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

SECOND SECTION

CASE OF SERGEY SHEVCHENKO v. UKRAINE

(Application no. 32478/02 (/sites/eng/pages/search.aspx#{"appno":["32478/02"]}))

JUDGMENT

STRASBOURG

4 April 2006

FINAL

04/07/2006

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 Sergey Shevchenko v. Ukraine,

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

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March 2006,

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

PROCEDURE

1. The case originated in an application (no. 32478/02 (/sites/eng/pages/search.aspx#{"appno":["32478/02"]})) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Sergey Vasilyevich Shevchenko ("the applicant"), on 3 August 2002.

2. The Ukrainian Government ("the Government") were represented by their Agent, Ms Valeria Lutkovska.

3. On 24 March 2005 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant is the father of Mr Andrey Shevchenko, deceased (hereinafter A.S.). He was born in 1944 and lives in Kharkiv.

5. At 2 a.m. on 3 October 2000 A.S. (a First Lieutenant in the Ukrainian Air Force) was detailed to guard a military airdrome of the A-2491 Air Force Unit (hereafter "the Unit"). He was issued a handgun with sixteen live cartridges. Around 5.40 a.m. he was found dead in the guardroom with two gunshot wounds to his head.

6. A criminal investigation into his death was opened the same day and an investigator from the Military Prosecutor's Office (hereafter "the MPO"), Captain S., inspected the scene. In his report he described the position of the body and a Makarov handgun lying near a foot, loaded with three cartridges[1]. No traces of a struggle were found either at the scene or on the deceased. There were bullet holes in a window and the ceiling, as well as three spent cartridges. A black ink pen was retrieved from A.S.'s pocket. The report drawn up on that occasion stated that the inspection had been conducted by the Commanding Officer (hereafter "the CO") of the Unit, Colonel V., and witnessed by two other officers from the Unit.

7. According to the applicant, around 8 a.m. Ms H., A.S.'s partner, went to his apartment and saw that it was open and that Lieutenant-Colonel D. (the Executive Officer of the Unit, hereafter "the EO") with other persons was conducting a search.

8. The official documents state that the apartment of the deceased was searched at 3 p.m. However, First Lieutenant M. testified that at 8 p.m. several officers, including himself, had been detailed to conduct an inventory at A.S.'s apartment under the supervision of the EO.

9. The applicant and Ms H. alleged that A.S. had kept some USD 15,000 in a side-table. During the search no money was found there. Instead, First Lieutenant G., an inquiry officer (an officer of the Unit, who had been appointed by the CO to conduct an inquiry into the possible crime) found a suicide letter.

10. On 4 October 2000 Ms H. was questioned by Lieutenant G. as regards her relations with the

deceased. She stated that the deceased had been "a clever person and one worth communicating with" who had never expressed any thoughts of suicide. On 2 October 2000, when A.S. was going on duty, he had invited her to come over.

11. According to the testimony of Major-General O., on 3 October 2000 he visited the Unit because of the tragic incident. On 4 October 2000 he informed the assembled Unit about the event and, whilst allowing the possibility of murder, nevertheless read out several extracts from the suicide letter. However, several other witnesses testified that the Major-General said nothing about murder, but focused on the alleged suicide, stating that A.S. had long prepared himself to die at his own hand by, *inter alia*, reading occult philosophy written by Carlos Castaneda.

12. Typed copies of the alleged suicide letter were disseminated among the staff of the Unit by the EO, who gave a copy to the applicant when the investigator refused to allow him to make a photocopy of the handwritten original.

13. During the applicant's interrogation on 5 October 2000, Captain S. remarked that he was almost completely sure that A.S.'s death had been a suicide and refused to add to the protocol the applicant's comments about the disappearance of USD 15,000.

14. By 10 October 2000 Lieutenant G. had questioned a number of witnesses - mainly those who had seen the applicant's son on the day of the tragic event and those who were closely acquainted with him. The questions asked were focused on A.S.'s mood before the incident, his interest in Castaneda's philosophy and occult practices, his possible abuse of alcohol or drugs and whether he played with his gun on duty.

15. A.S.'s friends stated that the deceased had been very careful with alcohol and weapons, and had been a calm, respectful person. The witnesses did not know if he had ever used any drugs or practised any occultism. Mr Sk., A.S.'s former roommate, claimed to having heard the applicant's son saying that he had meditated, but had never seen this for himself. The moral welfare officer submitted that the deceased used to abuse alcohol, but long before the incident he had given up drinking. A.S. had not been considered a suicide risk by either the moral welfare officer or his friends. None of those who saw the deceased on the day of the incident spotted any peculiarities in his conduct.

16. From 11 October 2000 onwards the line of interrogation was changed to include questions about whether A.S. had had any enemies and whether there had been any assaults on the sentries. Some of the previous witnesses were questioned again. None of the witnesses could positively answer either of these questions.

17. Mr Pk., who claimed to be A.S.'s friend (but was not identified as one by other witnesses), while describing the deceased as a calm, equable person, said, nevertheless, that the fact of his suicide "had not been a surprise to him". Mr Y. (whose relation with the deceased is unclear), re-interrogated on 31 October 2000, also stated that the suicide of A.S. "had not been a surprise to him". In his subsequent interview on 9 November 2000, Mr Y. recalled that in 1996 he had seen the deceased smoking a cigarette with a suspicious smell. Mr D. testified that the deceased had thought himself "cleverer than others" and read philosophical books. He had also heard that A.S. had meditated.

18. On 26 October 2000 the investigator refused to grant the applicant the status of a victim in criminal proceedings on the ground that the collected evidence strongly suggested that his son had committed suicide.

19. The applicant appealed to a higher prosecutor. His complaint about the refusal of victim status was rejected. However, certain instructions to the investigator were apparently given which triggered a new series of interviews in early November 2000 of the persons involved in the search of A.S.'s apartment on 3 October 2000 and of his superiors, including Lieutenant-Colonel L. and Major-General O. Lieutenant-Colonel L. testified that he had twice reprimanded the deceased, but did not think there had been any bias or partiality on his part regarding A.S.

20. On 24 November 2000 the Military Prosecutor of the Ivano-Frankovsk Garrison informed the applicant that the case had been assigned to another investigator and that his request for victim status in the proceedings could not be granted.

21. On 30 December 2000 the Assistant Prosecutor of the Ivano-Frankovsk MPO disjoined the investigation into the death of A.S. from the criminal proceedings for theft.

22. The handgun found at the scene and three cartridges from its magazine were examined by a ballistics expert. According to his report of 10 October 2000, the gun was serviceable and could not have been fired without pulling the trigger. The rounds were also serviceable. The spent cartridges had been fired from that gun.

23. The body was examined by a pathologist. According to the autopsy report, the cause of A.S.'s death had been two gunshot wounds. Both had been inflicted when the victim was still alive. The apparent first wound injured the neck, tongue and mouth (inlet on the left side of the tongue and the outlet near the right ear). The second wound, which was the direct cause of death (inlet on the forehead), damaged the frontal bone, brain and occipital bone, where the bullet was found. The pathologist concluded that the first shot had been fired into the victim's mouth and the second into the forehead. Both were fired from a short distance.

24. The additional forensic examination concluded that, after the first shot, the individual could still have retained the ability to make further movements for a short period.

25. The investigator also ordered a graphology forensic examination of the suicide letter found in A.S.'s apartment, and asked the expert to establish whether it had been written by the deceased. On 9 November 2000 the expert gave a positive answer to that question.

26. On 28 October 2000 a chemical expert concluded that the ink on the letter matched the one from the pen found in the A.S.'s pocket.

27. According to the post-mortem psychological inquiry, the mental state of A.S. did not exclude the possibility of suicide. In particular, it was mentioned that he had had overrated self-esteem and insularity, which had led to, *inter alia*, conflicts with his superiors.

28. On 30 December 2000 the investigator, First Lieutenant Sk., completed the preliminary investigation and drew up a final report. He concluded that the mental state of the deceased, the possibility of movement after the first shot, and the suicide letter written under the influence of Carlos Castaneda's philosophy, proved that A.S. had committed suicide. This conclusion was supported by references to the aforementioned expert opinions and five witness testimonies to that effect.

29. The applicant challenged this decision before a court. He stated, *inter alia*, that his son had been killed because of his involvement in the criminal schemes of his superiors. He alleged that the investigation had been from the very beginning focused on proving the suicide. The investigators did not even attempt to examine other versions, although the final report mentioned the victim's "conflicts with his superiors". In this respect the applicant also indicated that the Ukrainian Code of Criminal Procedure vested the commanding officers of military units with the authority to make the preliminary inquiry, comparable with that of the police. He thus challenged the EO's active participation in the criminal proceedings which practically excluded the possibility that the investigators could take account of the applicant's views on the incident.

30. The applicant mentioned the investigation's inability to detect the origin of a bullet hole in the guardroom ceiling and to explain why the first shot's trajectory was from left to right, although his son had been right−handed. He complained about the prosecution authorities' refusal to grant him the status of "a victim of the criminal offence", thus denying him access to the case file. In this respect he also complained about his inability to examine the suicide letter and to give an opinion on the likeness between the handwriting in the letter and that of his son. However, he alleged that the style of the letter did not match A.S.'s usual way of writing. The applicant, therefore, requested that an independent expert examination of the letter be conducted. He finally challenged the decision to disjoin the proceedings concerning his son's death and the theft of money from his apartment.

31. On 30 November 2001 the Military Court of the Ivano-Frankovsk Garrison rejected the applicant's complaints.

32. On 2 March 2002 the Military Court of Appeal of the Western Region (hereafter "the Court of Appeal") allowed the complaints, quashed the ruling of 30 December 2000, and ordered further inquiries. The court specified the following irregularities in the investigation:

- the failure to conduct a reconstruction of the events to establish the possibility that, in the circumstances, the body could naturally have fallen into the position in which it was found;
- the failure to detect the origin of the bullet hole in the guardroom window; and
- the failure to establish with sufficient clarity the mental state of the deceased before the incident.

33. However, the Court of Appeal rejected the applicant's request to grant him victim status. The court also found no reason to rejoin the investigations into the death and theft. On 29 October 2002 the Supreme Court rejected the applicant's cassation appeal on these issues.

34. On 29 April 2002 another investigator, First Lieutenant P, drew up a final report which generally repeated that of 30 December 2000. The only further action taken by the investigator was that of ordering a post-mortem psychiatric inquiry, which revealed that A.S. had not suffered from any mental disorder, though his general mental state could have led to suicide. The investigator thus concluded that A.S. had

committed suicide and closed the case. On the same day the Ivano-Frankivsk MPO refused to provide the applicant with a copy of this report on the ground that he was neither the defendant nor the victim in the case.

35. On 16 December 2002 the President of the Court of Appeal sent the applicant a copy of that report.

II. RELEVANT DOMESTIC LAW

1. Constitution of Ukraine

36. The relevant Articles of the Constitution provide as follows:

Article 3

"The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as having the highest social value. ..."

Article 27

"Every person has the inalienable right to life.

No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. ..."

Article 28

"Everyone has the right to respect for his or her dignity.

No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity. ..."

2. Code of Criminal Procedure

37. The provisions relating to the status of a victim in criminal proceedings read as follows:

Article 28. A civil claim in a criminal case

"A person, who has suffered material damage as a result of a crime, shall be entitled to lodge within the criminal proceedings a civil claim against the accused ..., which shall be considered by the court together with the criminal case..."

Article 49. An aggrieved party

"A person who has suffered moral, physical or property damage from the crime can be recognised as an aggrieved party. ...

A citizen, who has been recognised as an aggrieved party from the crime, shall be entitled to give evidence in the case. An aggrieved party, or his or her representative, shall be entitled to: ... make requests; to study all the materials of the case file when the pre-trial investigation is completed, ... to lodge complaints against the actions of inquirer, investigator, prosecutor and court, ...

In cases where the crime caused the death of the victim, the rights provided for in this Article shall be conferred upon the deceased's next of kin."

Article 236-1

"A complaint against the decision of the body of inquiry, investigator or prosecutor not to bring charges is lodged by a person with a direct interest or by his/her representative with the local court within whose area of jurisdiction falls the authority which took the decision."

38. The Code required a competent authority to institute criminal proceedings if there was a suspicion that a crime had been committed. That authority was under an obligation to carry out all measures provided for by law to establish the facts and to identify those responsible and secure their conviction (Article 4).

Article 94 of the Code provided the following grounds for instituting a criminal case:

"A criminal case shall be instituted on the following grounds:

1) applications or communications from ... individuals; ...

5) direct detection of signs of crime by a body of inquiry, investigation, prosecutor or court.

A case can be instituted only when there is sufficient information indicating a crime.

No criminal proceedings could be brought in the absence of a *corpus delicti* (Article 6). Where an investigating body refused to open or terminate a criminal investigation, a reasoned decision was to be provided. Such decisions could be appealed to a higher-ranking prosecutor or to a court (Articles 209, 214, 234 and 236-6).

39. Section II of the Code discerns two stages of pre-trial criminal proceedings: the inquiry (*дізнання*) and the investigation (*слідство*). During the inquiry the competent authorities undertake operational measures aimed at the detection of a crime and those responsible. If the body of inquiry institutes a criminal case regarding a grave offence, it is under an obligation to refer it to the competent investigator through a prosecutor, after having completed the urgent investigative actions. If the perpetrator of a grave crime is not identified, the body of inquiry continues the operational measures and informs the investigator about its results. After the investigator joins the proceedings, the body of inquiry carries out his/her instructions as regards the investigative and operational actions (Articles 103-104).

Article 101 enumerates the bodies of inquiry. Normally these functions are discharged by the police. However, at the material time paragraph 3 of Article 101 also vested this power in the commanding officers of military units for all crimes committed by their subordinates. (An amendment of the Code of 15 May 2003 delegated this authority to the newly-created Military Service of Law and Order.)

3. Instruction on the conduct of an inquiry in the Military Forces of Ukraine (approved by Order no. 413/949 of the Minister of Defence on 20 August 1995)

40. Article 4 of the Instruction provided that, in order to carry out inquiries into crimes committed by servicemen, the commanding officer appointed several commissioned officers of the unit to act as inquiry officers for a period of two years. The most qualified of them was appointed as the senior officer to deal with the most complicated cases.

41. The commanding officer of the unit, as a statutory “body of inquiry”, instituted inquiries into all crimes committed by the servicemen attached to the unit (Article 5).

42. Having received information about an offence, the commanding officer immediately instituted criminal proceedings and appointed an officer to investigate it. The competent Military Prosecutor’s Office had to be immediately notified about the offence and the measures undertaken for its investigation (Article 6).

43. According to Article 7 of the Instruction, the inquiry officer could not take part in the investigation
- if he/she was a victim, a witness or a civil party to the proceedings;
- if he/she had already participated in the case as an expert, translator, defence lawyer or representative of the victim or a civil party;
- if he/she or his/her relatives were interested in the outcome of the proceedings; or
- if there were any other circumstances affecting his/her impartiality.

44. The commanding officer was obliged to undertake all necessary operational measures, provided by the criminal law of procedure, in order to resolve the offence (Article 8).

45. The commanding officer, who had instituted the proceedings, led the inquiry, in that he gave instructions to the investigating officer as to which facts had to be established and which investigative actions were to be undertaken.

4. Order of the General Prosecutor of Ukraine no. 16 of 5 August 1994

46. The Order provides that the crimes committed by military servicemen are investigated by the competent Military Prosecutor’s Office.

5. The Law “on Prosecution” of 1991

Article 46-1 of the Law provided that commissioned officers who possessed law degrees could be appointed as military prosecutors or investigators. Servicemen attached to the Military Prosecution Offices performed their functions in accordance with this Law and served in accordance with the Law “on Military Conscription and Military Service”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

47. The applicant complained that the investigation into his son's death had not been independent, adequate or effective, as required by the procedural obligation imposed by Article 2 of the Convention, which provides, insofar as relevant as follows:

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

48. In effect he requested the Court to take on the investigation into what he considered to be his son's murder.

A. Establishment of the facts

49. The Court is sensitive to the subsidiary nature of its function and recognises that it must be cautious in taking on the role of a first instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Nonetheless, where allegations are made under Article 2 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (*Aktaş v. Turkey*, no. 24351/94 (/sites/eng/pages/search.aspx#{"appno":["24351/94"]}), § 271, ECHR 2003−V (extracts)).

50. However, despite questionable inconsistencies in the evidence collected by the investigation in the present case (see paragraph 67 below), the Court cannot formulate a conclusion different from that reached by the domestic authorities. In particular, the Court cannot, as the applicant asks, establish with reasonable certainty that the applicant's son was murdered or name any particular persons otherwise responsible for his death.

B. Admissibility

1. The compliance with the six months' rule

51. The Government considered that the final decision in the case was that refusing the applicant's request for the status of a victim regarding the possible offence, which decision was given by the investigator on 26 October 2000. The Government argued that the applicant should have raised his complaint to that effect before the Court within six months of that date, but failed to do so. The complaint filed by the applicant to the military courts was of a subsidiary character and thus could not be taken into account.

52. The applicant disagreed.

53. The Court notes that the applicant raised the victim issue first before the Military Court of the Ivano-Frankovsk Garrison and then before the Court of Appeal, which gave their decisions on 30 November 2001 and 2 March 2002 respectively. The latter court gave a specific answer to the applicant's complaint, finding that the rejection of his request for victim status had been lawful and reasonable. As its decision falls within the six month period laid down in Article 35 § 1 of the Convention, the Court dismisses the Government's objection.

2. Compatibility ratione materiae

54. The Government maintained that, since the domestic investigation established that the applicant's son had committed suicide, Article 2 of the Convention was inapplicable. They relied in this respect on the Court's statement in the *Pretty* case that "[Article 2] is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life" (*Pretty v. the United Kingdom*, no. 2346/02 (/sites/eng/pages/search.aspx#{"appno":["2346/02"]}), § 39, ECHR 2002−III).

55. The applicant did not comment on this point.

56. The Court considers that its findings in the *Pretty* case cannot be construed as a general exclusion of the application of Article 2 in suicide cases. It is to be noted that in a number of cases the Court has considered the Contracting States' positive obligations flowing from this provision as regards the risk to a person derived from self-harm, including the procedural obligation to carry out an effective investigation into the circumstances of what appears to be a suicide (cf. *Keenan v. the United Kingdom*, no. 27229/95 (/sites/eng/pages/search.aspx#{"appno":["27229/95"]}), § 90, ECHR 2001−III, and *Trubnikov v. Russia*, no. 49790/99 (/sites/eng/pages/search.aspx#{"appno":["49790/99"]}), § 89, 5 July 2005).

57. The Court, therefore, rejects this objection.

3. Conclusion

58. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds.

C. Merits

1. Submissions of the parties

a. The Government

59. The Government maintained that the original investigation lasted from 4 October to 30 December 2000, i.e. about three months. During that period evidence was heard from 75 witnesses and a substantial number of expert reports were submitted. They stated that, in view of the final outcome of the proceedings, there was no obligation on the State to investigate any use of force or other actions.

60. The Government concluded that there was nothing to suggest that the inquiry had been protracted or ineffective.

b. The applicant

61. The applicant submitted that the investigation conducted following the death of his son had not been effective, as required by the Court's case-law under Article 2 of the Convention. He stated that the investigators were not independent from the authority involved and that a deliberate attempt had been made to cover up evidence of the true circumstances of his son's death.

62. The applicant also complained that the investigation had not been public. He alleged that the inquiry lacked transparency in that the family was excluded from the proceedings by the reluctance of the prosecution authorities and courts to admit them as victims.

2. The Court's assessment

a. General principles

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

64. In that connection the Court has held that, if the infringement of the right to life or physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00 (/sites/eng/pages/search.aspx#{"appno":["53924/00"]}), § 90, ECHR 2004-VII; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96 (/sites/eng/pages/search.aspx#{"appno":["32967/96"]}), § 51, ECHR 2002−I; *Mastromatteo v. Italy* [GC], no. 37703/97 (/sites/eng/pages/search.aspx#{"appno":["37703/97"]}), §§ 90, 94 and 95, ECHR 2002−VIII). However, the minimum requirement for such a system is that the persons responsible for the investigation must be independent from those implicated in the events. This means hierarchical or institutional independence and also practical independence (see *Paul and Audrey Edwards, Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99 (/sites/eng/pages/search.aspx#{"appno":["46477/99"]}), § 70, ECHR 2002−II, and *Mastromatteo v. Italy* [GC], no. 37703/97 (/sites/eng/pages/search.aspx#{"appno":["37703/97"]}), § 91, ECHR 2002−VIII).

65. Accordingly, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. Thereby, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations which would be capable of, firstly, ascertaining the circumstances in which the incident took

place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see, for example, *mutatis mutandis, Güleç v. Turkey*, judgment of 27 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1733, §§ 81-82; *Oğur v. Turkey* [GC], no. 21954/93 (/sites/eng/pages/search.aspx#{"appno":["21954/93"]}), §§ 88, 91-92, ECHR 1999-III; *Hugh Jordan v. the United Kingdom*, no. 24746/94 (/sites/eng/pages/search.aspx#{"appno":["24746/94"]}), § 120, and *Kelly and Others v. the United Kingdom*, no. 30054/96 (/sites/eng/pages/search.aspx#{"appno":["30054/96"]}), § 114, both of 4 May 2001; *McCann and Others*, cited above, § 161; *Mahmut Kaya v. Turkey*, no. 22535/93 (/sites/eng/pages/search.aspx#{"appno":["22535/93"]}), §§ 106-07, ECHR 2000-III; *İlhan v. Turkey* [GC], no. 22277/93 (/sites/eng/pages/search.aspx#{"appno":["22277/93"]}), § 63, ECHR 2000-VII; *McKerr v. the United Kingdom*, no. 28883/95 (/sites/eng/pages/search.aspx#{"appno":["28883/95"]}), § 148, ECHR 2001-III).

b. Application in the present case

66. The Court finds that a procedural obligation arose under Article 2 of the Convention to investigate the circumstances of the death of the applicant's son, A.S. The Court notes the Government's contention that the instant case was a clear-cut case of suicide and, for that reason, the authorities were dispensed from having to comply with anything other than the establishment of its circumstances. However, the Court cannot accept that submission for the reasons expounded below.

67. First, the investigation revealed certain important inconsistencies and deficiencies.

The Court notes, *inter alia*, that the parties disagreed as to the exact time when officers of A.S.'s Unit conducted an "inventory" of his apartment under the supervision of the EO. The applicant, referring to the statement of A.S.'s partner, Ms H., alleged that it had been conducted at 8 a.m. on 3 October 2000 (i.e. before the official search at 3 p.m.). The officers claimed that it was at 8 p.m. Whatever the correct hour, the lawful authority and reason for the inventory are unknown (paragraphs 7-8 above). All the evidence shows that A.S. was a calm character who had never voiced suicidal thoughts. It is unclear how reading the works of Carlos Casteneda, without more, would lead to taking one's own life. People who were apparently not closely acquainted with A.S. expressed no surprise that he had committed suicide, yet his true friends were perplexed. Moreover, there has been no attempt to explain the fact that the first wound was inflicted to the left side of the face whereas A.S. was right-handed, or to account for the fact that two extra cartridges were missing from the handgun.

The Court recalls that an investigation will not be effective unless all the evidence is properly analysed and the conclusions are consistent and reasoned (*Nachova and Others v. Bulgaria*, nos. 43577/98 (/sites/eng/pages/search.aspx#{"appno":["43577/98"]}) and 43579/98 (/sites/eng/pages/search.aspx#{"appno":["43579/98"]}), § 131, ECHR 2004−...).

68. Secondly, the Court observes that, from the outset, the command of A.S.'s Unit pressed the suicide theory. The Court notes in this respect that, even if Major-General O. had briefly alluded to other possible scenarios during his speech to the Unit on 4 October 2000, he expressed the clear view that A.S. "had long prepared himself to die from his own hand" by reading Castaneda's philosophy, which evinced itself in extracts from his farewell letter read out by the General. The dissemination of typed copies of the said letter amongst the Unit by the EO also emphasises that view (see paragraphs 11 and 12 above).

69. The Court observes that it was not until 11 October 2000 (that is to say a week after the tragic event) that the inquiry officer started to question witnesses regarding other possible reasons for A.S.'s death (paragraph 16 above). Neither Ms H. nor the applicant was interviewed in this respect. It is noteworthy that out of 75 questioned witnesses the investigator's final report referred only to five of them, whose testimonies supported the version of suicide (paragraph 28 above). The most notable gap in the investigation was the failure to take into account the testimonies of the applicant, the moral welfare officer and A.S.'s friends, none of whom considered the deceased to have been a suicide risk.

70. Thirdly, the Court observes that the initial inquiry into the death was carried out promptly, within several hours after the incident. However, it did not satisfy the minimum requirement of independence since the investigating body – the CO of the Unit – represented the authority involved. Lieutenant G., an officer with the Unit appointed by the CO to conduct the inquiry, made a search of A.S.'s apartment and questioned witnesses. He remained in charge of the inquiry until the arrival of the investigator from the MPO; after that, he carried out most of the witness interviews at the behest of the investigator. The Court observes that Lieutenant G. acted under the authority of the CO, receiving orders from him concerning the

conduct of the proceedings as well as his day-to-day activities. The requisite independence was therefore lacking (cf. *Aktaş v. Turkey*, no. 24351/94 (/sites/eng/pages/search.aspx#{"appno":["24351/94"]}), § 301, ECHR 2003−V (extracts).

71. As regards the investigators from the MPO, the Court finds that their independence was also not ensured. While not being a part of the chain of command of the Unit, they nevertheless remained servicemen, subject to military discipline (*mutatis mutandis*, *Arı v. Turkey*, no. 29281/95 (/sites/eng/pages/search.aspx#{"appno":["29281/95"]}), § 46, 25 September 2001). Their relatively low rank could have made them susceptible to pressure from superior officers. The first investigator, Captain S., did not seem to have had any doubt about the official version of events when, on 5 October 2000 (i.e. long before the delivery of the expert reports on the body and the farewell letter), he informed the applicant of his certitude that A.S. had committed suicide.

72. Fourthly, the Court observes that no reconstruction of events was attempted, despite instructions from the Military Court of Appeal to do so (paragraph 32 above). The information from such an exercise could have been crucial. It would have enabled the investigators to form an opinion on, *inter alia*, whether in the circumstances the body could have naturally taken up the position depicted in the on-scene report, and the origin of a bullet hole in the window of the guardroom (also paragraph 32 above).

73. Fifthly, the Court notes that no forensic examination of the hands of the deceased was conducted as regards possible gunshot residue (*mutatis mutandis*, *Ramsahai and Others v. the Netherlands*, no. 52391/99 (/sites/eng/pages/search.aspx#{"appno":["52391/99"]}), § 401, 10 November 2005). The authorities did not thoroughly scrutinise A.S.'s authorship of the suicide letter as regards the applicant's claim that his son did not use the style found in that letter. Moreover, the applicant was denied a copy of the original by which he could have compared the handwriting to other documents he possessed written by his son. Finally, the farewell letter was the only direct evidence of suicide. Therefore, the investigator's acceptance of the graphology report by a single expert without any corroboration was insufficient in the Court's opinion given the general circumstances of the case and the fact that its conclusion was hotly disputed by the applicant.

74. Sixthly, the Court considers that the applicant's exclusion from the proceedings by the refusal to grant him victim status, contrary to the usual practice under national law, was unacceptable because he was thereby denied the possibility of intervening during the course of the investigation (*Trubnikov v. Russia*, cited above, § 93). While it is true that certain investigative actions were carried out following the applicant's complaint to the higher prosecutor, he was denied access to the case file. He was never informed or consulted about any proposed evidence or witnesses, including the appointment of a graphology expert to examine the suicide letter. Thus he was unable to take part in instructing the experts or to challenge their conclusions. The applicant did not receive any information about the progress of the investigation, and it was not until eight months after the proceedings were discontinued that he was provided with a copy of the final report.

75. The Court finds, therefore, that the investigation did not ensure sufficient public accountability or scrutiny; nor did it safeguard the interests of the next-of-kin.

76. In the light of these circumstances, the Court concludes that there has been a violation of the respondent State's obligation under Article 2 of the Convention because of the failure to conduct an effective and independent investigation into the death of A.S.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

77. Article 6 § 1 of the Convention provides, in relevant part:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

78. The applicant reiterated the procedural matters he had raised under Article 2 of the Convention. The Government submitted that Article 6 was not applicable in the present case.

79. Whilst the complaint is clearly admissible, nevertheless, the Court considers that it does not give rise to a separate issue from those determined above under Article 2 which would require an examination on the merits

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. The applicant complained under Article 8 of the Convention that the investigative authorities and the command of the Unit disseminated offensive information about his son's personal life. However, the Court notes that the applicant did not sue anyone for defamation, thus failing to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. This complaint must, therefore, be rejected in accordance with Article 35 § 4.

81. Lastly, the applicant complained that the authorities' conduct pending the investigation into his son's death was contrary to Articles 9 and 10 of the Convention. However, the Court finds no evidence whatsoever in the case file which might disclose any appearance of an unjustified interference or breach of these provisions. This part of the application must therefore be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention, as being manifestly ill-founded.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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."

83. The applicant claimed 150,000,000 euros (EUR) in moral damages to compensate him for the death of his son and the failure of the domestic authorities to carry out a proper investigation.

84. The Government found the applicant's claims exorbitant and unjustified.

85. Deciding on an equitable basis, and having regard to the sums awarded in similar cases and the violations which it has found in the present case, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

86. The applicant's claims under this head were submitted outside the set time-limit; the Court therefore makes no award in this respect.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 2 of the Convention, in its procedural limb and Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention;

3. *Holds* that no separate issue arises under Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable on 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ Registrar

J.-P. COSTA President

[1] The loaded magazine of Makarov pistol (*пістолет Макарова*) contains eight cartridges.