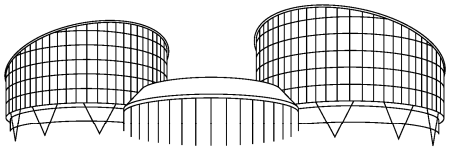

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANAHIT MKRTCHYAN v. ARMENIA

(Application no. 3673/11)

Art 2 (procedural) • Failure by the authorities to carry out a prompt and effective investigation into the death of a man during military service • Court's jurisdiction: "Genuine connection" between the event giving rise to the procedural obligation under Art 2 and the entry into force of the Convention • Investigations not ended after more than eighteen years (without being capable of establishing the exact circumstances of the death) • Repeated judicial remittals as a result of errors • Accidental shot hypothesis followed from the very first day • No meaningful steps to follow a different hypothesis and investigate a completely different version of the events described by a witness

JUDGMENT

STRASBOURG

7 May 2020

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 Anahit Mkrtchyan v. Armenia,

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

Ksenija Turković, President,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Jovan Ilievski,
Raffaele Sabato, judges,

and Abel Campos, Section Registrar,

Having regard to:

the application against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Ms Anahit Mkrtchyan ("the applicant"), on 10 January 2011;

the decision to give notice to the Armenian Government ("the Government") of the complaint concerning the alleged lack of an effective investigation into the death of the applicant's son and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 10 March 2020,

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

INTRODUCTION

In her application the applicant complained that the national authorities had not conducted a prompt and effective investigation into the circumstances of her son's death. The applicant relied on Articles 2 and 13 of the Convention.

THE FACTS

1. The applicant was born in 1952 and lives in Baghramyan village. She was represented by Ms A. Melkonyan and Ms H. Harutyunyan, lawyers of the non-governmental organisation Protection of Rights Without Borders ("PRWB"), which is based in Yerevan, Mr G. Margaryan, a lawyer practising in Yerevan, and Ms H. Harutyunyan, a legal expert at PRWB.

2. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

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

4. In June 2000 the applicant's son, Arayik Avetisyan, was drafted into the Armenian army. He was assigned to military unit no. 70179 ("the military unit") situated in the town of Vayk, Armenia.

5. On 30 October 2001 at around 8.30 p.m. Arayik Avetisyan, aged 22, died as a result of a gunshot wound in the office of the commanding officer of the third battalion headquarters of the military unit. According to the official version, conscripted soldiers K.S., A.K., K.G. and S.M. were in the room with Arayik Avetisyan when he died.

6. On the same date the place of the incident was examined and a record was drawn up, according to which Arayik Avetisyan's body had been found on the floor in front of the entrance door. The record stated, inter alia, that there was a perforating ballistic trauma to the upper brow area of the deceased's body and that there were blood stains in the area around the head and feet. In the course of the examination of the scene of the incident the military unit doctor stated that, initially, the deceased had been in a seated position with his right knee bent on the floor and his head inclined on a cardboard box under the computer. The doctor stated that he had laid the deceased on the floor in order to provide him with assistance.

7. On the same date another record was drawn up according to which Senr. Lt. S.H., deputy of the third battalion and commanding officer of the military unit in charge of armaments, had given a Makarov LR 2009 pistol and a cartridge belt with seven bullets, which he had kept in his office. S.H. also stated that at around 8.30 p.m. he had heard a shot next door, whereupon he had immediately entered the commanding officer's office and, in a situation that had been quite hectic, he had taken the Makarov pistol from the table and removed it to his office, where he had unloaded it and placed it on a metal safe.

8. It was subsequently established that S.H. had received the Makarov pistol in question earlier that day to give to M., a battalion commanding officer who had been assigned a duty shift the following day.

9. On 31 October 2001 criminal proceedings were instituted into the circumstances surrounding Arayik Avetisyan's death. The decision to institute criminal proceedings stated that at around 9 p.m. on 30 October 2001 private K.S. had taken the battalion commander's Makarov LR 2009 pistol from the office of the commanding officer of the battalion headquarters and, unaware that it had in fact been loaded and in breach of the rules for safe firearm handling, had fired it, as a result of which the bullet had hit Arayik Avetisyan, causing his death.

10. On the same date a forensic medical examination of Arayik Avetisyan's body was ordered. An expert was asked to determine, inter alia, the cause of death, whether any injuries were present on the body and, if so, the time and manner of their infliction and their link to the death.

11. On the same date K.G. was interviewed as a witness and stated, in particular, the following:

> "... [A]t around 8.30 p.m. on 30 October 2001 I went to the office of the commanding officer of the third battalion headquarters of the military unit to use the computer ... [S.M.] was in the same room ... I do not remember whether [A.K.] was also there. About twenty minutes later [K.S.] entered the room... After that ... Arayik Avetisyan came into the room. I do not remember exactly whether [Arayik Avetisyan] came first or [K.S.]. I was very scared by the incident and do not remember certain things ... [Arayik Avetisyan] had come to the room to take some documents. As far as I remember there were four of us in the room: me, [K.S.], [Arayik Avetisyan] and [S.M.]. A bit later ... [S.H.] gave S.M. a Makarov gun ... to be given to ... [M.]. I understood that it was the gun assigned to [M.] ... [S.M.] put the gun on the table which was in front of the cupboard to the right of the entrance ... I do not remember exactly whether it was [S.H.] or [S.M.] who put the gun on the table, but it was one of them. Having approached the table, [Arayik Avetisyan] took the gun and said: 'This is my gun; what is it doing here?' He said that as a joke. At that moment [K.S.], who was next to [Arayik Avetisyan], took the gun from him and said: 'No, this is my gun'. They were joking. At that point both of them were by the table, after which [Arayik Avetisyan] moved backwards. I was standing by the window, next to the metal cupboard. Having taken the gun, [K.S.] loaded it and held the gun barrel up, towards [Arayik Avetisyan] after which a shot was fired. At that moment [Arayik Avetisyan] was standing next to the computer desk with his back towards the metal cupboard, half-turned with his face towards [K.S.] ... As a result of the shot [Arayik Avetisyan] fell to the floor between the metal cupboard and the computer desk ... I realised that the bullet had hit [Arayik Avetisyan] ... I saw that ... the bullet had hit his forehead and there was bleeding. I bent to lift him up but realised that he was dead. There was no way out and I left the room because I was scared. I never went back to that room. I have heard that the doctor ... moved the body in order to provide assistance."

12. At his interview as a witness, conducted on the same date, S.M. stated, inter alia, that he had been in the room with A.K., Arayik Avetisyan, K.S. and K.G. when S.H. had asked him to take the battalion commanding officer's gun to give it to the latter's adjutant. He had received the gun in the office of S.H. who, before handing the gun to him, had loaded the magazine and put it back into the gun. Thereafter he had returned to the office of the commanding officer of the third battalion headquarters and put the gun on the table. He had then left the room to meet an officer to whom he was supposed to hand over a package. However, that officer had already left and he had turned to go back to the office when he had heard a shot. [K.S.] had run out. At that moment S.H. had entered the room to find out what had happened and approached Arayik Avetisyan. S.H. had then placed Arayik Avetisyan's head on the box underneath the computer and had given orders to call a doctor. The doctor had laid Arayik Avetisyan on the floor to provide first aid but said that it had been too late. S.M. further stated that he had not seen who had taken the gun since he had left the room.

13. When questioned as a witness on the same date, K.S. gave a similar account of the events and stated that he had fired the gun without knowing that it was loaded.

14. On 6 November 2001 A.K. was questioned as a witness and stated, inter alia, that [K.S.] had shot at Arayik Avetisyan despite the latter asking

him not to point the gun at him right before the shot. A.K. also stated that Arayik Avetisyan had had no issues with fellow service personnel, with the exception of battalion commanding officer M., who in general did not treat officers well. According to A.K., M. had not been present at the time of the incident. He further recounted several episodes of Arayik Avetisyan having been abused by M. Firstly, although he had not personally witnessed it, he had been told by the officers that M. had beaten up Arayik Avetisyan. Secondly, at the end of the summer or beginning of autumn 2001 he had seen Arayik Avetisyan with a black eye. Later that day Arayik Avetisyan had told the officers that M. had hit him on the eye. Also, probably in August 2001, M. had beaten up Arayik Avetisyan and several other officers. A.K. described various other episodes of verbal and physical abuse of officers by M.

15. On the same date a combined ballistic, forensic and criminalistics examination was ordered to determine, among other things, whether there were any fingerprints on the Makarov pistol and, if so, whether they belonged to K.S., S.H., S.M., K.G., A.K. or Arayik Avetisyan and whether the pistol had been cleaned after it had been fired for the last time.

16. On 7 November 2001 K.S. was charged with murder (դիտավորյալ սպանություն). The decision to bring charges against K.S. stated, in particular, that he had taken the gun, loaded it, pointed it at Arayik Avetisyan and fired, thereby deliberately killing the latter for reasons not clarified during the investigation.

17. On 8 November 2001 S.M. was questioned again and stated, inter alia, that he had seen K.S. taking the gun from the table after he had put it there. When he had been leaving the room, K.S. had had the gun. Contrary to his previous statement, S.M. stated that he had been in the room at the time the shot had been fired. He further stated that, when K.S. had directed the gun at Arayik Avetisyan, he had told K.S. that the gun had been loaded but right at that moment the latter had fired.

18. On 30 November 2001 the autopsy report was delivered. The relevant parts of the report read as follows:

> "... [Arayik Avetisyan's] death was caused by functional brain failure as a result of a perforating ballistic trauma to the cranium ... The following injuries have been identified during the examination of the body: a wound on the right part of the forehead ([bullet] entry); a frontal-bone fracture with the wound trajectory ...; an occipital-bone fracture on the left side; a wound on the left side of the occipital area ([bullet] exit)' a haematoma on the right side of the forehead; a closed wound on the back side of the left parietal bone. The haematoma and the closed wound were inflicted by a blunt object or tool with a small surface area, while [the victim was] still alive ... There are no medical methods to determine the sequence of the injuries. Death occurred immediately after the infliction of the injuries. At the time when Arayik Avetisyan received the injuries, he was facing towards the barrel of the firearm. The ballistic wound trajectory is directed from the front to the back, right to left, top to bottom ..."

19. On the same date K.G. was questioned again and stated, inter alia, that he was aware that M. had hit [Arayik Avetisyan] several times.

20. On 12 December 2001 the results of the combined ballistic, forensic and criminalistics examination were received. According to the experts' report, no fingerprints had been discovered on the gun submitted for examination.

21. On 28 December 2001 the applicant was interviewed and stated, in particular, that from the very first days of service in the military unit her son had been physically abused, frightened and humiliated. His superiors had also extorted money from him. During his aunt's visit he had told her of his intention to change battalion because of M., the commanding officer. After some time he had managed to change battalion. However, two to three days later M. had beaten him up, sworn at him and taken him back to the third battalion, after which his life had become unbearable since he had been physically abused on a daily basis. On 20 October 2001 M. had sent Arayik Avetisyan to visit his family with the condition that he should bring back 2 litres of homemade vodka and 100 US dollars. However, finding the requested amount had been an impossible task for the applicant owing to her family's difficult financial situation. When her son had been due to return to the military unit on 28 October 2001, she had promised him that she would raise the necessary amount and send it to him. Having learnt of their son's murder on 31 October 2001, both she and his father suspected M. right away.

22. On 21 December 2001 a combined ballistic, micro-particle, criminalistics and medical forensic examination was ordered to determine, inter alia, whether the non-ballistic injuries discovered on Arayik Avetisyan's head could have been sustained as a result of his falling after he had received the gunshot injury.

23. On 25 February 2002 the expert report in the above forensic examination was delivered. It stated, in particular, that it could not be ruled out that the occipital-bone fracture on the left side discovered on Arayik Avetisyan's head had been sustained as a result of the latter's fall after the shot, but the haematoma on the right side of the forehead had been inflicted directly by a blunt object or tool with a small surface area.

24. At a supplementary interview on 18 June 2002 K.G. stated, inter alia, that after having loaded the gun K.S. had suddenly lifted it, directed it rapidly at Arayik Avetisyan's head and pulled the trigger.

25. On 29 June 2002 A.K. was interviewed once again. He stated, in particular, the following:

> "... [M]y previous statements were not truthful; I made them because I was scared. Now I have a bad conscience and I have decided to tell the truth. On 30 October 2001 at around 8.30 p.m. I went to the office of the base commanding officer ... [S.M.] and [K.G.] were there ... About five minutes later Arayik Avetisyan and [K.S.] entered the room ... At that very moment battalion commanding officer [M.] entered ... [He] asked [Arayik Avetisyan]: 'You went home, why have you brought only half of the

amount?' to which [Arayik Avetisyan] replied: '[Sir], my family did not have enough, I have brought what there was.' Without saying anything, [M.] grabbed [Arayik Avetisyan] by the back of his collar, knelt [Arayik Avetisyan] facing towards him and, having pulled out his gun with the other hand ..., pistol-whipped [Arayik Avetisyan] hard, twice, in the back of the head ... The commander grasped [Arayik Avetisyan] by the chest with one hand and pulled him up ... [Arayik Avetisyan] took a breath and wanted to say something. At that very moment there was a shot ... I saw right away that there was a gunshot wound on his forehead ... I realised that he was dead ... Several seconds later [S.H.] and Lt. [N.] ran into the room. [S.H.] asked, shouting, who had fired the shot; nobody answered. At that point I looked at [M.]. He was standing by the door with the gun in his hand, doing and saying nothing ... then [S.H.] told [S.M.] to wash the gun ... After some time I tried to go back to the room to see what was going on but the military police officers, who had arrived by then, would not let me in ... nobody asked me any questions about the incident. The next morning the military police officers ... took me to [their headquarters] in Yerevan. I was kept there in the same cell with [K.G.] and [S.M.]. [K.S.] stayed with us in the same cell for two days. He told us there that he had taken responsibility for the murder ... All [of us] together agreed to testify that way ... I was obliged to testify the way they said since I was afraid that my statement wouldn't stand up against theirs and I would find myself in a bad position ... I repeat that on the day in question the battalion commanding officer [M.] had firstly pistol-whipped [Arayik Avetisyan] on the head and then killed him."

26. On 15 August 2002 K.S. was questioned again and reiterated that he had been the one who had accidentally shot Arayik Avetisyan. When asked whether he was trying to cover up someone else's guilt in respect of Arayik Avetisyan's murder, K.S. denied having been subjected to any kind of ill-treatment and stated that he had made his statements without any pressure.

27. On 19 August 2002 the investigator questioned A.K. once again. At his interview A.K. fully retracted his statement of 29 June 2002 and insisted on his initial statement according to which it had been K.S. who had shot Arayik Avetisyan. He claimed that any other circumstances mentioned by him before had been the result of his imagination. At the same time, he stated that he had not been subjected to any type of ill-treatment during his interview on 29 June 2002.

28. On 13 September 2002 a ballistics examination was ordered to determine whether gunshot residue was present on M.'s military attire and, if so, whether it had originated from a shot fired from the Makarov pistol.

29. On 2 November 2002 the Prosecutor General approved the bill of indictment whereby the charges against K.S. were modified and he was charged under Article 259 § 1 (c) of the old Criminal Code ("the old CC") for having breached the rules for safe firearm handling, which had resulted in a person's death. S.H. was charged with handing over a service weapon to another person whose actions had caused a person's death. S.M. was charged with careless storage of a firearm which had resulted in its use by another person, causing death. The prosecution thus found it established that Arayik Avetisyan had died as a result of an accidental shot fired by K.S. Also, charges unrelated to Arayik Avetisyan's death were brought against

M. for several episodes of ill-treatment of service personnel. The case was transferred to the Vayots Dzor Regional Court ("the Regional Court") for examination on the merits on the same date.

30. In a decision of 9 December 2002 the Regional Court returned the case to the prosecution for further investigation finding, in particular, that the prosecution had failed to address a number of contradictions between the statements of the accused and witnesses, notably those of K.S. and A.K., and the available forensic data. Also, in contrast to the conclusions of the prosecution, there was ample witness evidence showing that K.S. had shot Arayik Avetisyan intentionally.

31. The accused appealed. On 7 February 2003 the Court of Cassation upheld the Regional Court's decision as regards K.S.'s finding, in particular, that the investigating authority had not properly assessed the evidence. This had resulted in the necessity to bring charges against K.S. for another, more serious offence. At the same time, the Court of Cassation quashed the Regional Court's decision as regards the other accused. The case was thus remitted to the Regional Court for examination as regards S.H., S.M. and M.

32. On 17 February 2003 the prosecution severed the charges concerning S.H., S.M. and M. from the case and sent it to the Regional Court for examination on the merits.

33. On 30 June 2003 the Prosecutor General approved the bill of indictment in respect of K.S. The latter was charged under Article 259 § 1 (c) of the old CC. The prosecution found it established that K.S. had taken the gun from Arayik Avetisyan and, in breach of the rules for safe firearms handling, had loaded it and then played with the gun by turning it right and left, at which time the gun had gone off with the barrel pointed at Arayik Avetisyan. The case was transferred to the Regional Court for examination on the same date.

34. By a decision of 28 July 2003 the Regional Court remitted the case to the prosecution for further investigation. In doing so, it stated that the prosecution had ignored the requirements of the Court of Cassation's decision of 7 February 2003.

35. The prosecution lodged an appeal, which was dismissed by the Criminal Court of Appeal ("the Court of Appeal") on 27 August 2003. The Court of Appeal found, in particular, that no new evidence had been collected during the further investigation but the prosecution had brought the same charges against K.S. Therefore, the flaws in the investigation had not been eliminated.

36. On 22 October 2003 the prosecution issued a new indictment whereby K.S. was again charged with breaching the rules for handling weapons, negligently causing a person's death, under Article 373 § 3 of the new Criminal Code, which had in the meantime entered into force. The case was transmitted to the Regional Court for examination.

37. In the course of the trial K.S. fully admitted his guilt and testified that he had unintentionally loaded the gun and shot Arayik Avetisyan through negligence.

38. By the judgment of 23 December 2003 the Regional Court found K.S. guilty as charged and sentenced him to six years' imprisonment.

39. The applicant lodged an appeal.

40. In the proceedings before the Court of Appeal, K.S. refused to make a statement or answer the majority of the questions put to him.

41. On 19 July 2004 the Court of Appeal quashed the Regional Court's judgment and remitted the case to the prosecution for further investigation. In doing so, the Court of Appeal stated, inter alia, the following:

> "In the course of the investigation [A.K.] made an additional statement [on 29 June 2002] to the effect that ... [see paragraph 25 above]
>
> A.K. later retracted this statement while he stated in the Court of Appeal that the statement [of 29 June 2002] had been written by the investigator and he had merely signed it, without reading it, and when it had transpired during the trial proceedings that the statement had been written by A.K., the latter had explained that the investigator had dictated the text to him ... when asked how he had been able to mention circumstances in his statement that had been true, he had once justified that by saying he had made them up and those had coincided with the truth accidentally, whereas another time he had stated that he had made a guess from the questions put to him.
>
> ... [T]he investigating authority has failed to establish the origin of the victim's non-ballistic injuries ..."

42. By a decision of 17 September 2004 the Court of Cassation upheld the decision of 19 July 2004.

43. On an unspecified date the investigation was reopened and several forensic examinations were ordered, including an additional combined ballistic, chemical and medical forensic examination to find out, inter alia, whether Arayik Avetisyan's ballistic injury could have been sustained in the circumstances described by K.S., S.M. and K.G. in their respective statements and whether Arayik Avetisyan could have sustained his non-ballistic injuries as a result of his fall after being shot. The experts were also asked to establish the diameter of the bullet entry hole on Arayik Avetisyan's body.

44. On 31 May 2005 the experts' commission delivered its report which stated, in particular, that, taking into account the location of the victim's gunshot wound and the distance from the bullet hole on the wall in the room where the incident had taken place, Arayik Avetisyan could not have sustained his ballistic injury in the circumstances described by K.S. and the witnesses S.M. and K.G. The non-ballistic injuries discovered on Arayik Avetisyan's head, notably the haematoma on the right side of the forehead, could not have been caused by his fall but had been inflicted by blunt, firm objects or tools with a small surface area. As for the diameter of

the bullet entry hole, the experts stated that it could be determined only after the exhumation of the victim's body, taking into account that there was conflicting data in the case file concerning the diameter of the gunshot wound on the victim's head and the diameter of the bullet submitted for examination.

45. The applicant refused to agree to the exhumation of Arayik Avetisyan's body.

46. A number of interviews were conducted which did not reveal any significant new information while the attempts to locate A.K. were unsuccessful.

47. In November 2008 the investigation of the case was taken over by the Investigative Department of the Ministry of Defence.

48. By a decision of 10 February 2009, Senior Investigator P. made a decision to discontinue K.S.'s prosecution for lack of evidence and the absence of further possibilities to collect new evidence.

In another decision of the same date P. stayed the proceedings on the grounds that the investigation had not identified the person who had killed Arayik Avetisyan, although all possible investigative steps had been taken. The investigator thus decided to stay the proceedings until a person against whom charges should be brought had been found and ordered the military police to continue the operative and search activities in order to find the offender. The applicant unsuccessfully contested this decision before the supervising prosecutor and then the military prosecutor's office.

49. On 15 February 2010 the applicant requested that the proceedings be resumed and that certain other service personnel of the military unit be interviewed.

50. On 18 February 2010 the investigator partially granted the applicant's request and ordered that interviews of certain service personnel and that other investigative measures be carried out, without resuming the proceedings.

51. On 15 June 2010 the applicant contested P.'s decision to stay the proceedings before the Arabkir and Kanaker-Zeytun District Court of Yerevan ("the District Court"). She argued that, inter alia, the evidence in the case proved that M. had committed the murder.

52. On 9 July 2010 the District Court refused to examine the applicant's complaint for failure to respect the time-limits for contesting the decision of 10 February 2009 in which the proceedings had been stayed.

53. On 29 July 2010 the applicant asked the investigator to reopen the investigation and carry out further investigative measures, including exhumation, in order to identify the person who had fired the shot.

54. On 7 August 2010 the investigator decided to grant the applicant's request in part, that is to say the exhumation of Arayik Avetisyan's body was ordered with her consent and an additional combined forensic medical

and ballistic examination was ordered. The investigator agreed to carry out further investigative measures, without reopening the investigation.

55. The applicant appealed against this decision to the military prosecutor, requesting that the proceedings be resumed and other hypotheses be considered, including M.'s personal or direct involvement in the crime, the personal or direct involvement of one of those present in the room, and so on. She restated her request to continue with the necessary investigative measures, including exhumation.

56. By a letter of 19 October 2010 from the military prosecutor's office, the applicant was informed that her requests had been addressed previously in various other decisions.

57. The applicant subsequently contested the prosecution's refusal in a letter of 19 October 2010 before the District Court asking for the proceedings to be resumed. She argued that the investigation into Arayik Avetisyan's death had not been effective, and in these circumstances the proceedings should be resumed in order to identify the person responsible for his death.

58. On 10 January 2011 the applicant lodged her application with the Court.

59. On 12 January 2011 the District Court dismissed the applicant's complaint on the grounds that investigative measures could be conducted in respect of proceedings that had been stayed. In doing so, it relied on Article 258 of the Code of Criminal Procedure ("the CCP").

60. The applicant lodged an appeal, which was allowed by the Court of Appeal on 15 March 2011. The case was remitted to the District Court.

61. In the meantime, the police were assigned to take further measures to locate A.K. As a result, the police reported to the investigator that A.K. was living in Russia but it had been impossible to determine his address.

62. On 16 March 2011 K.G. was questioned once again and stated that he had personally witnessed K.S. accidentally shoot Arayik Avetisyan.

63. On 17 March 2011 K.S. was questioned again. He denied having either intentionally or accidentally shot Arayik Avetisyan. To a question concerning his previous statements to the effect that he had been the one who had shot Arayik Avetisyan, K.S. responded that he had had reasons to give such testimony but he could not state those reasons. In response to further questions by the investigator, K.S. stated that he had not been present when Arayik Avetisyan had been shot; he had had to make such culpatory statements previously to ensure his own and his family's security.

64. On 17 June 2011 the District Court dismissed the applicant's complaint once again.

65. Further appeals by the applicant against this decision were dismissed at final instance by the Court of Cassation on 12 October 2011.

66. Thereafter the investigation was taken over by at least two other investigators of the Investigative Department of the Ministry of Defence.

According to the material provided by the Government, certain measures such as additional interrogations and further attempts to locate A.K. were taken.

67. In May 2016 the investigation was taken over by the Investigative Committee.

68. On 18 July 2016 the applicant asked to be informed of the investigative measures, supported by relevant documents and records, which had been carried out since the stay of the proceedings in 2009. Her request was dismissed.

69. The applicant applied to the District Court, complaining about the refusal of the investigating authority to provide her with the material concerning the investigative actions taken after the decision to stay the proceedings.

70. By its decision of 21 February 2017 the District Court dismissed the applicant's complaint. The applicant appealed.

71. On 28 March 2017 the Court gave notice of the application to the respondent Government.

72. On 7 April 2017 the Court of Appeal overturned the District Court's decision of 21 February 2017 and allowed the applicant's complaint.

73. On 7 June 2017 the applicant requested to be provided with the relevant material from the case file pursuant to the decision of 7 April 2017.

74. On 26 June 2017 the applicant received the requested material.

75. On 3 August 2018 the proceedings were resumed following the supervising prosecutor's instruction.

76. Within the framework of the resumed proceedings attempts were made to locate A.K. but to no avail. A number of witnesses, including former battalion commanding officer M., former conscripted soldiers K.G. and K.S. and other witnesses were questioned with no useful new information being obtained. It had not been possible to ensure the attendance of a number of other summoned witnesses, including former conscripted soldier S.M.

77. On 13 March 2019 the investigator made a decision to stay the proceedings on the grounds that, despite the fact that all necessary investigative actions had been taken, it had not been possible to identify the person against whom charges should be brought.

RELEVANT LEGAL FRAMEWORK

78. Under Article 259 § 1 (c) of the Criminal Code in force until 1 August 2003, a breach of the rules for handling weapons, as well as munitions, explosive, radioactive or other substances and items dangerous to society that has resulted in the victim's death, is punishable by two to ten years' imprisonment.

79. Under Article 373 § 3 of the Criminal Code in force from 1 August 2003, as in force at the relevant time, a breach of the rules for handling weapons, munitions as well as radioactive substances, explosives or devices dangerous for the environment that have caused a person's death negligently, is punishable from three to seven years' imprisonment.

80. Pursuant to Article 258 § 2 (1) of the Code of Criminal Procedure, after having stayed the proceedings, an investigator must take measures personally or through the police to discover the person against whom charges should be brought. In such a case the investigator may carry out relevant investigative actions, if that is necessary (Article 258 § 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

81. The applicant complained that the investigation to determine the circumstances surrounding the death of her son, Arayik Avetisyan, had not satisfied the requirements of Articles 2 and 13 of the Convention. The Court finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. The parties' submissions

82. The Government submitted that the applicant had failed to exhaust domestic remedies available to her in that she had failed to lodge a timely appeal against the decisions of 10 February 2009 whereby the proceedings had been stayed and K.S.'s prosecution terminated. Even if the applicant had considered that remedy to be ineffective, she had failed to lodge her complaints with the Court within the six-month period.

83. The applicant maintained her complaints. She submitted that her complaint concerned a continuing breach by the national authorities of their obligation to carry out an effective investigation into the circumstances surrounding the death of her son. Under domestic law the decision to stay the proceedings did not entail termination of the investigation. Indeed, investigative measures had continued to be carried out after the stay of the proceedings. It had therefore not been unreasonable for her to wait for the outcome of the proceedings prior to introducing her application with the Court. However, she had not been able to wait indefinitely and, seeing that her attempts to resume the proceedings had been unsuccessful and being dissatisfied with the pace of the measures being taken, she had eventually introduced her complaints with the Court. Although certain investigative measures had continued to be carried out after the introduction of her

application to the Court, those had not produced any tangible results either. Neither had the investigation after the proceedings had been resumed on 3 August 2018 led to any positive outcome in clarifying the true version of the events.

2. The Court's assessment

(a) The Court's jurisdiction

84. The Court observes at the outset that the applicant's son died on 30 October 2001, that is to say a little less than six months before 26 April 2002, the date of the entry into force of the Convention in respect of Armenia ("the critical date"). The Court further observes that a number of investigative measures were carried out during the initial months of the investigation prior to the critical date while the vast majority of the procedural steps aimed at the establishment of the circumstances in which the applicant's son had died were carried out after that date.

85. Having regard to the temporal proximity between the triggering event and the critical date and the fact that much of the investigation took place after ratification of the Convention by the respondent State, the Court finds that there was a "genuine connection" between the event giving rise to the procedural obligation under Article 2 and the entry into force of the Convention (see Janowiec and Others v. Russia [GC], nos. 55508/07 and 29520/09, §§ 146 and 147, ECHR 2013; Mocanu and Others v. Romania [GC], nos. 10865/09 and 2 others, §§ 205-211, ECHR 2014 (extracts); and Ranđelović and Others v. Montenegro, no. 66641/10, § 91, 19 September 2017). Hence, in accordance with its well-established practice, the Court will confine itself to examining those procedural acts and omissions which took place or ought to have taken place in the period after the entry into force of the Convention in respect of the respondent State (see Janowiec and Others, cited above, § 142).

(b) Exhaustion of domestic remedies and compliance with the six-month rule

86. The Court reiterates that applicants are only obliged to exhaust domestic remedies which are accessible, capable of providing redress in respect of their complaints and offer reasonable prospects of success (see, among other authorities, Sejdovic v. Italy [GC], no. 56581/00, § 46, ECHR 2006-II).

87. The Court notes that despite the fact that the criminal proceedings instituted into the circumstances of Arayik Avetisyan's death were stayed on 10 February 2009, the investigative measures aimed at elucidating the circumstances surrounding his death continued thereafter (see paragraphs 50, 54, 61, 62 and 63 above). In this context, it is to be noted that the courts dismissed the applicant's application to have the proceedings resumed on the basis of Article 258 of the CCP and on the grounds that investigative

measures could be conducted despite the investigation having been stayed (see paragraph 59 and 80 above). In particular, the Regional Court did address the issue even though the applicant's former complaint against the decision of 10 February 2009 had been declared inadmissible for having been lodged out of time (see paragraph 52 above). In a situation where the investigative measures regarding the death of the applicant's son continue until the present day despite the formal decisions to stay the proceedings (see paragraphs 48 and 77 above) and, more importantly, where it is not clear what redress, if any, the applicant could have obtained had her appeal been granted and the proceedings resumed, the Court does not consider that lodging a timely appeal against the decision of 10 February 2009 constituted an effective remedy for her complaints concerning the inadequacy of the investigation into her son's death. The Court therefore dismisses the Government's objection as to the failure by the applicant to exhaust the domestic remedies.

88. As regards the Government's second objection, the Court reiterates that the six-month period, as a rule, runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts of measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see Varnava and Others v. Turkey [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009). Where a death has occurred, applicant relatives are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective investigation (ibid., § 157).

89. Having regard to its above conclusion that lodging a timely appeal against the decision to stay the criminal proceedings instituted in relation to the death of the applicant's son did not constitute an effective remedy for the applicant's complaints, the Court finds that the domestic courts' refusal to examine the applicant's appeal against the decision of 10 February 2009 cannot be considered as a "final decision" within the meaning of Article 35 § 1 of the Convention. It cannot be said therefore that the applicant failed to respect the six-month rule by not bringing her complaints to the Court within a period of six months of the date of that decision. At the same time, the Court considers that in the circumstances of the present case the applicant demonstrated the required diligence in lodging her application with due expedition. The Government's objection as to the failure to respect the six-month rule should therefore be dismissed as well.

90. 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. The parties' submissions

91. The applicant pointed out that the investigation into her son's death had been unduly protracted and ineffective. Specifically, her son, a conscripted soldier in the Armenian army and hence within the exclusive control of the authorities, was shot in his military unit with a bullet from the gun belonging to battalion commanding officer M. on 30 October 2001. The authorities had failed to determine the circumstances surrounding his death. The investigation, which had lasted more than sixteen years, had failed to clarify the precise circumstances of her son's death. That failure had been expressly admitted by the authorities who had stayed the proceedings twice on the grounds that they had been unable to identify the person who had killed her son while the military police had been assigned to continue with operative measures in order to find the offender.

92. The Government submitted that the investigation conducted by the authorities had been in compliance with their obligation under Article 2 of the Convention. All possible hypotheses had been verified by the investigative authorities and a vast number of investigative measures, including numerous forensic expert examinations, had been carried out. More than a hundred witnesses had been questioned with some of them questioned more than twice. The obligation under the procedural limb of Article 2 had not been an obligation of result but of means while the authorities had taken all necessary and possible measures to establish the relevant facts, and identify and punish those responsible for the death of the applicant's son.

2. The Court's assessment

(a) General principles

93. The applicable general principles have been summarised in the Grand Chamber's judgment in the case of Mustafa Tunç and Fecire Tunç (see Mustafa Tunç and Fecire Tunç v. Turkey [GC], no. 24014/05, §§ 169-82, 14 April 2015) and in the Court's judgment in the case of Muradyan (see Muradyan v. Armenia, no. 11275/07, §§ 132-136, 24 November 2016).

(b) Application to the present case

94. The Court observes at the outset that within hours of Arayik Avetisyan's death, steps were taken to secure the evidence. In particular, an investigator carried out an on-site examination and seized the gun (see paragraphs 6 and 7 above). Furthermore, the following day a criminal case was opened, an autopsy was ordered and several key witnesses were questioned (see paragraphs 9, 10, 11, 12 and 13 above). In those

circumstances, the Court considers that there was no unjustified delay in the investigation.

95. That being said, the Court observes that the investigation which, as noted above, commenced on 31 October 2001, has still not ended today, with the criminal proceedings having been stayed for the second time – albeit that the authorities continue with operative and search activities in the attempt to identify the person responsible (see paragraph 77 above). The investigation, which has lasted for more than eighteen years, has so far been incapable of establishing the exact circumstances of Arayik Avetisyan's death which, according to the official version, took place in the presence of at least three eyewitnesses (see paragraph 5 above).

96. In that connection the Court reiterates that in Article 2 cases concerning proceedings instituted to elucidate the circumstances of an individual's death, lengthy proceedings such as these are a strong indication that the proceedings were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify such a course of proceedings (see Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, § 219, 19 December 2017; Kudra v. Croatia, no. 13904/07, § 113, 18 December 2012; Bilbija and Blažević v. Croatia, no. 62870/13, § 107, 12 January 2016). The Court observes that no such reasons have been provided by the respondent Government, which merely described in great detail the vast number of investigative measures and witness interviews that were conducted but did not provide any explanation for the delay.

97. The Court acknowledges the practical difficulties of investigation work in the present case, such as the conflicting witness testimony and expert evidence. The Government, however, failed to provide a plausible explanation for the investigation not being capable of establishing even such crucial issues as the origin of the non-ballistic injuries on the deceased's body, which, as clearly established by the experts, had not been caused by his fall as a result of the shot (see paragraphs 23 and 44 above), or the gun from which the shot had been fired.

98. Furthermore, the Court notes that from the very first day of the investigation, even before they had received the autopsy report and questioned all the key witnesses, the authorities followed the hypothesis that K.S. had shot Arayik Avetisyan by accident, as stated in the decision to institute criminal proceedings (see paragraph 9 above). One week later K.S. was charged with murder. He was eventually indicted for negligent homicide as a result of breach of rules for handling firearms (see paragraphs 16 and 33 above). The Court further notes that the domestic courts remitted the case to the prosecution three times in so far as the charges against K.S. were concerned, pointing to inconsistencies and deficiencies in the investigation which in the courts' opinion had to be addressed (see paragraphs 30, 34 and 41 above). The Court finds that the repeated judicial

decisions whereby the case was remitted to the prosecution as a result of errors committed by the investigating authorities within one set of proceedings disclosed in the applicant's case a serious deficiency in the operation of the judicial system (see, mutatis mutandis, Wierciszewska v. Poland, no. 41431/98, § 46, 25 November 2003).

99. Lastly, the Court cannot but observe the lack of the required thoroughness on the part of the authorities in dealing with the case. In particular, following A.K.'s statement incriminating M. in the killing of Arayik Avetisyan and thereby suggesting a completely different version of the events as described by him and other witnesses previously (see paragraph 25 above) the authorities did not take any meaningful steps to follow a different hypothesis and investigate the circumstances described by the witness. What is more, the authorities hastily accepted A.K.'s further retraction of that statement without exploring any further the possibility of any pressure, psychological or other, on the witness (see paragraph 27 above). This becomes even more striking in the light of K.S.'s statement made on 17 March 2011 when he denied the version of the events as described in all his previous statements and in fact implied that those had been submitted by him out of fear for his security and that of his family (see paragraph 63 above).

100. In addition, the Court cannot overlook the cursory manner in which the authorities attempted to locate A.K., who was believed to be resident in Russia. In particular, the domestic authorities failed to submit any requests to the Russian authorities to clarify A.K.'s address in order to summon him for additional questioning (see paragraph 61 above).

101. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into Arayik Avetisyan's death. In view of this conclusion, the Court considers it unnecessary to examine whether the other aspects of the investigation met the requirements of the Convention (see Magnitskiy and Others v. Russia, nos. 32631/09 and 53799/12, § 272, 27 August 2019).

102. Accordingly, there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

103. The applicant complained that she had no effective domestic remedies at her disposal in respect of the alleged breach of Article 2 of the Convention. She relied on Article 13 of the Convention, which reads as follows:

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

104. The Government contested that argument.

105. Having regard to the findings relating to Article 2 of the Convention under its procedural limb (see paragraphs 101-102 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 taken in conjunction with Article 2 of the Convention (see Muradyan, cited above, § 161).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

108. The Government did not submit any comments in this connection.

109. Making its assessment on an equitable basis, and in view of the specific circumstances of the case, the Court awards the applicant EUR 24,000 in respect of non-pecuniary damage.

B. Costs and expenses

110. The applicant claimed EUR 11,960 in respect of costs and expenses. In support of her claims she submitted an agreement for her representation before the Court signed with PRWB and timesheets describing the number of hours of work of the relevant lawyers and legal experts. Pursuant to that agreement, the applicant was liable to pay PRWB the incurred legal fees in the event of adoption of a judgment in her favour by the Court.

111. The Government did not comment on the applicant's claims under this head.

112. The Court has previously recognised the validity of contingency fee agreements for the purposes of making an award for legal costs (see, for example Asatryan v. Armenia, no. 3571/09, §§ 78-79, 27 April 2017; and Safaryan v. Armenia, no. 576/06, §§ 62-63, 21 January 2016). The Court sees no reason to depart from that approach in the present case. On the other hand, the Court considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the applicant's several representatives, as set out in the relevant time sheets. Therefore, the claim cannot be allowed in full and a considerable reduction must be applied. Making its assessment on an

equitable basis, the Court awards the applicant a total sum of EUR 2,000 for costs and expenses, to be paid to PRWB's bank account.

C. Default interest

113. 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, by a majority, the application admissible;

2. Holds, by six votes to one, that there has been a violation of Article 2 of the Convention;

3. 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 24,000 (twenty-four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid to PRWB's bank account;
   (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;

4. Dismisses, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Ksenija Turković President

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

K.TU.
A.C.

DISSENTING OPINION OF JUDGE WOJTYCZEK

I have explained in detail my views concerning the temporal scope of application of the Convention in my separate opinions appended to the judgments in the cases of Janowiec and Others v. Russia, applications nos. 55508/07 and 29520/09, 21 October 2013, as well as Mocanu and Others v. Romania, Applications nos. 10865/09, 45886/07 and 32431/08), 17 September 2014. It is not necessary to express them again in the instant opinion.

In the instant case, the death of the applicant's son occurred on 30 October 2001, i.e. before the date of the entry into force of the Convention in respect of Armenia (26 April 2002). For this reason the application should have been rejected as inadmissible. For the same reason the respondent State cannot be held responsible for a violation of Article 2 of the Convention. The approach adopted by the majority, which follows the case-law of the Court established in recent years, amounts to a retroactive application of the Convention.