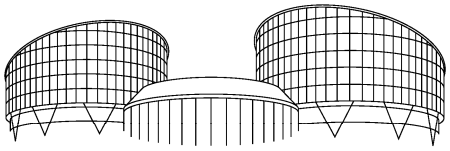

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF NANA MURADYAN v. ARMENIA

(Application no. 69517/11)

JUDGMENT

Art 2 (substantive and procedural) • Life • Positive obligations • Failure to take any measures to protect life of conscript who committed suicide, against backdrop of harassment, monetary disputes and discouragement of reporting misconduct in his military unit • Ineffective investigation

STRASBOURG

5 April 2022

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 Nana Muradyan v. Armenia,

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

Yonko Grozev, *President,*
Tim Eicke,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 69517/11) 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 Nana Muradyan ("the applicant"), on 23 January 2012;

the decision to give notice of the application to the Armenian Government ("the Government");

the parties' observations;

Having deliberated in private on 27 May and 21 September 2021 and 15 March 2022,

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

INTRODUCTION

1. The case concerns the death of the applicant's son, allegedly by suicide, during his compulsory military service and raises issues under Articles 2 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1972 and lives in Armavir. She was represented before the Court by Mr M. Shushanyan and Mr R. Revazyan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

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

I. BACKGROUND TO THE CASE

5. The applicant is the mother of V. Muradyan, who died at the age of 18.

6. In November 2009 V. Muradyan was drafted into the Armenian army. He was then assigned to military unit no. 39318 of the Nagorno-Karabakh armed forces ("the military unit", situated in the "Republic of Nagorno-Karabakh" (the "NKR")).

7. On 15 March 2010, at around 12.35 a.m., V. Muradyan's body was found hanging from a metal pole at the back of the officers' room of the military unit's maintenance company.

II. INVESTIGATION INTO THE APPLICANT'S SON'S DEATH

A. Initial investigation

8. On the day of the discovery of V. Muradyan's body investigator A. of the First Garrison Investigation Department of the Investigative Service of the Ministry of Defence of the Republic of Armenia (Stepanakert, Nagorno-Karabakh) decided to institute criminal proceedings concerning V. Muradyan's death. The investigator's decision stated, in particular, as follows:

> "... having considered the report concerning private [V. Muradyan's] suicide, I found out that at around 12.35 a.m. on 15 March 2010 ... private [V. Muradyan's] body was found hanging from a metal pole with a rope at the back of the officers' room of the maintenance company of [the military unit].
>
> This fact contains the elements of a crime under Article 110 § 1 of the [Criminal Code of Armenia] ...
>
> I [have] decided to institute criminal proceedings under Article 110 § 1..., take over the criminal case and conduct an investigation ..."

9. Between 1.30 and 2.50 a.m. investigator A. conducted an examination of the scene of the incident. According to the report of that examination, the investigator found a military belt with the number 118733 by the door to the contractual servicemen's office situated in a building next to the officers' room of the military unit's maintenance company. The belt was seized by the investigator. A couple of metres away the investigator found a military hat and a belt, both with the number 00000276, and a military jacket with the number 105388, all of which were seized. The report then went on to describe the position of V. Muradyan's body, which was said to have been hanging from a metal pole. It was stated, *inter alia*, that V. Muradyan was in military uniform and that there was a chair on the floor, 5 cm away from his left heel. After V. Muradyan's body had been removed and taken on a stretcher to the officers' room of the maintenance company, the remainder of the rope that had been left on the metal pole was also seized.

10. From 2.55 until 3.30 a.m. investigator A. examined V. Muradyan's body. His clothes, including his military jacket, were removed and seized.

11. Later that morning investigator A. conducted an additional examination of the scene of the incident. It appears that a torn and empty cardboard box with the applicant's son's name written on it was found and seized. No other items relevant to the investigation were reported as being found during the examination of the officers' room of the maintenance company and the contractual servicemen's office.

12. On the same date investigator A. ordered a forensic medical examination of V. Muradyan's body to determine, *inter alia*, the cause of his death, the presence of injuries on his body, whether his death had resulted from hanging or the knot had been put in place after his death, and whether it was possible that his death had resulted from suffocation by other means.

13. In the aftermath of the incident, several servicemen from the maintenance company, including privates N.G., H.H., A.K. and junior sergeant K.A., were questioned. According to their version of events, V. Muradyan owed 6,000 Armenian drams (AMD – approximately 11 euros (EUR)) to serviceman N.G., who had lent him the money to pay back junior sergeant M.B., for a mobile telephone bought from the latter. On 14 March 2010 servicemen H.H. and A.K. had requested AMD 2,000 (approximately EUR 4) from N.G. Stating that he did not have the money, N.G. had referred them to V. Muradyan, who, according to N.G., had agreed to give them AMD 2,000 from the amount initially owed to him. As a result of further discussions that day, A.K. and H.H. learnt that V. Muradyan had lied to them when he had said that another serviceman, T.H., had agreed to lend him the required amount. Later that day servicemen A.K. and H.H. had met N.G. to discuss V. Muradyan's debt. Junior sergeant K.A. had also joined in the conversation. N.G. had offered to meet V. Muradyan. At around 9 p.m. they had gone to the contractual servicemen's office, which had been empty at the time. A.K. had then invited V. Muradyan, who had been asked to explain why he had lied about the fact that T.H. had promised to lend him money. V. Muradyan had bowed his head and not answered. Thereafter, V. Muradyan had stated that he needed to go to the first artillery division urgently. As he had been leaving, A.K. had told him to find the required amount before midnight. The conversation involving N.G, A.K., H.H. and K.A. had lasted about ten minutes.

14. In their statements, N.G., K.A., H.H. and A.K. denied inflicting any violence on V. Muradyan during the discussions concerning the latter's debt.

15. It was established that platoon commander A.Ar. had been in charge of the maintenance company on 14 March 2010. At about 10.30 p.m., before giving the "lights out" order, A.Ar. had gone to the armoury, where he had seen all the maintenance company servicemen except V. Muradyan.

A.Ar. had enquired as to his whereabouts, and junior sergeant K.A. had replied, untruthfully, that V. Muradyan had gone to the toilet. A.Ar. had not then verified whether that was indeed the case and had left for his office to continue watching television, while K.A. had marked V. Muradyan as present in the evening register.

16. It was further established that at about midnight, private L.T., seeing that V. Muradyan's bed was empty, had informed the other servicemen. After searching for V. Muradyan for some time, the servicemen had discovered his body hanging from a metal pole.

17. At some point, the applicant was recognised as V. Muradyan's legal heir in the proceedings. When questioned, the applicant stated, in particular, that during a telephone conversation a couple of days before the incident her son had told her that he had witnessed a fuel theft at the military unit. She also stated that she did not believe that her son could have committed suicide and that he had been killed by the servicemen whom he had seen stealing fuel.

18. On 19 April 2010 the forensic medical expert delivered his report (see paragraph 12 above). The relevant parts read as follows:

> "... there is a single closed ligature mark on the upper third of the neck ... On the left side on the front surface of the neck there is a 1.2 to 1.3 cm wide dark red snake-like bruise that is horizontal to the ligature mark ...
>
> [V. Muradyan's] death resulted from mechanical suffocation caused by compression of the neck organs by the knot ...
>
> The following injuries have been discovered as a result of the forensic examination of [V. Muradyan's] body: a bruise in the left arm area, an abrasion on the right wrist ... which were inflicted while he was still alive, about 2 to 4 days prior to death ... are not connected with the death ... Apart from the features inherent in the given type of mechanical suffocation, the forensic examination of [V. Muradyan's] body has not revealed other specificities ..."

19. On 31 May 2010 investigator A. ordered a post-mortem forensic psychiatric and psychological assessment of V. Muradyan's condition prior to his death. The relevant parts of the experts' report of 27 July 2010 read as follows:

> "... It should also be noted that [V. Muradyan's] fellow servicemen and officers have said in their statements ... that [V. Muradyan] had not complained about military service and was in a good mood during the period preceding his death; moreover, he was happy; no anxiety or despair could be noticed ...
>
> It should be noted that the participants in the situation being examined have stated ... that [V. Muradyan] was very upset and did not utter a word or respond during the last conversation with him. It is also worth noting that, apart from the fact mentioned, according to the material in the case file, [V. Muradyan] had not been subjected to any violence by anyone; he had not been seen unhappy or depressed ...
>
> ... it can be concluded that while alive and at the moment of committing suicide [V. Muradyan] was not suffering from any psychiatric disorder and could account for his actions and control them.

> ... [V. Muradyan] had found himself in a conflict situation trying to find money for the payment of the mobile telephone bought from M.B. ...
>
> ... according to the material in the case file [V. Muradyan] ... had plans for the future, there is no information about a previous suicide attempt or thoughts [of that sort], his relationships with fellow servicemen were normal ...
>
> ... it can be concluded that almost immediately before his death [V. Muradyan] was in a severely depressed psychological state. It should also be mentioned that, according to the material in the case file, [V. Muradyan's] psychological state before his death was provoked by the ... discussions concerning repayment of the money, to which the actions of [N.G.], [A.K.], [H.H.] contributed ...
>
> ... it can be concluded that there is a causal link between the actions of [N.G.], [A.K.], [H.H.] and [V. Muradyan's] psychological state but that those actions should be subject to legal assessment."

20. Dissatisfied with the results of the investigation, the applicant sent various complaints to the authorities claiming that the investigation had failed to establish the true circumstances of her son's death.

21. On 3 August 2010 the investigation of the case was taken over by investigator A.T. of the Investigation Department of Cases of Special Importance of the Investigative Service of the Ministry of Defence (Yerevan, Armenia).

22. On 6 September 2010 A.T. ordered a forensic biological examination of V. Muradyan's clothes, including his military hat, belt, trousers and jacket, all of which had the number 00000276, and other items found at the scene of the incident, including the military belt with the number 118733 and a military jacket with the number 105388.

23. On 16 September 2010 the expert delivered his report, which stated that V. Muradyan's trousers were dirty and had whitish traces on them, while his shirt was also dirty and the sleeves covered with traces of white mould. No traces of blood, skin or hair particles had been found on the clothes examined.

24. On the same date A.T. ordered a forensic trace evidence examination to determine, in particular, whether the clothing seized at the scene of the incident contained any evidence of a violent struggle or fight. The expert's report, delivered on 12 October 2010, concluded that there were no mechanical defects or specific trace evidence on the clothes examined.

25. On 4 October 2010 A.T. ordered a forensic biological examination to determine whether there were any traces of blood, hair, skin or other types of tissue on the rope. According to the expert's report of 15 October 2010, a sparse amount of blood had been found in the sample taken from the part 12 to 13 cm from the knot. However, the blood type had not been determined, probably because of the scarcity of proteins in the sample, which was why the expert had not proceeded to determining the blood group.

26. It was established during the investigation that the military belt with the number 118733 found at the scene of the incident had belonged to N.G.

27. By a decision of 15 January 2011 A.T. decided to stay the criminal proceedings into V. Muradyan's death. The relevant parts of the decision read as follows:

> "... According to the material in the case file, before, during or after the conversation which took place at around 9 p.m. on 14 March 2010 ... servicemen N.G., A.K., H.H. and K.A. did not assault, threaten, degrade or humiliate V. Muradyan ...
>
> It was also established that in the days preceding the incident, V. Muradyan had participated in car repair works in the maintenance company and that the bruise in the area of his left arm and the abrasion on his right wrist could have been caused then.
>
> ...
>
> K.A. and A.Ar. failed to fulfil their duties properly, however no significant damage has been caused by their actions and there is no causal link between their actions or inaction and [V. Muradyan's] suicide. K.A. and A.Ar. could not have predicted that, by being absent from the evening call-up [V. Muradyan] could have committed suicide ...
>
> As a result of the internal investigation into [V. Muradyan's] suicide ... the officials responsible, who breached the internal rules of military conduct, including A.Ar., were reprimanded.
>
> ...
>
> The Stepanakert military police and the command of the military unit were instructed to investigate a shortage of fuel in the military unit ... however no cases of fuel shortage were... detected.
>
> ... according to the evidence collected in the case [N.G.] left his belt [at the place where V. Muradyan's body was found] as a result of having forgotten about it and no other information has been received in the case to explain the presence of [N.G.'s] military belt at the place in question.
>
> ...
>
> The chair that [V. Muradyan] used during the suicide was a metal one and, according to the evidence ..., it did not belong to any division; it was at the back of the maintenance company garages and was not in use.
>
> ...
>
> Thus, all the possible necessary investigative actions have been taken during the investigation ... however the person or persons to be charged have not been identified."

B. Resumption of the investigation

28. On 31 January 2011 the supervising prosecutor instructed A.T. to resume the investigation, giving specific instructions concerning investigative measures that still needed to be taken.

29. By a decision of 3 February 2011 A.T. resumed the proceedings.

30. On 4 April 2011 A.T. questioned N.G. again, who stated, *inter alia*, that he had lent AMD 6,000 to V. Muradyan on 11 March 2010 because he had seemed anxious and frightened as he had had until midnight that day to pay for the telephone bought from M.B. Since M.B. was undergoing a disciplinary punishment (isolation) at the time, V. Muradyan was to give the money to S.B., M.B.'s friend. He further stated that after the evening call-up on 11 March 2010 he had seen V. Muradyan speaking with S.B. Although he did not hear their conversation, he knew that they were talking about the payment to M.B. Since they were not friends, there was nothing else that they could have been talking about. Besides, S.B. had authority in the military unit, while V. Muradyan was a new recruit and did not have authority. Either that same day or the day after he noticed that V. Muradyan was absent from the evening call-up when all the servicemen had lined up. When he asked K.A. where V. Muradyan was, K.A. told him that he had excused himself because he had to have a conversation regarding the payment of some money. N.G. then saw V. Muradyan on his way back trying to button his winter jacket, but he only managed to button some of the lower buttons and fasten his belt. N.G. also stated that V. Muradyan had appeared very confused at that point and had not been acting his usual self, which was why he had thought that something had happened, although he had not known what at that point. Afterwards, he realised that V. Muradyan was late for the line-up because of his conversation with S.B. When asked what consequences he could have suffered if he was unable to pay or was late with the payment, N.G. stated that it depended on who he had owed money to, but if he had failed to keep his word, that would have been shameful for him.

31. On 8 April 2011 A.T. questioned junior sergeant K.A., who stated, *inter alia*, that he would often use V. Muradyan's mobile telephone, which his family had gifted him on the day of his oath of enlistment. In February 2010 V. Muradyan told him that he had sold his mobile telephone to junior sergeant A.G., a contractual serviceman in the maintenance company of the military unit. However, he did not tell him whether he had received payment. Seven to ten days after that conversation K.A., A.K., N.G. and H.H. were present at a conversation between A.G. and V. Muradyan in which the latter asked him for payment, to which A.G. replied, without any explanation, that he was not planning to pay for the telephone. That conversation was followed by an argument between the two men. K.A., knowing that there was going to be an argument, avoided participating and remained outside. He could hear A.G. shouting while V. Muradyan kept silent. When the noise stopped, V. Muradyan came out with his eyes red and head down. He then realised that A.G. had definitively refused to pay the money. Those present during the argument, including A.K., N.G. and H.H., then told him that A.G. had hit V. Muradyan.

When asked to explain why he did not intervene in the argument, K.A. said:

> "Although I was squad commander and had the rank of junior sergeant, I did not have authority among the servicemen ... even if I had tried to intervene, nothing would have changed ... I did not report the incident or inform the [senior] officers."

K.A. then recounted an incident in January or February 2010 in which A.K. had hit him when he had refused to go shopping for him. According to K.A, A.K. was stronger and he could not do anything about his behaviour. He also recounted several other incidents in which A.K. had made him do favours for him, which he had done out of fear of being hit again. K.A. stated that he had not reported any of the incidents to the senior officers since the other servicemen would not have respected him afterwards. Lastly, K.A. described an incident involving A.K. and V. Muradyan in February 2010 in which the former had hit V. Muradyan after he had refused to fetch him water.

32. On 30 April 2011 A.T. charged A.G. with breaching military discipline rules. According to the charges, in early February 2010 A.G. had an argument with V. Muradyan over money and deliberately slapped and assaulted him in the presence of a number of servicemen, publicly degrading and humiliating him.

33. On 23 May 2011, when questioned again, N.G. recounted the incident between A.G. and V. Muradyan. He confirmed that A.G. had pulled V. Muradyan's clothes and hit him several times. According to N.G., A.G. had served in the military unit and then continued serving on a contractual basis, whereas V. Muradyan was a new recruit.

34. By a decision of 29 June 2011 A.T. terminated A.G.'s prosecution based on the Amnesty Act enacted by Parliament on 26 May 2011 on the grounds that he had a young child in his care and the charges against him included an offence punishable by up to two years' imprisonment.

35. On 4 November 2011 the applicant lodged a claim with the Arabkir and Kanaker-Zeytun District Court of Yerevan, seeking a judicial review of the actions and inaction of investigators A. and A.T., recognition of the violation of V. Muradyan's right to life and acknowledgment of the ineffectiveness of the investigation into his death. The applicant's main complaint was that investigator A. had failed to undertake the necessary measures to investigate the circumstances of her son's death properly, having put forward the hypothesis of suicide in a preconceived manner. Furthermore, investigator A.T. had not tried to consider other versions of the incident, apart from the suicide hypothesis. Although he had ordered several forensic examinations, they had not produced any tangible results.

36. By a decision of 12 December 2011 the Arabkir and Kanaker-Zeytun District Court of Yerevan left the applicant's complaint unexamined on the grounds that she had failed to specifically mention the action or decision complained of.

37. Following an appeal by the applicant, on 26 January 2012 the Criminal Court of Appeal upheld the decision of 12 December 2011.

38. The applicant lodged an appeal on points of law, which on 21 March 2012 was declared inadmissible for lack of merit by the Court of Cassation.

39. The case was then taken over by investigator A.M. of the Investigation Department of Cases of Special Importance of the Investigative Service of the Ministry of Defence.

40. On 25 June 2013 the applicant enquired about the status of the investigation, in particular about the investigative measures which had taken place the previous year.

41. By a letter of 4 July 2013 A.M. replied that the investigation was continuing and that the applicant would be able to study the file upon its completion.

42. On 10 December 2013 A.M. ordered an additional forensic medical examination by a panel of experts based on the material in the case file, including the photographs attached to the initial forensic medical report (see paragraph 18 above) and those taken during the examination of the body and at the scene of the incident (see paragraphs 9 and 10 above). The relevant expert panel was requested to determine the nature and origin of the bruises visible in the photographs of V. Muradyan's body, as well as the possible time of their infliction and severity. The experts were also requested to clarify whether the bruises could have been caused by hanging and, if so, the manner of their infliction.

43. On 11 March 2014 the applicant asked to examine the package containing her son's clothes that had been seized by investigator A. at the scene of the incident (see paragraph 10 above).

44. On 28 March 2014 an expert panel composed of three forensic medical experts (see paragraph 42 above) delivered its report, the relevant parts of which read as follows:

> "... we find that ... the injury in question [the bruise on the left front side of the neck] located [horizontally] beneath the ligature mark could have been sustained during death as a result of pressure on the neck while hanging ... The severity of said bruise is no different from the ligature mark from the rope and the other injuries and changes brought about by mechanical suffocation ..."

45. On 8 August 2014 the applicant lodged a complaint with the Prosecutor General which stated, in particular, as follows:

> "... At my request ... investigator [A.M.] has conducted an additional examination of the sealed package in which my son's clothes, which are physical evidence in the case, were kept. As a result of the examination, the following has come to light:
>
> 1. My son's military boots, which were on him when his body was discovered, were missing from the package;
>
> ...

> In view of the above, I request that the Special Investigative Service [of the Republic of Armenia] be instructed to investigate the above-mentioned circumstances."

46. By decision of 12 September 2014 the Special Investigative Service refused to institute proceedings against investigator A. The decision referred to A.'s statement that he had not considered it important to examine V. Muradyan's military boots and had not put them in the package with the rest of the clothes since he had not detected any injuries on V. Muradyan's lower extremities or damage to his clothes, including his socks, which was why the boots had not been sent later to the Investigative Service of the Ministry of Defence.

47. The decision of 12 September 2014 was unsuccessfully challenged before the Prosecutor General, after which the applicant sought a judicial review.

48. On 24 December 2014 the Kentron and Nork-Marash District Court of Yerevan upheld the decision of 12 September 2014.

49. The applicant lodged an appeal, which was dismissed by a decision of the Criminal Court of Appeal on 26 February 2015.

50. The applicant lodged an appeal on points of law.

51. By a decision of 23 July 2015 the applicant was refused leave to appeal by the Court of Cassation.

52. On 7 December 2015 A.M. decided to stay the criminal proceedings. The decision stated, in particular, as follows:

> "... no evidence has been obtained to substantiate that [V. Muradyan] suffered ... humiliation or ill-treatment.
>
> ...
>
> Thus, in the course of the investigation ... all possible investigative measures have been taken to identify the person/persons who should be charged with inciting [V. Muradyan] to commit suicide ..."

III. THE APPLICANT'S APPEALS

53. The applicant appealed against the decision of 7 December 2015 to the Military Prosecutor.

54. By a decision of 19 February 2016 the applicant's appeal was dismissed.

55. The applicant lodged a complaint with the Arabkir and Kanaker-Zeytun District Court of Yerevan against the decisions of 7 December 2015 and 19 February 2016.

56. On 7 November 2016 that court fully upheld the decisions of 7 December 2015 and 19 February 2016.

57. On 29 November 2016 the applicant lodged an appeal.

58. On 21 December 2016 the Prosecutor General sent a letter to the Head of the Investigative Committee, the relevant parts of which read as follows:

> "On my instructions, the criminal case [concerning V. Muradyan's death] was examined by the Department of Organisation, Supervision and Legal Assistance of the Prosecutor General's Office...
>
> It has come to light as a result of the examination of the criminal case that it is necessary to carry out a number of investigative and procedural activities with the purpose of ensuring a full and objective investigation, therefore a decision was taken on 21 December 2016 to quash the decision of 7 December 2015 by which the criminal proceedings were stayed.
>
> ... I propose to discuss the question of continuing the investigation with the Department for the Investigation of Cases of Special Importance of the Investigative Committee ..."

59. On the same date the case was transferred to the Investigative Committee to continue the investigation.

60. Subsequently, senior investigator R.M. of the Department for the Investigation of Cases of Special Importance of the Investigative Committee took over the case.

61. On 23 January 2017 the applicant withdrew her appeal against the decision of 7 November 2016 of the Arabkir and Kanaker-Zeytun District Court of Yerevan (see paragraph 57 above) on the grounds that the investigation had since resumed.

62. The Criminal Court of Appeal discontinued the examination of the applicant's appeal on the same date.

63. On 7 July 2017 former servicemen N.G. and A.K. (see paragraph 13 above) were charged under Article 359 § 3 of the Criminal Code (breach of military conduct by servicemen, see paragraph 77 below). In particular, according to the charges, on 14 March 2010 N.G. and A.K. had harassed V. Muradyan with the intention of oppressing and humiliating him for having given a false promise and failing to return the promised amount of money in time, which had resulted in the latter committing suicide by hanging later that day at around midnight.

On the same date N.G. and A.K. were put on the wanted list since they could not be located.

64. On 20 July 2017 R.M. decided to stay the criminal proceedings under Article 31 § 1(2) of the Code of Criminal Procedure (fleeing an investigation or trial) on the grounds that N.G. and A.K. were hiding from the prosecution and it had not been possible to find out their location. The Prosecutor General dismissed an appeal by the applicant against that decision on 13 November 2017.

65. On 11 December 2017 the applicant lodged a complaint with the Arabkir and Kanaker-Zeytun District Court of Yerevan against the decisions of 20 July and 13 November 2017.

66. By a decision of 23 October 2018 the Court of General Jurisdiction of Yerevan ("the Yerevan Court") allowed the applicant's complaint and ordered the investigating authority to eliminate the violations of the applicant's procedural rights. It found, in particular, that the applicant's involvement in the investigation had been of a formal nature as she had not had a genuine possibility to exercise her rights specifically in so far as she had not been informed of a number of forensic expert examinations beforehand, which would have allowed her to get acquainted with the investigator's decision to assign a forensic expert examination, challenge the experts, put additional questions to them and so forth. Furthermore, it found that the investigating authority had failed to carry out a full and objective investigation while the applicant's arguments had not been addressed. The court also concluded that the investigation had been unreasonably lengthy, in breach of the requirements of Article 2 of the Convention. As a result, the applicant's right to a plausible explanation for her son's death and her right to obtain criminal prosecution of those responsible could have been infringed.

67. On 21 December 2018 the supervising prosecutor quashed R.M.'s decision of 20 July 2017 (see paragraph 64 above) and sent the case to the Investigative Committee for further investigation.

68. On 24 December 2018 investigator R.S. of the Department for the Investigation of Cases of Special Importance of the Investigative Committee took over the investigation of the case.

69. In March 2019 the investigator made enquiries with the police to clarify whether N.G. and A.K. had crossed the Armenian border. Instructions were issued to the police and military police.

70. On 19 May 2019 R.S. interviewed T.H. (see paragraph 13 above), who stated that he had been questioned a number of times in relation to V. Muradyan's death and had disclosed everything he knew. He did not make any new statements and merely stated that he had not been aware of any violence or threats against V. Muradyan.

71. On 21 May 2019 R.S. interviewed two other servicemen. Both of them similarly made no new statements and stated that they had already been questioned and had disclosed everything they knew. When asked about possible ill-treatment of V. Muradyan, they submitted that they had not been aware of any such treatment.

72. On 5 August 2019 R.S. questioned L.T. (see paragraph 16 above), who also stated that he had nothing to add to his numerous other statements. When asked about the whereabouts of N.G. and A.K., he stated that to his knowledge they were in Russia, but that he did not know where specifically as he had not kept in touch with them.

73. On 16 July 2019 R.S. requested that the investigation be extended for a period of two months.

74. By a decision of 19 July 2019 the supervising prosecutor extended the investigation period until 21 September 2019.

75. According to the information provided by the Government on 1 July 2020, the investigation concerning V. Muradyan's death was, on that date, still pending.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Criminal Code

76. As in force at the relevant time, Article 110 § 1 provided that indirectly or negligently causing a person to commit or attempt suicide by threats, cruel treatment or repeated humiliation was punishable by imprisonment for a term of up to three years.

77. Article 359 § 3 provided that breaches of military conduct by servicemen in the absence of a subordinate relationship between them by humiliation, bullying, beating or other acts of violence which have negligently led to serious consequences, was punishable by imprisonment of four to eight years.

B. Civil Code

78. The relevant provisions of the Civil Code concerning civil liability for damage and the obligation to compensate for damage provide as follows.

79. Under Article 17 § 1, a person whose rights have been violated may claim full compensation for the damage suffered, unless the law or contract provides for a lower amount of compensation. Damage is the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights, loss of property or damage to it (material damage), including loss of income, as well as non-pecuniary damage (Article 17 § 2). Non-pecuniary damage may only be compensated in the cases provided for by the Civil Code (Article 17 § 4).

80. Article 162.1 § 2 provides that a person has the right to claim compensation for non-pecuniary damage if it has been established by the prosecuting authority or a court that, as a result of a decision, action or omission by a State or local governance body or one of its officials, his or her fundamental rights guaranteed by the Constitution and the Convention, including the right to life, have been violated.

81. Article 1087.2 §§ 3 and 4 provide that non-pecuniary damage suffered as a result of a violation of fundamental rights may be compensated regardless of whether there is any fault on the part of a State official. Non-pecuniary damage is compensated from the State budget. If the fundamental

right included in Article 162.1 has been violated by a local governance body or one of its officials, non-pecuniary damage is compensated from the relevant local budget.

82. The amount of compensation for non-pecuniary damage suffered as a result of the violation of a person's right to life cannot exceed three thousand times the minimum salary (approximately EUR 6,000) (Article 1087.2 § 7 (1)). The amount of compensation for non-pecuniary damage may, in exceptional cases, exceed that limit if the damage has led to serious consequences (Article 1087.2 § 8).

83. A claim for compensation for non-pecuniary damage may be submitted to a court together with a claim seeking to establish a breach of the rights set out in Article 162.1 within one year of the time the person became aware of the breach, as well as within six months of the date on which a judicial decision establishing the breach of the right in question came into force. If the breach has been established by a law-enforcement body, a claim for compensation for non-pecuniary damage may be submitted no earlier than two months but no later than one year after the date on which the person concerned became aware of the matter (Article 1087.2 § 9).

II. DOMESTIC CASE-LAW

84. The Civil and Administrative Chamber of the Court of Cassation dealt with a case concerning an individual's claim for compensation for, *inter alia*, non-pecuniary damage suffered as a result of an unlawful conviction. After analysing Articles 162.1 and 1087.2 of the Civil Code (see paragraphs 80-82 above), in a decision of 27 December 2017 (ԵԿԴ /3296/02/14) the Court of Cassation stated, in particular, as follows:

> "In [Armenia], compensation for non-pecuniary damage is only possible in the cases where the specific requirements of [Articles 162.1 and 1087.2 of the Civil Code] have been met, taking into account the restrictions set out in those Articles, the analysis of which consists of the following:
>
> (a) ... compensation for non-pecuniary damage can only be claimed in the case of a violation of one or more of the rights set out in [Article 162.1 § 2].
>
> (b) ... the violation [of fundamental rights guaranteed by the Constitution and the Convention] should be established by a court or prosecuting authority...
>
> (c) The basis for compensation of non-pecuniary damage is physical or mental suffering ...
>
> The Court of Cassation notes that the Civil Code prescribes limits to the amounts of compensation for non-pecuniary damage which can be exceeded in exceptional cases if serious consequences have arisen because of the [non-pecuniary] damage suffered (for instance serious damage to health) ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

85. The applicant complained under Articles 2 and 13 of the Convention about the death of her son during military service, and that the authorities had failed to carry out an effective investigation into the matter. Since it is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), 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. Jurisdiction

86. The Government submitted that the investigation into the circumstances of V. Muradyan's death had been and was still being conducted by the Armenian authorities. There was therefore solid evidence to support the theory that Armenia had jurisdiction over the matter complained of. The Government considered that Armenia's jurisdiction should be acknowledged on the basis of the exception of "State agent authority and control", as all the acts complained of as regards the procedural obligation were attributable to the Armenian authorities.

87. The applicant made no submissions in this regard.

88. The Court notes that it has already examined in other cases the issue of Armenia's jurisdiction over the territory in question and found that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and that, therefore, complaints pertaining to events that happened in that area came within the jurisdiction of Armenia for the purposes of Article 1 of the Convention (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 169-86, ECHR 2015; and *Muradyan v. Armenia*, no. 11275/07, §§ 123-27, 24 November 2016, specifically concerning the death of a conscript during compulsory military service in Nagorno-Karabakh; and compare *Mirzoyan v. Armenia*, no. 57129/10, § 56, 23 May 2019, concerning the murder of a conscript during compulsory military service in Nagorno-Karabakh).

89. In the present case, the applicant's complaints about the death of her son fall to be examined under both the substantive and procedural aspects of Article 2 of the Convention.

90. It should be noted that in the above-cited case of *Mirzoyan*, the Court concluded that there was a jurisdictional link between Armenia and

the applicant's deceased son, considering that, as established during the investigation (ibid. § 62), the applicant's son had been killed by an officer of the Armenian army on the territory of the "NKR" (see paragraph 6 above).

91. In the present case, however, at the date of the latest information available to the Court (that is, 1 July 2020 – see paragraph 75 above) the exact circumstances of the death of the applicant's son, which occurred under the authority of the Nagorno-Karabakh armed forces at a military unit situated in Nagorno-Karabakh and administered by that entity, had not been elucidated while, as noted above, the applicant complained under both aspects of Article 2 of the Convention about the death of her son, including as regards the State's failure to protect her son's right to life during his compulsory military service. The Court therefore considers that, like in the *Muradyan* case (cited above, § 126), the jurisdictional link between Armenia and the applicant's deceased son in the present case should be established on the basis of the Court's earlier finding in the Grand Chamber case of *Chiragov and Others* that at the relevant time (that is, prior to the changes in the situation on the ground as a result of the Nagorno-Karabakh war, which ended on 10 November 2020 with Azerbaijan capturing all the surrounding territories and part of the "NKR" proper and with the deployment of Russian peacekeepers in the area for at least five years) Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and was under an obligation to secure in that area the rights and freedoms set out in the Convention (see *Chiragov and Others*, cited above, §§ 169-86).

92. It follows that, for the reasons set out above, there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicant's deceased son.

2. The applicant's victim status

93. The Government submitted that the applicant could no longer claim to be the victim of a violation of Article 2 of the Convention since there had been an acknowledgement of the breach, which had resulted in the criminal proceedings being resumed and provided her with the possibility to obtain redress. In particular, the decision of the Yerevan Court dated 23 October 2018 (see paragraph 66 above) had established a violation of Article 2 of the Convention under its procedural limb and "had mirrored the violation under the procedural limb to the substantive limb of Article 2", finding that the breach of the procedural obligation could have violated the applicant's right to be provided with a plausible explanation for her son's death. Furthermore, by virtue of that decision the investigating authority had been ordered to resume the proceedings and eliminate the violation of the applicant's rights. Lastly, that decision constituted judicial acknowledgement of the breach of the applicant's right guaranteed by the

Convention, which had provided her with an opportunity to claim compensation for non-pecuniary damage from the State.

94. The applicant submitted that the criminal proceedings in respect of her son's death were still pending.

95. According to the Court's settled case-law, a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and subsequently afforded appropriate and sufficient redress for the breach of the Convention (see, for the main principles, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V, and, for a summary of those principles, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 49, 20 December 2007). The Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010), the reasons given for the decision (see *M.A. v. the United Kingdom* (dec.), no. 35242/04, ECHR 2005-VIII) and the persistence of the unfavourable consequences for the person concerned after that decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

96. The Court observes that in its decision of 23 October 2018 the Yerevan Court found that the applicant's right to an effective investigation had been breached on account of the lengthy investigation, the fact that she had not had an opportunity to participate effectively in a number of forensic expert examinations, and her statements not being properly addressed. On this basis, it ordered the investigating authority to resume the criminal proceedings in respect of V. Muradyan's death and eliminate the breach of her rights (see paragraph 66 above).

97. The Court notes at the outset that the Yerevan Court's decision of 23 October 2018 was a procedural decision taken by that court within the framework of the judicial review of the investigation. Such decisions are not uncommon in the Armenian judicial system and are primarily aimed at pointing out flaws in the investigation which have undermined its effectiveness and the restoration of the rights of the victim in the course of pending, stayed or discontinued criminal proceedings (see, for example, *Gulyan v. Armenia*, no. 11244/12, §§ 54 and 60, 20 September 2018, where the courts quashed the decisions to discontinue the investigation twice during the same set of criminal proceedings).

98. Furthermore, and contrary to what the Government claimed, the decision in question acknowledged a breach only of the procedural aspect of the applicant's complaint under Article 2 of the Convention. What is more, the Yerevan Court, having been requested to examine the lawfulness of the decision of 20 July 2017 to stay the criminal proceedings (see paragraph 64 above) by exercising a judicial review of the investigation, was not called to and indeed did not rule on the substantive aspect of the applicant's

complaint under Article 2 of the Convention, which was not the subject matter of the case before it.

99. Most importantly, the Court notes that the criminal proceedings instituted into the death of the applicant's son were, at the date of the latest information available to the Court (see paragraph 75 above), still pending at the investigation stage.

100. In these circumstances, the Court concludes that the applicant has retained her victim status and dismisses the Government's preliminary objection on this point.

3. Non-exhaustion of domestic remedies

101. Relying on the Court's decision in *Harrison and Others v. the United Kingdom* ((dec.) nos. 44301/13, 44379/13 and 44384/13, 25 March 2014), the Government argued that the applicant's complaints were premature on the grounds that the investigation was still pending after the proceedings had been resumed pursuant to the decision of the Yerevan Court of 23 October 2018 (see paragraph 66 above). In addition, the applicant had not yet availed herself of the civil remedy allowing her to claim compensation from the State based on the same decision.

102. The applicant maintained that there were no effective remedies available to her which should have been exhausted. The investigation that had been pending since 2010 had been inadequate and characterised by a lack of diligence on the part of the authorities in elucidating the circumstances of her son's death. The same could be said as regards the investigative measures being undertaken after the decision of 23 October 2018. In those circumstances, there were no grounds for considering that her complaints were premature.

103. The applicant further argued that the possibility of seeking damages from the State in civil proceedings could not be considered effective within the meaning of Article 2 of the Convention as it could not lead to the identification and punishment of those responsible. In any event, the maximum amount of compensation to which she could potentially be entitled at domestic level would not constitute appropriate and sufficient redress.

104. The general principles concerning exhaustion of domestic remedies under Article 35 of the Convention are resumed in *Vučković and Others v. Serbia* ([GC] (preliminary objection), nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

105. The Court observes that the criminal proceedings in respect of the death of the applicant's son were instituted on 15 March 2010 (see paragraph 8 above), but that the investigation was, on the date of the latest information available to the Court (see paragraph 75 above), still pending.

106. It considers that the Government's objection, in so far as they argue that the applicant's complaints are premature, raises issues concerning the

effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. It therefore considers that these matters fall to be examined below under the procedural aspect of Article 2 of the Convention, and decides to join this part of the objection to the merits.

107. In addition, the Government argued that the applicant had failed to bring a civil claim for compensation in respect of non-pecuniary damage based on the decision of the Yerevan Court of 23 October 2018 which, in their submission, constituted judicial acknowledgment of a violation of her fundamental rights guaranteed by the Convention for the purposes of Article 162.1 of the Civil Code, allowing her to claim damages from the State (see paragraph 80 above).

108. The Court notes that the applicant did not submit a claim for damages following the Yerevan Court's decision. She argued in that regard that the maximum amount she could potentially be awarded would not in any event constitute sufficient redress (see paragraph 103 above).

109. The Court observes that Article 1087.2 § 7 (1) prescribes a ceiling of AMD 3,000,000 (approximately EUR 6,000) as regards compensation in respect of non-pecuniary damage suffered as a result of a breach of the right to life. At the same time, Article 1087.2 § 8 provides for the possibility of exceeding that limit in exceptional cases, if the damage has had serious consequences (see paragraph 82 above). The Government did not argue, however, that the applicant's case would have fallen within those exceptions had she claimed damages. Furthermore, the Court of Cassation has interpreted that provision as requiring an individual to have suffered additional consequences such as, for example, having developed an illness as a result of the mental suffering otherwise caused by the breach (see paragraph 84 above).

110. The Court notes that it may, in principle, accept a lower award of compensation by the domestic authorities than it would award itself, judged in the light of the standard of living in the State concerned (see *Mučibabić v. Serbia*, no. 34661/07, § 119, 12 July 2016). However, having regard to the above-mentioned limit prescribed by domestic law, the Court considers that in the present case the compensation that could have been awarded by the civil courts is not in reasonable proportion to any award the Court may have made under Article 41 of the Convention in respect of comparable violations of Article 2 (see, for example, *Muradyan*, cited above, § 167; and *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 109, 7 May 2020).

111. In these circumstances, the Court concludes that the compensatory remedy advanced by the Government would not be capable of remedying the impugned state of affairs since, for the aforementioned reasons, it could not provide sufficient redress to the applicant. The Court therefore dismisses the Government's non-exhaustion objection in this regard.

4. Other grounds for inadmissibility

112. 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

(a) The applicant

113. The applicant submitted that the authorities of the State were responsible for her son's death, which had occurred while he had been under their exclusive control during his military service. She disputed that the finding of suicide as the cause of her son's death was accurate and argued that her son had been murdered.

114. She maintained that the investigation, which had been pending for more than nine years, had failed to elucidate the exact circumstances of her son's death owing to its inadequacy and a lack of diligence on the part of the authorities in identifying those responsible. Since the very beginning of the investigation, the only hypothesis put forward had been that of suicide. During the first five months of the investigation, only two medical expert reports had been obtained, and important evidence such as the metal chair and her son's military boots had either been destroyed or negligently lost. Furthermore, a number of important forensic examinations had been ordered several months and even years after the incident, while her statements (concerning her son witnessing fuel theft prior to the incident) had not been adequately addressed. Charges had only been brought against the two former servicemen of the military unit seven years after the incident, by which time it had already become impossible to locate them.

115. Nor could it be said that any meaningful steps had been taken by the authorities since the criminal proceedings had been resumed following the decision of the Yerevan Court of 23 October 2018.

(b) The Government

116. The Government did not comment on the applicant's complaint under the substantive aspect of Article 2 of the Convention.

117. In their submissions filed in March and August 2019, the Government stated that after the investigation had been resumed in December 2018 the authorities had carried out a number of investigative activities, such as filing a request with the police to find out whether N.G. and A.K. had crossed the Armenian border, and relevant instructions had been issued to the police and military police. The Government submitted that the details could not be disclosed at that stage owing to the secrecy of the investigation. Furthermore, several witnesses had been questioned,

while others had not yet been questioned, and certain investigative measures had been undertaken. Again, the details of the progress of the investigation could not be disclosed fully owing to the secrecy of the investigation.

2. The Court's assessment

(a) General principles

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

119. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct (see *Keenan v. the United Kingdom*, no. 27229/95, § 89-90, ECHR 2001-III).

120. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are under the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009; *Mosendz v. Ukraine*, no. 52013/08, § 92, 17 January 2013; and *Malik Babayev v. Azerbaijan*, no. 30500/11, § 66, 1 June 2017).

121. In the same context, the Court has further held that the primary duty of a State is to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Kılınç and Others v. Turkey*, no. 40145/98, § 41, 7 June 2005, and *Mosendz*, cited above, § 91).

122. Furthermore, States are required to secure high professional standards among regular soldiers, whose acts and omissions – particularly *vis-à-vis* conscripts – could, in certain circumstances, engage their responsibility, *inter alia*, under the substantive limb of Article 2 (see, in particular, *Abdullah Yılmaz v. Turkey*, no. 21899/02, §§ 56-57, 17 June 2008, see also, *mutatis mutandis*, *Stoyanovi v. Bulgaria*, no. 42980/04, § 61, 9 November 2010).

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

124. The Court further reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see, among many other authorities, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 169 and 171, 14 April 2015). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The same standards also apply to investigations concerning fatalities during compulsory military service, including the suicide of conscripts (see *Malik Babayev*, cited above, § 79, and the cases cited therein).

125. The investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 172).

126. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. However, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken. The investigation's conclusions must be

based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible and is liable to fall foul of the required measure of effectiveness (see *Muradyan*, cited above, § 135, and the references contained therein).

127. Lastly, the question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case (ibid., § 136).

(b) Application of the general principles to the present case

(i) Substantive limb

128. The applicant's son, V. Muradyan, was a conscript carrying out his mandatory military service under the care and responsibility of the authorities when he died as a result of what was alleged to be suicide.

129. The applicant questioned the authorities' finding that her son had committed suicide and alleged that he had been murdered (see paragraph 113 above). The hypothesis put forward by her, which she maintained in the domestic proceedings, was that her son had been murdered for having witnessed a fuel theft in the military unit (see paragraph 17 above). The Court observes, however, that this hypothesis was examined and refuted during the investigation (see paragraph 27 above).

130. The Court reiterates that the applicable standard of proof under Article 2 is that of "beyond reasonable doubt" (see the case-law cited in paragraph 123 above). In the instant case, the Court finds no evidence in the material before it to support the hypothesis that V. Muradyan's life was taken intentionally (contrast *Beker,* cited above, §§ 45-54, and *Lapshin v. Azerbaijan*, no. 13527/18, §§ 110-20, 20 May 2021; see also, *mutatis mutandis*, *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010).

131. The Court therefore considers that any allegation that the applicant's son was murdered would be purely speculative (see, *mutatis mutandis*, *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 59, 17 June 2008, and *Durdu v. Turkey*, no. 30677/10, §§ 59-61, 3 September 2013).

132. According to the findings of the investigation and the charges brought against former servicemen N.G. and A.K., V. Muradyan committed suicide as a consequence of harassment by his fellow servicemen (see paragraphs 13, 19 and 63 above). Furthermore, it was established during the investigation that V. Muradyan, who had been drafted into the army in November 2009 (see paragraph 6 above), was subjected to abuse at the

hands of more senior conscripts and junior command staff within the first few months of starting service (see paragraphs 30-33 above).

133. The Court reiterates in this connection that the domestic authorities are required to adopt practical measures aimed at effectively protecting conscripts against the dangers inherent in military life and appropriate procedures for identifying the shortcomings and errors likely to be committed in that regard by those in charge at different levels. The authorities are also required to secure high professional standards among regular soldiers to protect conscripts (see the case-law quoted in paragraphs 121 and 122 above). In the Court's view, however, and for the reasons which follow, the authorities failed to fulfil those obligations in the present case.

134. It appears from the evidence before the Court that in the months preceding V. Muradyan's death there had been several incidents of physical and psychological violence as he was a new recruit and was considered not to have authority (see paragraphs 30, 31 and 33 above), while there is nothing to suggest that those in charge of the military unit were aware of the situation let alone took action to address the matter. In this connection, the Court observes that junior sergeant K.A. was aware of and even involved in at least one of those incidents but did not interfere or report it to his superiors for fear of being disrespected (see, in particular, paragraph 31 above).

135. As regards the day of the incident in particular, it appears that there had been ongoing discussions about the repayment of the debt owed by V. Muradyan to N.G. throughout the day. Junior sergeant K.A. was involved in the discussions between N.G., A.K., H.H. and V. Muradyan preceding his death (see paragraph 13 above). However, he not only did not report the situation to the superiors as before, but misstated V. Muradyan's whereabouts to platoon commander A.Ar. and falsified the evening register to cover up the absence. In turn, A.Ar. failed to verify V. Muradyan's whereabouts either at that point or thereafter (see paragraph 15 above).

136. In addition, the Court observes that, aside from hazing and harassment by more powerful recruits or junior command staff, relations between servicemen constantly involved monetary issues and frequent disagreements in that regard (see paragraphs 13, 30 and 31 above). However, instead of reporting the existence of such practices to their superiors, junior sergeants M.B. and A.G. were themselves involved in monetary matters (see paragraphs 13, 30 and 32 above).

137. While the Court cannot speculate whether the command staff's ignorance of the incidents of harassment (and even physical violence) and the existence of non-statutory relations among servicemen was due to their own omission or even indifference, it is clear that the environment in the military unit was such that junior officers were discouraged from reporting misconduct (see paragraph 31 above).

138. The Court notes that the report following an internal investigation by the Ministry of Defence based on which the command staff of the military unit were subjected to disciplinary measures in relation to the incident was not provided to the Court (see paragraph 27 above and paragraph 146 below). Therefore, it is not clear whether the command staff were reprimanded for the events that took place specifically on the day of the incident or for their failure to maintain discipline and morale in the military unit in general.

139. Nevertheless, as noted above, it appears from the material before the Court that the command of the military unit failed to adopt practical measures to ensure that signals of bullying and mistreatment in the military unit under their responsibility were effectively reviewed (see paragraph 133 above). What is more, due to the unhealthy environment in the military unit, reporting misconduct appears to have been in fact discouraged. As a result, no measures were adopted whatsoever to effectively protect V. Muradyan against abuse at the hands of more senior conscripts and junior command staff which, according to the findings of the investigation (see paragraph 63 above), resulted in him committing suicide.

140. In the light of all these considerations, the Court concludes that the authorities in the instant case failed to comply with their positive obligation to protect V. Muradyan's right to life while he was under their control.

141. There has accordingly been a violation of the substantive limb of Article 2 of the Convention.

(ii) Procedural limb

142. The Court notes at the outset that the applicant disputed the authorities' finding of suicide as the cause of her son's death, arguing that he had been murdered (see paragraph 113 above). In this connection, the Court refers to its earlier finding that, in view of the evidence before it, any allegation that the applicant's son was murdered would be purely speculative (see paragraphs 129-131 above).

143. That said, there are a number of elements which, in the Court's view, seriously impaired the effectiveness of the investigation carried out by the authorities in relation to V. Muradyan's death.

144. Firstly, there were several shortcomings during the first months of the investigation which resulted in a complete loss of opportunity to collect important forensic evidence. For instance, investigator A., who was initially in charge of the investigation, failed to request a forensic trace evidence examination of the items seized during the inspection of the scene of the incident, including V. Muradyan's clothes, the rope and the chair which had allegedly been used by him to commit suicide. The relevant expert reports were requested more than six months after the incident, when the case was taken over by investigator A.T. (see paragraph 21 above). However, owing to the passage of time, the majority of biological and trace evidence

examinations requested did not produce any results since the samples provided were not fresh (see, for example, paragraphs 22, 23 and 25 above). Furthermore, as was later revealed due to the applicant's enquiries, investigator A. had not put V. Muradyan's military boots in the package containing the clothes that he had been wearing when his body was discovered (see paragraphs 45 and 46 above), thus making it impossible to verify whether the metal chair found at the scene of the incident had any trace evidence on it matching his boots.

145. Secondly, no adequate explanation was provided for two of the injuries noted in the autopsy report, namely a bruise in the left arm area and an abrasion on the right wrist (see paragraph 18 above). These two injuries were explained by the fact that V. Muradyan had participated in car repair works "in the days preceding the incident" and could have sustained them then (see paragraph 27 above). However, that hypothesis was not corroborated by any other evidence such as, for instance, witness statements to that effect or evidence that V. Muradyan had received any medical assistance in respect of injuries which had allegedly been sustained during the performance of his military duties.

146. Thirdly, it was established during the investigation that junior sergeant K.A., who had been among those confronting V. Muradyan in connection with the repayment of the latter's debt, had deliberately misled the platoon commander in charge of the maintenance company about V. Muradyan's whereabouts during the evening call-up and had falsified the relevant register by marking him present (see paragraphs 13 and 15 above). V. Muradyan was found dead a couple of hours later, and the authorities failed to investigate any further what exactly happened after the conflict with N.G., H.H. A.K. and K.A. and why the latter covered up V. Muradyan's absence. The Court notes in this regard that, according to the material before it, there was an internal investigation by the Ministry of Defence in relation to V. Muradyan's death (see paragraph 27 above), which resulted in disciplinary measures being taken against the military personnel responsible, including platoon commander A.Ar., who was in charge of the maintenance company on the day of the incident (see paragraph 15 above). However, despite the Court's specific request in that regard when the present application was notified to the Government, the latter failed to provide a copy of the relevant report to find out whether any additional circumstances about the events of 14 and 15 March 2010 had been clarified as a result of the internal investigation. In any event, the fact that based on the results of the internal investigation disciplinary measures were applied indicates that certain failures and omissions were acknowledged by the authorities as regards the actions and omissions of the command staff of the military unit on the day of the incident. Nevertheless, there is nothing to indicate that the findings of the internal investigation

were in any way analysed by the investigating authority, let alone correlated with the evidence gathered as part of the criminal investigation.

147. Fourthly, it remains unclear why charges were not brought against H.H., who, together with N.G. and A.K., was also implicated in the events preceding V. Muradyan's death; according to the post-mortem forensic psychiatric and psychological assessment, there was a causal link between the actions of H.H. (and N.G. and A.K.) and V. Muradyan's severely depressed psychological state (see paragraph 19 above).

148. In addition, there is nothing to suggest that the events of 14 March 2010 and V. Muradyan's severely depressed psychological state that day were examined in the broader context of the events that had taken place earlier, including those of 11 March 2010 and the incidents with A.G. and A.K. which clearly showed that V. Muradyan had been mistreated as a newly recruited conscript (see, in particular, paragraphs 30-33 above). The Court observes in this connection that the evidence with regard to the earlier violent incidents and humiliation came to light months after the post-mortem forensic psychiatric and psychological assessment report was produced. However, investigator A.T. did not seek an additional assessment in the light of the newly emerged evidence to determine whether the earlier incidents, together with the events of 14 March 2010, constituted a common chain of events that contributed to V. Muradyan's severe depression prior to his death.

149. The Court notes that the investigation into the circumstances of V. Muradyan's death, which has been ongoing since 15 March 2010, has been stayed three times for different reasons, and that each time the relevant decisions have been quashed either by the supervising prosecutor or the court following an appeal by the applicant (see, in particular, paragraphs 27, 28, 52, 58, 64 and 66 above), with the result that on 1 July 2020, more than ten years and three months after V. Muradyan's death, the investigation was still pending (see paragraph 75 above). The Court observes on this last point that, as mentioned above, by its decision of 23 October 2018 the Yerevan Court acknowledged that the investigation had been unreasonably lengthy, in breach of the requirements of Article 2 of the Convention (see paragraphs 66 and 124-127 above). The Court cannot but agree with the domestic court on this issue and reiterates in this connection 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, *mutatis mutandis*, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 219, 19 December 2017; *Kudra v. Croatia*, no. 13904/07, § 113, 18 December 2012; and *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 in the present case.

150. At the same time, the Government argued that a number of investigative measures were being taken by the authorities following the Yerevan Court's decision of 23 October 2018 in order to fully clarify the circumstances of V. Muradyan's death. In particular, they referred to additional questioning of witnesses and attempts to locate N.G. and A.K. (see paragraph 117 above).

151. However, the supplementary questioning of witnesses could hardly be considered as a sufficient attempt to discover any new facts or circumstances. Hence, it is not clear what new circumstances the witnesses, who had already been interviewed a number of times, were capable of providing in relation to events taking place a decade ago. Indeed, all of the witnesses questioned stated that they had nothing to add to their previous statements (see, in particular, paragraphs 70, 71 and 72 above).

152. As regards the enquiries of the police aimed at locating N.G. and A.K., although the Government did not disclose full details of the investigation in that regard, there is nothing to indicate that the investigating authority sought to initiate any meaningful steps such as, for instance, putting them on the wanted list or resorting to international legal assistance.

153. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into V. Muradyan'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, *mutatis mutandis*, *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 272, 27 August 2019, and *Anahit Mkrtchyan*, cited above, § 101).

154. The Court therefore concludes that there has been a procedural violation of Article 2 of the Convention. It accordingly dismisses the Government's objection that the applicant's complaints under Article 2 were premature (see paragraph 106 above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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

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

157. The Government considered the applicant's claim to be excessive.

158. In view of the nature of the violations found, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

159. The applicant also claimed EUR 16 for the postal expenses incurred before the Court.

160. The Government made no submissions in that regard.

161. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the sum of EUR 16 covering postal costs in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the Government's objection as to the premature nature of applicant's complaints under Article 2 of the Convention to the merits of her complaint under the procedural limb of Article 2 of the Convention, and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the authorities' failure to protect the life of the applicant's son;

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

5. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance

with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 16 (sixteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Yonko Grozev
Deputy Registrar	President