

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

THIRD SECTION

CASE OF KHABIROV v. RUSSIA

(Application no. 69450/10)

JUDGMENT

Art 2 (substantive) • Life • Positive obligations • Death of applicant's son during compulsory military service • No deficiencies in military forces' system of psychological assessment and assistance • Adequate preventive operational measures 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 Khabirov 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. 69450/10) 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, Mr Saitgaray Mingareyevich Khabirov ("the applicant"), on 12 November 2010;

the decision to give notice to the Russian Government ("the Government") of the complaint under Article 2 of the Convention concerning the death of the applicant's son and its investigation and to declare inadmissible the remainder of the application;

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 compulsory military service and the subsequent investigation.

THE FACTS

2. The applicant was born in 1956 and lives in Kazan, in the Republic of Tatarstan. The applicant was represented by Mr R.K. Akhmetgaliyev, a lawyer practising in Kazan.

3. The Government were initially represented 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. THE APPLICANT'S SON'S MILITARY SERVICE AND DEATH

5. On 23 June 2005 the applicant's son, Radik Khabirov, was conscripted into compulsory military service. The psychological examination performed before the conscription concluded that he was fit for military service.

6. The applicant's son attended training in military unit no. 50661 based in Saratov, and the following incident happened while he was there. When Radik Khabirov was reprimanded for having a dirty uniform, he started crying and attempted to jump out of a window in his barracks. Some other soldiers pulled him away from the window. He later told another soldier, Pte V. (see paragraph 35 below), that he had been distressed by news from his grandmother about her poor harvest.

7. On 21 November 2005 Pte Khabirov was sent to continue his military service in military unit no. 61964 based in Totskoye, in the Orenburg Region. Upon his arrival there he sat psychological tests which revealed that he had a low neuropsychological resilience ("NPR") and was a suicide risk. He admitted having considered suicide on one occasion. The applicant's son expressed having no desire to serve in the military forces. He was placed under special supervision and was to have individual corrective discussions with the psychologist of the military unit.

8. On 22 November 2005 Pte Khabirov left the military unit without authorisation. He was later found and brought back to the unit.

9. On 27 November 2005 Pte Khabirov again deserted. The following day he was arrested on a train. Upon his return to the unit the psychologist interviewed him. The applicant's son explained that he did not want to continue serving in the army, as everything there irritated and depressed him. He stated that if he were not dismissed from the army, he would leave the unit again. He also complained of frequent headaches. At the psychologist's suggestion, Pte Khabirov met with a psychiatrist, who recommended placing the soldier in the medical service.

10. On 3 December 2005 the applicant's son was placed in the medical service of his military unit.

11. On 14 December 2005 the commander of the military unit, the psychologist and the head of the unit's medical service signed Pte Khabirov's individual assessment report, which concluded that he should not be assigned sentry duties or otherwise have access to weapons, and should be sent for a consultation with a psychiatrist.

12. On 18 December 2005 the applicant's son had another psychological examination, which also showed that he had a low level of NPR and was a suicide risk.

13. On 20 December 2005 Pte Khabirov was transferred to the psychiatric department of the military hospital of Totskoye. He was diagnosed with an adjustment disorder.

14. The applicant's son was also diagnosed with a skin disorder usually precluding military service. However, as a result of the medical treatment which he received in the hospital, his skin disorder improved, and on 19 January 2006 a military medical panel declared him fit for military service with insignificant limitations (the second category of eligibility for military service).

15. On 20 January 2006 Pte Khabirov was to be discharged from the hospital and was to be sent back to the military unit. After a discussion with him, the doctors decided to keep him in the hospital and recommend again that he be decommissioned.

16. On 22 January 2006 Pte Khabirov was formally readmitted to the psychiatric department, and at 5 p.m. a new entry was made in his medical record. The entry apparently contained the remark "Urgent!" ("*Cito!*") and indicated that the applicant's son had been diagnosed with a "neurotic reaction". During his readmission examination the patient complained that his state of health had worsened, his mood was unstable, his sleep was disturbed and he longed to be home. His psychological state was described in the medical record as follows:

> "[The patient] is conscious, [and] is properly oriented in time [and] place and about his personality. Mood context is unstable. Emotions are stable. Speaking [voice] is low, monotone. Facial expression is sad. [He] says: 'I wanted to continue the military service, but I remembered my family and suddenly wanted to go home very much.' Memory and cognition are not disturbed. Demonstrates no delirium or distortions of perception. Critical thinking is present. Denies suicidal thoughts."

17. At 9.30 p.m. the applicant's son met with his attending doctor, Dr Z. At 10 p.m. he talked with another patient, Z.

18. At 11.33 p.m. Radik Khabirov was found hanging from a noose in a toilet. He received first aid, but as a result of asphyxia he had brain damage which left him in a coma. He remained in the military hospital until 6 March 2006 and was then transferred to the Samara Military Medical Institute. Following a request by the applicant, on 25 April 2006 his son was taken to the Kazan Garrison Military Hospital. On 6 June 2006 the applicant took his son home. Radik Khabirov remained in a coma until his death on 1 April 2007 in a hospital in the Kirovskiy district of Kazan.

II. INVESTIGATION INTO THE APPLICANT'S SON'S SUICIDE ATTEMPT

A. Internal investigations

1. Military hospital of Totskoye

19. On an unspecified date the deputy commander of the military hospital, Lt Colonel O., and the head of the psychiatric department of the military hospital, Major L., reported the results of an internal investigation

into Pte Khabirov's suicide attempt. The report was based on earlier discussions with the soldier, his assessment material and medical documents. It stated as follows.

20. Radik Khabirov had been the second of three children in a nuclear family. When he had been two years old his mother had been deprived of her parental rights owing to a mental disorder. From the age of eight he had been raised by his paternal grandparents. The applicant's son had graduated from high school with average results; he had been shy, unsociable, and had lacked independence. After one college year he had been conscripted into military service. Pte Khabirov had made a negative impression during his military service, as he had been unstable, prone to taking unauthorised periods of leave, and had needed to be controlled. After the consultation with the psychiatrist in December (2005) he had been diagnosed with an adjustment disorder and had been placed firstly in the medical service and then, on 20 December 2005, in the psychiatric department of the military hospital. Upon his admission to the hospital, and later, Pte Khabirov had denied having suicidal thoughts. He had also been diagnosed with a skin disorder precluding his military service. Having learnt about that, the patient's "mood and general health situation had significantly improved, he had become more active and had started making plans for his life after decommissioning". As a result of the medical treatment, his skin disorder had improved and he had again been declared fit for service with insignificant limitations. Having learnt about that decision, the soldier had been very upset, saying that he would have continued his military service closer to home, but that in his current military unit he "would have no rest". After discussions with his attending doctor and the head of the psychiatric department, it had been decided that he should be kept in the hospital. On 22 January 2006 a new medical record with the diagnosis of a "neurotic reaction" had been entered into his file. The doctors had explained to Pte Khabirov that they planned to decommission him on the grounds of his health. The patient had been very relieved upon hearing that news. According to Nurses P. and G. who had begun their duties at 4.30 p.m., Radik Khabirov had seemed to be in a good mood, had been calm and had shared his plans for the future. At about 7 p.m. he had given a nurse a letter for his grandparents, describing his military training and service. In it, the applicant's son had also written "It is very hard to serve, in the barracks – [with the] regular bullying of new conscripts. I served and served and got tired and decided to run away". The letter had ended with the statement "everything will be fine, they will decommission me soon, do not worry, I will return, everything is under the control of the doctors, I wish I could come home sooner."

21. At about 9.30 p.m. Pte Khabirov had talked with Doctor Z., who had given him a detailed explanation about his upcoming examination by the

military medical panel. The former had been calm and had not showed any frustration or suicidal intentions.

22. At 10 p.m. Radik Khabirov had chatted with another patient, Pte Z., about decommissioning, after which time he had returned to his ward looking upset. Previous duty shifts had reported that Z. had made fun of Radik Khabirov, saying that in order to be decommissioned he would need "to do something with himself". After that (about two weeks before the incident) the applicant's son had been transferred to a ward for calm patients and had not communicated with Z.

23. At 11.30 p.m. Pte Khabirov had asked a nurse for permission to go to a toilet which had been closed for the night. Three minutes later he had been discovered hanging from a noose made out of a bedsheet. He had been provided with first aid and had been transferred to the intensive care and resuscitation department.

2. Military prosecutor's office of Totskoye

24. On 7 April 2006 the military prosecutor of the Garrison of Totskoye, Colonel N., submitted to the military authorities a report concerning breaches of legal requirements in the military hospital of Totskoye. Among other established breaches, attributed to the poor work of the head of the hospital, Lt Colonel S., the prosecutor noted two suicide attempts, including that of Pte Khabirov. The report read as follows where relevant:

> "So, from 30 November to 26 December 2005, and from 20 December 2005 to 22 January 2006 Ptes B. and Khabirov received treatment in the psychiatric department of the military hospital of Totskoye. Both servicemen had been diagnosed with an adjustment disorder. After being discharged, on 30 December 2005 B. attempted to commit suicide and jumped out of a window in the barracks, as a result of which he suffered serious health damage. On 22 January 2006 at about 10 p.m. ... R.Khabirov attempted to commit suicide in a toilet by using a bedsheet. ... He is currently in a coma. ...
>
> The investigation ... [has] established that in both cases the diagnosis and treatment were perfunctory and formulaic. As a result of that, and because the psychiatrists lacked sufficient experience in their field of specialisation, hidden psychological anomalies of the patients were not discovered; accordingly, they did not receive proper treatment [or a proper] examination of their eligibility for military service, and eventually they attempted to commit suicide, which demonstrates the need to reconsider the staffing of the psychiatric department."

25. It appears that on an unspecified date the head of the military hospital of Totskoye, Lt Colonel S., was dismissed from his post.

B. Criminal investigation into incitement to suicide

26. On 3 February 2006 an investigator decided not to open a criminal case under Article 110 of the Criminal Code of Russia (the "CC") (see paragraph 52 below) into alleged incitement to suicide. The investigator

held that Pte Khabirov had attempted suicide because of his serious psychological disorder, and that no actions of third parties had caused the attempted suicide.

27. On 2 June 2006 the decision of 3 February 2006 was set aside for failure to indicate the motives behind Pte Khabirov's actions. On 26 June 2006 the investigator again refused to open a criminal case, on the same grounds.

28. On 12 July 2006 the refusal of 26 June 2006 was set aside for failure to obtain a report on Pte Khabirov's psychological state prior to his suicide attempt and failure to thoroughly assess the circumstances of his suicidal actions. By the same decision a criminal investigation into the circumstances of Radik Khabirov's suicide attempt was initiated under Article 110 of the CC (incitement to suicide).

29. On 22 September 2006 an expert issued a report on a psychological assessment of Radik Khabirov which had been performed on the basis of the available personal file in respect of him and medical records. The expert noted, among other things, that although relatives had not confirmed this directly, there was information indicating that the soldier's mother had been deprived of her parental rights when he had been two years old. For four years she had been treated for schizophrenia in a psychiatric hospital. From the age of eight Radik Khabirov had been raised by his grandparents. The general conclusion was that Pte Khabirov had not suffered from any mental disorder before his conscription. During his military service he had developed a mental illness in the form of an adjustment disorder affecting his behaviour and emotions. That disorder had manifested itself in his inability to build good relations with other military servicemen and adapt to the conditions of military life, and had resulted in significant mood changes, a tendency to commit impulsive acts (including the taking of unauthorised leave from the military unit), and suicidal remarks and acts. The above disorder had developed in the context of the individual features of Radik Khabirov, who had been unsociable and immature. He had made an impulsive suicide attempt in a state of frustration.

30. On 12 December 2006 the investigator decided to close the criminal case into incitement to suicide, on the grounds that the alleged offence had not been committed. The decision relied on a number of witness statements, including statements from the following people.

1. Psychologist of the military unit

31. Senior Lt S., the military unit's psychologist, said in his statement of 12 July 2006 that the regiment's psychologist, Captain Sh., and the head of a psychological assistance and rehabilitation centre, Sergeant Major K., had carried out the initial psychological assessments in respect of new conscripts upon their arrival on 21 November 2005. Pte Khabirov's examination had revealed a low NPR and had identified that he was a suicide risk and had a

negative attitude towards military service. He had been placed under special supervision and it had been decided that he would have corrective discussions with the unit's psychologist, Senior Lt S.

32. During those discussions Senior Lt S. had found out that Pte Khabirov had been raised by his paternal grandparents and that his mother had been deprived of her parental rights owing to a mental illness and alcohol abuse. The psychologist had also learnt that before his military service Pte Khabirov had made a suicide attempt because of a fight with his mother due to her heavy drinking.

33. After his first unauthorised period of leave from the military unit Pte Khabirov had told Senior Lt S. that he suffered from headaches, that he wanted to go to his grandparents, and that if he were not decommissioned then he would leave again. The psychologist had proposed that he have a consultation with the psychiatrist, which Pte Khabirov had agreed to. After that consultation the psychiatrist had told Senior Lt S. that Pte Khabirov was simulating his state in order to be decommissioned. He had also advised that the soldier should be placed in the medical service of the military unit, as he had some kind of rash and would probably calm down during his medical treatment. Once that treatment in the medical service had finished Pte Khabirov had been sent for another consultation with the psychiatrist, and after that consultation he had immediately been sent to the psychiatric department of a military hospital with a diagnosis of a "psychiatric personality disorder".

2. Head of the medical service of the military unit

34. In her statement of 17 October 2006 the head of the medical service of Pte Khabirov's military unit, Major K., stated that after a consultation on 2 December 2005 the unit's psychologist had recommended that the soldier be placed in the medical service. On 20 December 2005 he had had another psychological examination, after which it had been decided that he should be sent to the military hospital. Major K. declared that Pte Khabirov had not had any bruises, injuries, or traces of cuts or injections on his body.

3. Other military servicemen

35. A fellow soldier, Pte V., mentioned that Radik Khabirov had attempted suicide during his military training in military unit no. 50661. When he had later been asked about the reasons for his actions, the applicant's son had explained that his grandparents had collected a poor harvest.

36. According to the witness K., in hospital, Radik Khabirov had closed himself off and had feared his return to the military unit, allegedly because he had been scared of the older conscripts. Another patient in the psychiatric department, P., testified that he had heard from someone that before the

military committee's decision of 19 January 2006 Radik Khabirov had said that if he were declared fit for service then he would do something to himself. The witness B. (another patient) and Nurse P. stated that on 22 January 2006 the applicant's son had been upset after talking to the patient Z., who had insisted that the latter would not be decommissioned.

37. A number of officers and soldiers from the military unit testified that Pte Khabirov had not suffered from bullying or been subjected to any other unlawful acts. The grandparents and the applicant confirmed that in his letters to them Radik Khabirov had not complained of such unlawful acts either.

4. Head of the psychiatric department of the military hospital

38. The head of the psychiatric department of the military hospital, Major L., stated that initially Pte Khabirov had been placed under the "strict control" regime. As the soldier had previously left the military unit without authorisation, it had been decided that he was also capable of leaving the hospital in the same way. The "strict control" regime meant that a person was placed in a ward located immediately next to the office of the nurse on duty, thus ensuring the uninterrupted observation of patients for their and others' safety. Given the improvement in the patient's psychological state, he had later been transferred to a regular ward. When the military commission had again declared Pte Khabirov fit for military service, he had become very upset, had showed a negative attitude towards the army, and had become anxious and emotionally unstable. It had been decided that Pte Khabirov should be kept in the hospital and that his decommissioning should be proposed again by February 2006 at the latest, that time on the grounds of him having a personality disorder. On 22 January 2006 Nurse G. had accompanied Radik Khabirov to the toilet room, leaving the door open so that she could check on the patient. She had complied with all necessary requirements to ensure the safety of the patient. However, Radik Khabirov had acted in a way which the medical staff had not expected and had secretly taken with him a bedsheet, which he had used to attempt suicide.

5. Nurse G.

39. Nurse G. stated that Pte Khabirov had always wanted to go home, hoping to be decommissioned. He had never complained of any bullying or ill-treatment. On 22 January 2006 she had been on duty since 4.30 p.m. the applicant's son had talked with her about his letter to his grandparents and his plans to go home. Later that day Pte Khabirov had met with his attending doctor, Dr Z. Nurse G. noted that Radik Khabirov had looked "happy and content" after his meeting with Dr Z., because the latter had confirmed to him that they would decommission him. At 10 p.m. patients had gone to their beds. Nurse G. had seen that Pte Khabirov had gone to the

toilet and had told another nurse, P., about that. She explained that patients from "strict regime" wards and patients in an acute state were accompanied; all other patients were checked on only if they were away for too long. Another patient, K., had gone to the toilet and had discovered Pte Khabirov hanging there from a noose. Nurse G. had run there to help.

6. Nurse P.

40. Nurse P. stated that Pte Khabirov had been unsociable and calm; he had not wanted to continue his military service and had missed home, and she had never suspected him of having suicidal thoughts. She also noted that the patient Z., who was very obsessive and stubborn, had tried to push Radik Khabirov around by obtrusively telling him how to make his bed and arrange his belongings and other things. Nurse P. had also witnessed Z. shouting at Radik Khabirov "they will not decommission you anyway".

41. On 22 January 2006 at about 7 p.m. Pte Khabirov had given her his letter to his grandparents to read, a letter in which he had talked about his plans for the future after his imminent homecoming. At 11.30 p.m. he had asked her to open the toilet for him. She had not suspected anything and had opened the toilet for him. She had been standing about three metres away from the door when she had decided to check on him. The patient K. had entered before her and had shouted that Radik Khabirov was hanging there. K. had got him to the floor and Nurse P. had started giving him first aid, while Nurse G. had called for doctors.

7. Pte Z.

42. Pte Z. stated that Radik Khabirov had been a secretive, unsociable person and had lacked hygiene, so he had often had to remind him to clean himself and his bed. Z. had heard about Radik Khabirov's family issues from the latter and had not heard anything about unlawful acts or pressure.

8. Forensic examinations

43. The decision to close the criminal investigation also relied on the report of a handwriting expert, a medical expert report and the psychological expert report of 22 September 2006 (see paragraph 29 above).

9. Conclusion

44. Relying on the above evidence the investigator found that no people were responsible for the alleged incitement to suicide. He also concluded that the military doctors had provided Pte Khabirov with proper medical assistance. The investigator closed the criminal investigation on the grounds that the alleged offence had not been committed. By a letter of 12 December 2006 the investigator informed the applicant about the decision.

C. Pre-investigation inquiry into negligence of military officers

45. On 16 July 2008 the applicant requested that a criminal case under Article 293 § 2 of the CC (negligence) (see paragraph 53 below) be opened against the commanding officers and the psychologists of military unit no. 50661, where his son had undergone his military training for five months, for their failure to recognise his suicidal tendencies and provide him with proper assistance before sending him to the permanent place where he would perform his military service. The applicant argued that if his son had been identified as having a low NPR and being a suicide risk on the day of his arrival at his new military unit no. 61964, then he must have developed his personality disorder during the preceding five months of his training in military unit no. 50661. However, the criminal investigation which had been performed had not examined the circumstances of Pte Khabirov's military service or the psychological assistance provided to him in military unit no. 50661.

46. On 25 July 2008 an investigator refused to grant the applicant's request on the grounds that the alleged offence had not been committed. The applicant challenged the refusal before a court. On 6 March 2009 the Saratov Garrison Military Court terminated the proceedings because by that time the prosecution had set aside the refusal of 25 July 2008.

47. On 4 April 2009 the investigator again refused to initiate a criminal case. The applicant applied to a court. The prosecution quashed the second refusal again and on 31 August 2009 the Saratov Garrison Military Court terminated the proceedings.

48. On 29 September 2009, for the third time, the investigator refused to open a criminal case in relation to the applicant's request, on the grounds that the alleged offence had not been committed. The investigator noted, in particular, that during Pte Khabirov's time in military unit no. 50661 his medical examinations had not revealed any issues which could have required that those in command of that military unit place him under supervision or take other necessary steps. Pte Khabirov had also not applied for medical or psychological assistance on his own initiative during his training in military unit no. 50661. In that regard, the investigator relied on the explanations given by the head of the medical service and the head of the medical assistance station of military unit no. 50661, as well as the explanations from the psychologist and the commander of that military unit. The investigator also referred to a complex medical and psychological examination, examination no. 35 of 3 April 2009, performed by the Saratov Military Medical Institute, and an expert opinion of the military educational and scientific centre of the land forces – The Combined Arms Academy of the Military Forces of Russia – of 29 September 2010. The experts held that Pte Khabirov had not suffered from a mental illness, but had demonstrated an adjustment disorder affecting his emotions and actions, which had

developed during his service in military unit no. 61964. The experts considered that Radik Khabirov had not had that disorder during his training in military unit no. 50661, but had developed it later, probably owing to the change in his place of service, conditions of military life, his difficulty adapting to a new group of people, and conflict situations with other servicemen.

49. The investigator further referred to the findings of the criminal investigation into the alleged incitement to suicide and the psychological expert report of 22 September 2006 (see paragraph 29 above) concluding that Radik Khabirov had developed an adjustment disorder during his military service in military unit no. 61964 and had made an impulsive suicide attempt in a state of frustration.

50. The investigator also noted that a number of documents, such as Radik Khabirov's psychological assessments carried out in military unit no. 50661, were unavailable because they were missing or had been destroyed after the time for keeping them in the archives had expired. However, it had in any event been thoroughly established that the adjustment disorder had developed during Pte Khabirov's military service in unit no. 61964, not unit no. 50661.

51. The investigator concluded that the responsible officers of military unit no. 50661 were not guilty of criminal negligence in respect of the applicant's son, and refused to open a criminal investigation on the grounds that the alleged offence had not been committed.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL LIABILITY

52. Article 110 of the CC 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.

53. Article 293 § 2 of the CC provides that "negligence, that is, a failure to comply or an improper compliance by a public official with his or her duties as a result of a bad faith or a careless attitude towards [public] service", is punishable by compulsory labour or a deprivation of liberty if it caused damage to health or a death of a person.

II. LEGAL FRAMEWORK ON PREVENTION OF SUICIDE

54. 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.

III. THE SYSTEM OF PSYCHOLOGICAL ASSESSMENT AND ASSISTANCE

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

56. Most military formations were to be staffed with psychologists. In addition to them, the organisation and performance of the 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").

A. Professional psychological screening

57. 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 on Professional Psychological Screening in the Armed Forces of the Russian Federation, "Decree 50"). The purpose of PPS is to find the people who best fit the requirements of a particular military job.

58. As a result of 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.

59. 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.

60. 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.

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

B. Psychological assessment and monitoring

62. 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 service or studies; at the time of transfers; and at regular intervals during military service.

63. Responsible officers ensure that the initial assessment and medical examinations of newly arrived military servicemen is carried out within the first month of their arrival (Decree 50, and the 1997 Guide on 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.

64. 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 information is to be recorded in a personal file.

65. 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").

66. If at any stage 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.

67. 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 moment of his conscription, such a consultation upon his or her arrival at a military unit is mandatory.

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

69. 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.

C. Psychological work before combat or sentry duty

70. 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

71. The applicant complained that the State had failed to protect the life of his son, and that the investigation into the circumstances leading to his son's death had not been efficient. The applicant relied on Article 2 of the Convention, which reads as follows:

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

A. Admissibility

72. 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

73. The applicant submitted that the system of psychological assessment and assistance in the military forces as presented by the Government had only started to be developed at the material time, and had mostly existed on paper. In any event, it had failed to improve the situation as regards suicides, as the available statistics for the period between 2003 and 2008 demonstrated. In 2003 suicides had constituted 35% of 337 deaths in the military forces. In 2006 they had amounted to 40% of 554 deaths. In 2007 and 2008 about 50% of 442 and 471 deaths respectively had been due to suicides. Since 2009 the Russian authorities had stopped officially reporting the number of deaths in the military forces, including those resulting from suicides. From that moment only data from non-governmental organisations had been available. For instance, the Mother's Right Foundation had assessed that by 2015 the number of applications sent to it by the parents of conscripts who had committed suicide had increased from 49% to 69% of the total number of applications received. Moreover, suicide attempts were not properly investigated, if a criminal case was initiated at all. The applicant argued that, in the absence of official statistics and proper investigations, the public had no control over the situation as regards suicides in the military forces.

74. The applicant also submitted that the system of psychological assistance in the Russian military forces was not efficient for the following reasons. The positions of military psychologists were held by people who lacked the necessary education and qualifications. Furthermore, complex psychological examinations of conscripts were carried out only once or twice during their period of service. The psychological assistance boiled down to talks with military servicemen, which were inefficient in respect of suicide prevention, because people usually hid their suicidal intentions.

75. The applicant further submitted that the authorities had known about the existence of a risk to his son's life, but had failed to take adequate measures. According to the statistics, people who had already made suicide attempts had a high probability of making another. Radik Khabirov had made suicide attempts before his conscription and during his military service. The military authorities had been aware of those incidents. Radik Khabirov's psychological assessment had also revealed that he was a suicide risk. However, no steps had been taken in that regard. The applicant referred to the military prosecutor's report of 7 April 2006 in order to demonstrate the poor quality of the psychological assistance provided to his son (see paragraph 24 above).

76. As for the investigation into the circumstances leading to Radik Khabirov's death, the applicant submitted that, according to the Court's case-law, an investigation had, firstly, to establish the cause of death and rule out an accident or manslaughter and, secondly, once suicide had been established, to examine whether the authorities were in any way responsible for failing to prevent either the suicide attempt or the fatal outcome. The investigation had to comply with the effectiveness criteria.

77. In the present case, the investigation had not been effective. Firstly, it had not been expeditious. Initially, the investigator had refused to open a criminal case because the applicant's son had not been dead, but in a coma. The criminal investigation had not been initiated until six months after the suicide attempt. The investigation had also not been completed, as it had not examined the quality of the medical and psychological assistance provided to the applicant's son. The additional inquiry in respect of the commanders and psychologists of military unit no. 50661 had also been carried out only following the applicant's request. However, the Court had already found that an inquiry was not an adequate remedy to establish facts and who was responsible for alleged wrongdoing, because it did not ensure the proper collection of evidence or an applicant's victim status and, accordingly, public control. Lastly, the applicant doubted the impartiality of the inquiry, as one of Radik Khabirov's initial psychological assessments in military unit no. 50661 had been performed by experts from the same Saratov Military Medical Institute which had later issued a report of 3 April 2009 within the framework of the inquiry.

(b) The Government

78. Relying on the relevant legal acts (see paragraphs 54-70 above), the Government described the system of psychological work and suicide prevention which had been established in the Russian military forces.

79. The Government further submitted that Radik Khabirov had been found to be fully fit for military service before his conscription. Later on, during his service, he had passed a psychological examination and had been assigned to the fourth category of eligibility which corresponded to a low level of the UNPR and a higher than normal risk of suicide. On the basis of the results of the above examination, Pte Khabirov had been placed under special supervision and had been sent for a consultation with a psychiatrist. An individual plan of corrective activities had been drawn up by the military commanders. Pte Khabirov had been precluded from taking up sentry duties involving weapons.

80. The Government indicated that on 22 and 27 November 2005 Pte Khabirov had left the military unit without authorisation. Upon his arrest and return to the military unit, his commanders had had individual discussions with him and the psychologist had recommended that he consult a psychiatrist. Pte Khabirov had explained that he wanted to serve closer to

his home, and had not complained of hazing or other unlawful acts on the part of servicemen. Pte Khabirov had then been placed in the medical service of the military unit to prevent any pressure being exerted on him by fellow soldiers and to preclude his physical exertion, and in order for him to follow a course of crisis psychotherapy involving self-help methods.

81. The Government noted that during his service in military unit no. 61094 the applicant's son had never expressed any suicidal thoughts, and had only said that he did not want to continue his military service.

82. The psychological supervision of Radik Khabirov had been efficient, in that it had ensured his timely transfer to the psychiatric department of a military hospital. There, he had been correctly diagnosed with an adaptation disorder. Pte Khabirov had then received appropriate treatment which had improved his state of health to a degree enabling him to continue his military service. Even in the hospital the soldier had never expressed any suicidal thoughts, and the hospital had had no objective grounds to suspect a risk to his life. When Radik Khabirov had made a suicide attempt on 22 January 2006, the first aid provided to him had kept him alive.

83. The Government considered that the present case was similar to the case of *Tikhonova v. Russia* (no. 13596/05, 30 April 2014), where the Court had established that the applicant's son had been emotionally immature and that there had been a history of suicide in his family, but that there was no evidence which could demonstrate beyond the reasonable doubt that the authorities had known or should have known about a real and immediate risk to his life. Therefore, there had been no obligation on the authorities to take any operational measures.

84. As for the investigation into the applicant's son's death, the Government submitted that it had been initiated on 25 January 2006 and had been terminated on 12 December 2006. The decision to terminate the criminal investigation had relied on the record of the inspection of the scene of the incident, witness statements and expert reports, including the report on the psychological and psychiatric post-mortem examination. The relevant experts had concluded that Radik Khabirov had not suffered from any psychological disorders, but had had difficulties in adapting to military service. The suicide had resulted from his frustration. Versions of events involving homicide or incitement to suicide had been examined, but dismissed. The investigation had thus established the circumstances of the applicant's son's death. The decision of 12 December 2006 had not been contested before the courts.

85. On the basis of the above information, the Government submitted that the State had complied with its obligations under Article 2 of the Convention.

2. The Court's assessment

(a) General principles

(i) Substantive aspect

86. 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).

87. 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; *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).

88. 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).

89. In the same context the Court has further held that a State has to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Kılınç and Others*

v. Turkey, no. 40145/98, § 41, 7 June 2005; *Mosendz*, cited above, § 91; and *Perevedentsevy*, cited above, § 94).

90. 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, § 115; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III; *Kılınç and Others*, cited above, § 40; *Nicolae Virgiliu Tănase*, cited above, § 136; and *Kurt*, cited above, § 157).

91. 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 v. Turkey*, no. 40860/04, § 46, 6 September 2016; *Cengiz and Saygıkan v. Turkey*, no. 26754/12, § 47, 24 January 2017; *Nicolae Virgiliu Tănase*, cited above, § 136; and *Kurt*, cited above, § 158).

92. 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, as they are also within the exclusive control of the authorities of the State (see *Mosendz*, cited above, § 92).

(ii) Procedural aspect

93. 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 Yılmaz*, cited above, § 58).

94. 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).

95. 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).

96. 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

(α) Obligation to put in place a regulatory framework

97. 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 the applicant's son.

98. The domestic legislation establishes a system of psychological assessment and assistance in the military forces (see paragraphs 54-70 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 of psychological issues, including where a person may be a suicide risk, certain limitations are placed on a person's eligibility for military education or service and 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.

99. On the basis of the available data, the Court observes that the applicant's son passed the necessary medical examinations, including his psychological assessment, before his conscription, during his military training and immediately after his transfer to the military unit where he was to undergo his military service. The psychological assessment revealed that he had a low NPR and was a suicide risk. In accordance with the requirements, Pte Khabirov was placed under special supervision and was prescribed regular consultations with the psychologist. After Pte Khabirov's periods of unauthorised leave the psychologist proposed that he meet with a psychiatrist. At the psychiatrist's recommendation, the soldier was placed in the medical service for treatment. He was also precluded from taking up sentry duties involving access to weapons. After his treatment in the medical service Radik Khabirov underwent another psychological assessment and, as his results continued to show that he had a low NPR and was a suicide risk, he was placed in the psychiatric department of a hospital. After the military medical panel decided not to decommission Pte Khabirov in connection with his skin disorder, the doctors decided to keep him in the

psychiatric department and recommend his decommissioning on the basis of his adjustment disorder. Accordingly, in the present case, there is no evidence that the psychological assistance procedure designed for people with a low NPR and at risk of suicide adversely affected the applicant's son.

100. Lastly, the Court was not presented with evidence of any issues with the surveillance procedure in place in the psychiatric department of the military hospital which could have contributed to Radik Khabirov's suicide attempt. The staff on duty, including those who were on duty during the night, carried out general monitoring in respect of patients. A more restrictive surveillance procedure, the "strict regime", was also available when this was considered necessary by doctors (see paragraphs 38 and 39 above). Such patients were more closely monitored by the nurses and were accompanied by them when outside of their ward. The applicant's son was initially placed in a "strict regime" ward and later he was transferred to a regular one. On the basis of the material before it, the Court considers that the surveillance procedure in the hospital does not appear to have been deficient and to have operated to Radik Khabirov's detriment.

101. Thus, there is no evidence of any deficiencies in the system of psychological assessment and assistance in the military forces which could have resulted in the death of the applicant's son. Accordingly, the Court finds that the system of regulatory measures relating to the prevention of suicides in the Russian military forces does not raise an issue under Article 2 of the Convention in the circumstances of the present case.

(β) Obligation to take preventive operational measures

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

103. In the present case, after the applicant's son's transfer to military unit no. 61964 and his psychological examination of 21 November 2005, the authorities became aware that he had a low NPR and was a suicide risk (see paragraphs 7 and 31 above). Furthermore, during his subsequent consultations with the military unit's psychologist, the authorities also obtained information about Pte Khabirov's previous suicide attempts and the history of mental disorders in his family (see paragraph 32 above). Thus, the authorities were aware that Radik Khabirov posed a risk to his own life.

104. When it was revealed that Pte Khabirov was a suicide risk, he was provided with medical and psychological assistance as follows. He was initially placed in the medical service of his unit and was precluded from having access to weapons. As his situation did not improve, the applicant's son was then transferred to the psychiatric department of the military hospital. According to the witness statements collected from the medical

staff and other patients, Radik Khabirov's mood changed from time to time while he was in the hospital. He was content when contemplating his decommissioning from the army, and became upset when the military medical committee declared that he was still fit for service despite his skin disorder (see paragraphs 20 and 38 above). However, when the doctors decided to resubmit him for decommissioning on the basis of his adjustment disorder, the applicant's son again appeared reassured (see paragraph 20 above). During his examination at 5 p.m. on 22 January 2006 the patient was described as sad, but he denied having suicidal thoughts (see paragraph 16 above). At about 7 p.m. he wrote a letter for his grandparents in which he made plans for after his return and promised to come back home soon (see paragraphs 39 and 41 above). At 9.30 p.m. Radik Khabirov met his attending doctor, Dr Z., who explained to him how the decommissioning procedure would operate in his case (see paragraphs 21 and 39 above). According to nurse G., Pte Khabirov looked happy and content after that meeting with Dr Z. (see paragraph 39 above).

105. On the basis of the information above, the Court observes that the domestic authorities were aware that Radik Khabirov had been a suicide risk and they took actions in that respect which appear reasonable and appropriate regard being had to his particular circumstances, such as nature and degree of his psychological difficulties (see *Perevedetsevy*, cited above, § 100). The evidence in the Court's possession is, moreover, insufficient to conclude beyond reasonable doubt that the authorities knew or ought to have known in the days and hours before his suicide attempt that the risk to the life of the applicant's son had reached such an extent which would require them to take further operational measures in addition to what had been already done. The Court notes that, while he was described as upset or sad at times, in the days and hours before his suicide attempt Radik Khabirov did not display any worrying signs in his behaviour or suicidal thoughts, which could have required an appropriate reaction. Accordingly, the Court concludes that the State authorities took operational measures which could reasonably have been expected of them to protect Radik Khabirov's life.

106. For the above reasons, the Court finds that there has been no violation of Article 2 of the Convention under its substantive limb in the circumstances of the present case.

(ii) Procedural obligation

107. 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 possibilities 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).

108. The Court notes that in the present case the criminal investigation into incitement to suicide was not initiated until five months after the incident, and after two initial refusals to do so (see paragraphs 26, 27 and 30 above). Consequently, no investigative activities were performed during those five months, which inevitably undermined the quality of the subsequently opened criminal investigation and the evidence collected. For instance, for no apparent reason, Radik Khabirov's attending doctor, Dr Z., does not appear to have been questioned during the criminal investigation.

109. The Court further observes that the criminal investigation concerned only the period of time after the applicant's son's transfer to military unit no. 61964 and his subsequent treatment in the unit's medical service and the military hospital. The Court sees reason in the applicant's argument that the circumstances of Pte Khabirov's military service in military unit no. 50661, before his transfer to military unit no. 61964, deserved close examination, as he was identified as a suicide risk immediately after that transfer. However, the initial period of Pte Khabirov's service was completely omitted from the criminal investigation. It was only after the applicant's request that the authorities carried out a pre-investigation inquiry into the initial five months of Radik Khabirov's military service. However, the Court has previously found that in the context of the Russian legal system, a "pre-investigation inquiry" alone is not capable of leading to the punishment of those responsible for alleged wrongdoing, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges against the alleged perpetrators which may then be examined by a court (see *Fanziyeva v. Russia*, no. 41675/08, § 53, 18 June 2015, with further references, and *Trapeznikova and Others v. Russia*, no. 45115/09, §§ 34-36, 1 December 2016). The Court has also held that, in the absence of a proper criminal investigation, it is impossible to carry out a whole range of investigative measures – such as questioning, confrontations, identification parades, searches, seizures, reconstructions, and so on – while ensuring the validity

of the evidence collected (see *Fanziyeva*, cited above, § 53). Furthermore, the lack of a criminal investigation seriously undermines the procedural rights of victims to participate in the investigation, such as their right to lodge applications, put questions to experts or obtain copies of procedural decisions (see *Kleyn and Aleksandrovich v. Russia*, no. 40657/04, § 57, 3 May 2012). In the present case, the applicant was not granted victim status, and therefore could not exercise the procedural rights accompanying that status. Thus, the pre-investigation inquiry did not comply with the participation of the next-of-kin requirement of Article 2 of the Convention. The Court also notes that the scope of the pre-investigation inquiry was limited to "explanations" taken from the four officers concerned and reports of psychology experts (see paragraph 48 above), none of which was thus accompanied by the necessary safeguards inherent in an effective criminal investigation, such as criminal liability for perjury (see *Lyapin v. Russia*, no. 46956/09, § 134, 24 July 2014). Lastly, by the time the inquiry was carried out, a number of original documents on Radik Khabirov's psychological assessment had been destroyed or were otherwise unavailable (see paragraph 50 above).

110. Given the above deficiencies in the criminal investigation and the pre-investigation inquiry the Court concludes that the authorities failed to comply with their obligation to carry out an effective investigation into the applicant's son's death.

111. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

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

114. The Government submitted that if the Court were to find a violation of the Convention in respect of the applicant then he should be awarded just satisfaction in accordance with the Court's established case-law.

115. The Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

116. The applicant also claimed EUR 12,500 for the costs and expenses incurred before the domestic authorities, and EUR 4,800 for those incurred before the Court.

117. The Government did not comment separately on the applicant's claims for costs and expenses.

118. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were 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 sum of EUR 17,300 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

119. 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 application admissible;

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

3. *Holds*, by five votes to two, that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds*, by six votes to one,
   (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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 17,300 (seventeen thousand three hundred 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;

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	Paul Lemmens
Registrar	President

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

P.L.
M.B.

PARTLY DISSENTING OPINION OF JUDGE SEIBERT-FOHR JOINED BY JUDGE ZÜND

1. While we agree with the majority that there has been no violation of Article 2 of the Convention under its substantive limb, we are unable to support the conclusions under its procedural limb. More generally, we do not agree that pre-investigation inquiries are insufficient in cases in which neither suspicious circumstance (see *Kotenok v. Russia*, no. 50636/11, §§ 73 and 77, 23 March 2021; *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 58, 17 June 2008) nor any reasonable grounds to suspect third-party involvement in the commission of suicide are found (see *Hasan Çalışkan and Others v. Turkey*, no. 13094/02, § 50, 27 May 2008).

2. In the present case, the authorities acted of their own motion, made all reasonable efforts to collect promptly and with sufficient thoroughness the evidence and to eliminate or minimise any risk of omissions. They continued the investigation until reaching the conclusion that there were no grounds for finding that there had been incitement to suicide.

3. In particular, after the applicant's son had attempted to take his own life on 22 January 2006, investigations were conducted at the Totskoye military hospital; these resulted in a detailed account of the events leading to the suicide bid (see paragraphs 19-23 of the judgment). As a result of the report issued by the military prosecutor of the Totskoye Garrison on 7 April 2006, analysing, among other questions, the treatment of the applicant's son and finding that the staffing of the psychiatric department ought to be reconsidered, Lt Colonel S. was dismissed from his post.

4. During the subsequent criminal investigation an expert report was drawn up on the psychological state of the applicant's son prior to his suicide attempt (see paragraph 28). Following the psychological assessment report, which found that the applicant's son had made an impulsive suicide attempt in a state of frustration, and after a medical report, a handwriting report and the taking of a number of witness statements (see paragraphs 31-42) the investigator concluded that there had been no incitement to suicide (see paragraphs 29-30, 43) and the criminal case into incitement to suicide was closed.

5. The majority criticizes the fact that the criminal investigation was not initiated until five months after the incident and that no investigative activities were performed during those five months. However, during this very period an investigation was carried out at the Totskoye military hospital and resulted in a detailed account of the events (see paragraphs 19-23). The applicant has challenged neither the thoroughness of this investigation, nor its independence. Nor is there any indication that a delay in the subsequent criminal investigation led to any shortcoming in the collection of evidence which would have undermined the possibilities of establishing liability and of holding persons responsible to account. As

noted above, Lt. Colonel S. was dismissed from his post after the military prosecutor of the Totskoye Garrison's report found shortcomings in the diagnosis and treatment at the military hospital (see paragraph 25). At no time was there any indication of third-party involvement in the suicide attempt. Nor does the applicant claim that any such involvement occurred. Thus, the authorities cannot be accused of having insufficiently investigated the events in the Totskoye military hospital which led to the applicant's son's suicide attempt.

6. Equally, they cannot be accused of not opening a criminal investigation in respect of the period prior to the applicant's son's transfer to military unit no. 61964. The authorities conducted a pre-investigation inquiry into possible negligence on the part of the relevant military officers. Having questioned the head of the medical service and the head of the medical assistance station of military unit no. 50661, and examined the explanations provided by the psychologist and commander of the military unit, a complex medical and psychological report by the Saratov Military Medical Institute and an expert opinion by the military educational and scientific centre of the land forces, the investigator concluded that, in the experts' view, the applicant's son had not suffered from a mental illness but had developed his adjustment disorder only during his service in military unit no. 61964 (see paragraphs 48-50).

7. Although the applicant claims that his son must have developed his personality disorder during his training in military unit no. 50661, in the absence of any indication that he was subjected to treatment which led to his low neuropsychological resilience and suicide risk, mere doubts about the provision of adequate psychological assistance during the five months of training are insufficient to oblige the authorities to conduct a criminal investigation. This is even more so as the applicant's son received medical treatment soon after his arrival at the new military unit. He was initially placed in the medical service of the military unit and subsequently transferred to the psychiatric department in the Totskoye military hospital.

8. In these circumstances, in which there was at no time any reasonable suspicion or indication of homicide (see *Hasan Çalışkan and Others,* cited above, § 49) nor any indication that the victim was driven to suicide by bullying, threats or ill-treatment (see *Abdullah Yılmaz*, cited above, §§ 59-76; *Mosendz v. Ukraine*, no. 52013/08, § 112, 17 January 2013; *Şahinkuşu v. Turkey*, no. 38287/06, § 52, 21 June 2016; and *Yasemin Doğan v. Turkey*, no. 40860/04, § 47, 6 September 2016), the authorities did everything that was necessary to investigate the death of the applicant's son (see also *Kotenok*, cited above). We are therefore unable to conclude that the inquiry and the criminal investigation were insufficient to establish who was responsible for the death of the applicant's son.