 February 2012; *Şahinkuşu v. Turkey*, no. 38287/06, § 58, 21 June 2016; *Yasemin Doğan*, cited above, § 46; *Cengiz and Saygıkan v. Turkey*, no. 26754/12, § 47, 24 January 2017; *Nicolae Virgiliu Tănase*, cited above, § 136; and *Kurt*, cited above, § 158).

80. Concerning suicide risks in particular, the Court has previously had regard to a variety of factors in order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures. These factors commonly include: a history of mental health problems; the gravity of the mental condition; previous attempts to commit suicide or self-harm; suicidal thoughts or threats; and signs of physical or mental distress (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 115, 31 January 2019, with further references). The principles established in the above cited *Fernandes de Oliveira* case, concerning a psychiatric inpatient, apply equally to people in custody (see *Kotenok v. Russia*, no. 50636/11, § 54, 23 March 2021) and, similar to them, to conscripts and contractual military servicemen, whose conditions of life and service correspond to those of conscripts, as they are also within

the exclusive control of the authorities of the State (see *Mosendz*, cited above, § 92 and *Tomac v. the Republic of Moldova*, no. 4936/12, § 52, 16 March 2021, respectively). Furthermore, the States are expected to set high professional standards among military personnel and ensure that military servicemen meet the requisite criteria (see *Abdullah Yilmaz*, cited above, §§ 56-57). According to the Court's case-law, the State bears responsibility for the death of a victim who was driven to suicide by his bullying and ill-treatment by his hierarchical military supervisors (see *Abdullah Yilmaz*, cited above, §§ 59-76; *Mosendz*, cited above, § 112; *Şahinkuşu*, cited above, § 52; and *Yasemin Doğan*, cited above, § 47).

(ii) *Procedural aspect*

81. 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 an effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV; *Branko Tomašić and Others*, cited above, § 62; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015; and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 230, ECHR 2016). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II, and *Mezhiyeva v. Russia*, no. 44297/06, § 72, 16 April 2015). The same standards also apply to investigations concerning fatalities during compulsory military service, including the suicide of conscripts (see *Hasan Çalışkan and Others v. Turkey*, no. 13094/02, § 49, 27 May 2008, and *Abdullah Yilmaz*, cited above, § 58), or contractual military servicemen (see *Beker*, cited above, §§ 41-43; *Durdu*, cited above, §§ 69-74; and *Yasemin Doğan*, cited above, §§ 60-63).

82. The investigation must be adequate in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example,

mutatis mutandis, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63).

83. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mustafa Tunç and Fecire Tunç*, cited above, § 177).

84. There must also be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the next of kin of the victim must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011, and *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 70, 31 July 2014).

(b) Application to the present case

(i) Substantive aspect

(a) Obligation to put in place a regulatory framework

85. The Court reiterates that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant or the deceased gave rise to a violation of the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 188, 19 December 2017). Therefore, the mere fact that the regulatory framework may be deficient in some respects is not sufficient in itself to raise an issue under Article 2 of the Convention. It must be shown to have operated to the person's detriment (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 107, 31 January 2019). The Court will therefore examine whether any particular deficiencies of the system of psychological assessment and assistance in the Russian army adversely affected Sergey Boychenko.

86. The domestic legislation has established a system of psychological assessment and assistance in the military forces (see paragraphs 40-56 above) which is also designed, among other things, to prevent suicide. People have to pass a psychological assessment before and during their military education or service. In cases involving psychological issues, including suicide risk, certain limitations are placed on eligibility for military education or service and on access to weapons. Also, military students or servicemen with psychological issues are put under special supervision and should follow an individual plan of corrective and preventive activities or treatment. Psychological assistance is also available on request to all military students and servicemen.

87. On the basis of the available data, the Court observes that Sergey Boychenko's psychological assessment did not reveal any issues or suicide risk which would have required his subsequent supervision and treatment

and the limitation of his access to weapons. Sergey Boychenko also did not seek psychological assistance on his own. Thus, there is no evidence of any deficiencies in the system of psychological assessment and assistance in the military forces which could have contributed to the death of Sergey Boychenko. Accordingly, the Court discerns no issue under Article 2 of the Convention as regards the system of regulatory measures on prevention of suicide in the Russian military forces in the circumstances of the present case.

(β) Obligation to take preventive operational measures

88. The Court will now examine whether the authorities knew or should have known of the existence of a real and immediate risk that Sergey Boychenko would commit suicide and, if so, whether they did all that could reasonably have been expected of them to avoid that risk from materialising.

89. In the present case there is no evidence that Sergey Boychenko had ever suffered from a mental disorder or had a history of suicide attempts or self-harm.

90. On the other hand, the Court notes that many fellow officers and soldiers noted Lieutenant Boychenko's low morale, caused by the distant location of their military unit and by professional difficulties, especially, acute conflicts with his superiors, Major B. and Major D. and bullying suffered by them. As it appears from the internal inquiry (see paragraph 12 above), Major B. and Major D. had gone beyond the normal limits of criticism in respect of Lieutenant Boychenko, as they had insulted him, including in the presence of others, and repeatedly accused him of thefts of fuel. Such excessive actions, unjustified by military needs, educational or disciplinary purposes, undoubtedly created an undue pressure and, as also found by the experts (see paragraph 35 above), could have negatively affected the mental state of Sergey Boychenko. As the national investigation established, at least five people in the military unit had been aware that Sergey Boychenko had had suicidal thoughts. So, in the three months preceding the death, three people heard Sergey Boychenko talking about taking his own life (see paragraphs 31-32 above). Further, having heard Sergey Boychenko's talk about suicide before the beginning of their service and having observed him later on, Lieutenant U. apparently considered it necessary to mention it to Major P., the head of the educational service, who was responsible for psychological work in military unit no. 39032 (see paragraph 30 above). Consequently, Major P. knew about Lieutenant Boychenko's suicidal thoughts from Lieutenant U.

91. Therefore, the command of military unit no. 39032 knew or should have known that the applicant's son was experiencing mental distress and had had suicidal thoughts.

92. However, there is no evidence that anything was ever done in response to Sergey Boychenko's signs of mental distress and suicidal

intentions to determine the seriousness of his state and the risk of suicide (see *Perevedentsevy*, cited above, § 100; *Bljakaj and Others v. Croatia*, no. 74448/12, § 115, 18 September 2014; compare with *Şahinkuşu v. Turkey* (dec.), no. 38287/06, § 58, 21 June 2016). So, although the domestic legislation seems to provide for such a possibility (see paragraph 52 above), no medical consultation with a psychologist or psychiatrist was suggested to him.

93. Most importantly, Major P., despite being aware of Lieutenant Boychenko's low morale and suicidal thoughts, did not undertake any actions, including, for instance, those foreseen by the relevant legal framework (see paragraphs 52-56 above). The internal inquiry also considered the ineffective actions of Major P. to be a reason for Lieutenant Boychenko's death (see paragraph 12 above).

94. It has not been shown that the applicable requirements in respect of the psychological examination of newly arrived military servicemen were complied with in the present case. According to the Government, newly arrived military servicemen take various tests every month, including for the determination of suicide risks, (see paragraph 66 above). However, the Government refused to provide any detailed information concerning Sergey Boychenko, other than that he had been found eligible for military school and that he had passed a psychological examination on 24 November 2005 (see paragraph 68 above). The Government referred to Article 161 § 3 of the Code of Criminal Procedure (see paragraph 72 above) as an explanation for their refusal. In this connection the Court reiterates that it has already found such explanation insufficient to justify the withholding of key information requested by it (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)). It can therefore draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations (see *Gisayev v. Russia*, no. 14811/04, § 124, 20 January 2011). The Court will thus continue on the assumption that Sergey Boychenko underwent a psychological examination only once, on 24 November 2005, after being transferred to military unit no. 39032. The Court notes that this appears to be at variance with the requirements of the domestic legislation, for instance, the obligation to perform a psychological examination of newly arrived servicemen within the first month following their arrival and later at regular intervals (see paragraphs 48-49 above), not to mention monthly, as indicated by the Government (see paragraph 66 above).

95. The above were appropriate measures to avoid the risk to the applicant's son's right to life on account of acts of self-harm. While the Court cannot conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, it reiterates that the test under Article 2 does not require it to be shown that "but for" the failing or omission of the authorities the death would not have occurred. Rather, what

is important, and what is sufficient to engage the responsibility of the State under that Article, is that the reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see *Bljakaj and Others*, cited above, § 124, with further references).

96. In the light of the above considerations, the Court concludes that the State failed to comply with its positive obligation to take appropriate steps to safeguard the life of the applicant's son.

(ii) *Procedural aspect*

97. The Court reiterates that in cases concerning a death or life-threatening injury in circumstances that might give rise to the State's responsibility, 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, for example, *Branko Tomašić and Others*, cited above, § 62, with further references; *Nicolae Virgiliu Tănase*, cited above, § 164; and *Hanan v. Germany* [GC], no. 4871/16, § 201, 16 February 2021). Furthermore, the authorities must make all reasonable efforts given the practical realities of investigation work, including by having in place the necessary resources, to ensure that on-site and other relevant evidence is collected promptly and with sufficient thoroughness to secure the evidence and to eliminate or minimise any risk of omissions that may later undermine the possibility of establishing liability and of holding the person(s) responsible accountable. The obligation to collect evidence ought to apply at least until such time as the nature of any liability is clarified and the authorities are satisfied that there are no grounds for conducting or continuing a criminal investigation (see *Nicolae Virgiliu Tănase*, cited above, § 162).

98. In the present case the applicant had to refuse the burial of her son and to insist on a forensic autopsy being performed on his body and a criminal investigation being opened (see paragraphs 14-15 above). As a result, the criminal investigation in the present case was initiated and the autopsy performed only on 31 March 2006, a week after the incident and further to the applicant's complaints in that regard. Consequently, no criminal investigative activities were performed during the first week after the incident, which is normally the crucial period for any investigation.

99. Furthermore, from the beginning of the criminal investigation, the applicant was not granted victim status and was not informed about any of its steps. So, although the investigation was first closed two months later, on 31 May 2006, the applicant learnt about this only by accident on 21 September 2006. She was eventually granted victim status on 20 February 2007 (see paragraph 18), after the investigation had been reopened. Even after that, the applicant did not have the opportunity to

study the case file until 21 January 2008 (see paragraph 36 above), by which time the investigation had been already closed again, on 2 July 2007. Thus, in the present case the applicant's right to be involved in the criminal investigation was not respected from the opening of the investigation on 31 March 2006 until its closure on 2 July 2007. It can therefore be concluded that the applicant's involvement and public scrutiny of the investigation were not secured in the present case.

100. The foregoing considerations are sufficient to enable the Court to conclude that the investigation in the present case was not efficient and, thus, that the respondent State failed to comply with its procedural obligation under Article 2 of the Convention.

(iii) Conclusion

101. There has accordingly been a violation of Article 2 of the Convention under its substantive and procedural limbs.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. The Court has also examined the applicant's complaints under Articles 3 and 13 of the Convention that two senior officers had publicly insulted, humiliated and otherwise put undue pressure on her son which ultimately led to his suicide; that as a result of her son's death she experienced mental suffering which amounted to inhuman and degrading treatment and that she had no effective remedies in respect of those grievances. The Court notes that during the criminal investigation witnesses were asked to comment on the conduct of the two officers towards Sergey Boychenko. About twenty-five witnesses stated that the latter's conduct had not been prejudicial. Given those statements it is impossible to establish beyond reasonable doubt that the officers' behaviour towards Sergey Boychenko had amounted to inhuman or degrading treatment. As for the applicant's complaint that as a result of her son's death she experienced mental suffering which amounted to inhuman and degrading treatment, the Court notes that, while there is no doubt of the profound suffering caused to the applicant by the death of her son, there are no particular circumstances in the present case which could raise an issue under Article 3 of the Convention (see *Bitiyeva and Others v. Russia*, no. 36156/04, §§ 105-06, 23 April 2009). In the absence of an arguable complaint under Article 3, the complaints under Article 13 are manifestly ill-founded. Therefore, 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 a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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 contended that the applicant’s rights had not been violated and that there were therefore no grounds for compensation. In the alternative, the Government submitted that the sum claimed by the applicant was obviously excessive and not in line with the Court’s case-law.

106. The Court awards the applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicant did not submit any claims in respect of costs and expenses.

C. Default interest

108. 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

1. *Declares*, unanimously, the complaints under Article 2 of the Convention admissible, and, by a majority, the complaints under Articles 3 and 13 of the Convention inadmissible;
2. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its substantive limb;
3. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds*, unanimously,

- (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 26,000 (twenty-six thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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;
5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lemmens and Elósegui is annexed to this judgment.

P.L.
M.B.

JOINT CONCURRING OPINION OF JUDGES LEMMENS AND ELÓSEGUI

1. We have voted with the majority in favour of finding a violation of Article 2 of the Convention, under both its substantive and its procedural limb.

To our regret, however, we are unable to agree with the majority's approach to the case. Under the substantive limb, they limit their analysis to the question whether the military authorities should have known that the applicant's son was experiencing mental distress and had had suicidal thoughts and whether there had been sufficient psychological assessment and assistance. Under the procedural limb, they limit their findings to the issue of the applicant's involvement in the criminal investigation.

The majority thus prefer not to deal with what is the big elephant in the room: the allegation that Sergey Boychenko was driven to suicide by the brutal actions of his two commanding officers, Majors D. (the head of the military unit) and B. (his deputy).

In our opinion, this is not an "ordinary" case of suicide in the army, but a very specific case, which deserves a very specific approach. The majority acknowledge that "the State bears responsibility for the death of a victim who was driven to suicide by his bullying and ill-treatment by his hierarchical military supervisors" (see paragraph 80 of the judgment, referring to a number of judgments of the Court). Unfortunately, however, apart from merely referring to this ground for the State's responsibility for a suicide, the majority do not pay any attention whatsoever to this aspect of the case.

2. And yet, at the domestic level the case turned primarily if not exclusively on the issue of whether Majors D. and B. had incited Sergey Boychenko to commit suicide.

In this connection, we note the following:

- in his internal inquiry, immediately after the facts, Lieutenant Colonel Ch. examined in detail how Sergey Boychenko, a young lieutenant who had arrived in the military unit right after his graduation from military school, had difficulties handling equipment which he had never studied and dealing with some of his subordinates, and how he was treated by his commanding officers D. and B. The conclusion of Lieutenant Colonel Ch. was clear: "Lieutenant Boychenko had taken his life because of the disrespectful behaviour of Major D. and Major B. and the resulting unhealthy environment in the military unit" (see paragraph 12 of the judgment). It was only in addition to this main conclusion that Lieutenant Colonel Ch. also pointed to the fact that Major P., the deputy head of the military unit responsible for "educational work", had been ineffective in responding to the situation created by Majors D. and B. (*ibid.*);

- the criminal investigation, opened at the request of the applicant, was about a possible infringement of Article 110 of the Russian Criminal Code, that is, about incitement to commit suicide (see paragraph 15 of the judgment);

- the investigation was closed on the ground that there had been “no evidence of unlawful actions on the part of Lieutenant Boychenko’s commanding officers which could have been connected to his suicide” (see paragraph 38 of the judgment, referring to the decision of the Military Court of the Spassk-Dalniy Garrison of 18 July 2008).

3. In her application to the Court, the applicant again focused on the actions of Majors D. and B., and complained that neither the domestic investigation nor the Government in their submissions to the Court had addressed those actions (see paragraph 61 of the judgment).

4. In this case the Government have been successful in sending the Court the wrong way by referring extensively to the legislative and regulatory framework on psychological assistance in the army and then by focusing on the *reaction* by the officer responsible for the psychological well-being of military personnel to the situation that had developed after the arrival of Major D. in the military unit (see, with regard to this chronology, the statement by Major P., quoted in paragraph 8 of the judgment). Nothing was said about the *actions* that may have led to this situation. This issue was conspicuously avoided by the Government.

A hard case about bullying and humiliation in the army, to such a degree that it might have driven a young lieutenant to suicide, has been turned into a much softer case of lack of sufficient psychological assistance to contractual military personnel who, for whatever reason, have suicidal thoughts.

5. We regret that the majority prefer not to go deeper into the issue of incitement to suicide. In our opinion, the case file gives us reasons to be very suspicious about what actually happened.

Indeed, we note a striking development in the description of the situation in the relevant military unit. Initially, the servicemen and women who made written contributions to Lieutenant Colonel Ch.’s inquiry all mentioned how Sergey Boychenko had changed after the arrival of Major D. in his unit and how he had been the subject, on “a countless number of occasions” (see Sergeant Major N.’s statement, quoted in paragraph 10 of the judgment), of severe humiliation, including accusations of a lack of professional competence and even of theft of army material. This led Lieutenant Colonel Ch. to conclude, as already indicated above, that Sergey Boychenko “had taken his life because of the disrespectful behaviour of Major D. and Major B.” (see paragraph 2 above). During the subsequent criminal investigation, by contrast, the witnesses all downplayed the seriousness of the humiliations suffered by Sergey Boychenko and instead tried to point to the weaknesses in his personality.

We have sympathy with the applicant, who also noted this change in certain witness statements, and who submitted as an explanation “Majors D. and B.’s continued service and the witnesses’ fear of reprisals” (see paragraph 61 of the judgment).

6. In our opinion, apart from the fact that the applicant was not sufficiently involved in the criminal investigation, that investigation suffered from a much more important deficiency. Confronted with the clear divergence between the statements made during the internal inquiry, right after the facts, and those made about a year later, the investigation should have sought an explanation for this divergence and should have tried to resolve the discrepancies. Moreover, we cannot but agree with the applicant that there was no real investigation into D.’s and B.’s actions. The criminal investigation was more about the victim (Sergey Boychenko) than about the alleged perpetrators (Majors D. and B.).

We will not enter into details here, but in our opinion there were many lacunae in the criminal investigation. Too many questions which should have been obvious to an investigator were left unanswered. For instance: what exactly did some witnesses mean when they said that the relations between Sergey Boychenko and his commanding officers had merely been “complicated” (see paragraph 29 of the judgment)? What exactly did Sergey Boychenko mean when on some occasions he had stated that he would kill himself because of the constant monitoring of his actions and the accusations of theft of fuel (see paragraph 32 of the judgment)?

In our opinion, the investigation was far from thorough. This failure, rather than the failure to involve the applicant in the investigation, should have been the major reason for finding a violation of Article 2 in its procedural limb.

7. Furthermore, we note that in his conclusions Lieutenant Colonel Ch. considered “that an assessment committee should examine whether Majors D. and B. should continue serving in the military forces” (see paragraph 13 of the judgment).

The Court has not been informed of any disciplinary investigation into D.’s and B.’s conduct, or of any measure entailing their suspension pending the outcome of such an investigation. On the contrary, as indicated above, according to the applicant, Majors D. and B. continued to serve as commanders of the unit (see paragraph 5 above). May we ask whether they received protection from on high?

8. With respect to the substantive limb of Article 2, it is not for us to pass judgment on whether the allegation of incitement to suicide is well-founded or not. That is a task for the domestic authorities, and as indicated above, we are of the opinion that they failed in their task of exposing the truth.

What we can note, however, is that apparently no steps were taken to de-escalate the conflict between Sergey Boychenko and his commanding

officers. We are not speaking here of the lack of psychological assistance to Lieutenant Boychenko; that would be merely “curing the symptom”, not tackling the problem at its roots. What we have in mind are measures directed at Majors D. and B., who, even according to the majority, displayed “excessive actions, unjustified by military needs, educational or disciplinary purposes” (see paragraph 90 of the judgment). No remedial action against them was taken. In our opinion, it is not Major P. who should take all the blame for that failure. Rather, it is the “system” that did not allow for more immediate action against commanding officers who were obviously unfit to deal with subordinates in need of guidance and advice and whose conduct might well have led to an event as tragic as a suicide.

There has therefore been a substantive violation of Article 2, if not because of incitement to suicide on the part of State agents (an issue which we must leave open), then at least because of the insufficient reaction to the risk to Sergey Boychenko’s life created by the wholly inappropriate conduct of his commanding officers.