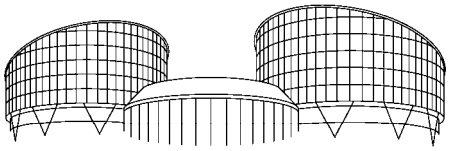

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AYVAZYAN v. ARMENIA

(Application no. 56717/08)

JUDGMENT

STRASBOURG

1 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ayvazyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Krzysztof Wojtyczek,
Ksenija Turković,
Armen Harutyunyan,
Pauliine Koskelo,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 9 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 56717/08) 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 a Russian national, Ms Silvard Ayvazyan ("the applicant"), on 20 November 2008.

2. The applicant was represented by Mr K. Tumanyan, a lawyer practising in Vanadzor. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that her brother, Seyran Ayvazyan, had been shot dead by the police in circumstances constituting a violation of Article 2 of the Convention and that the authorities had failed to conduct an effective investigation into his death.

4. On 6 September 2011 the application was communicated to the Government. The Russian Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Rostov-on-Don, Russian Federation. She is the sister of Seyran Ayvazyan, who was born in 1961 and was killed by police officers on 6 March 2006. He had been suffering from

a mental disorder (paranoid-type schizophrenia) and at the material time had been living alone in the village of Odzun, in the Lori Region of Armenia.

A. The circumstances of Seyran Ayvazyan's death, as established by the investigation

6. The circumstances of Seryan Ayvazyan's fatal shooting, as established by the decision issued by the investigator on 3 October 2006 following the end of the investigation (see paragraph 30 below), are as follows.

7. On 6 March 2006 at around 11 a.m. Seyran Ayvazyan went to a local shop, where he took out a knife and, for no reason, stabbed H.Ch., a shop assistant, in the arm, and E.P., a customer entering the shop, in the cheek. He then went home.

8. Some time later, after a telephone call made from the Odzun Medical Centre to the police station of the nearby town of Tumanyan, four police officers, A.A., V.B., A.E. and M.V., arrived at Seyran Ayvazyan's house. As they approached, Seyran Ayvazyan was in the garden and, having seen the police officers, ran towards the house. The police officers started chasing him. As Seyran Ayvazyan entered the house and was about to shut the door, police officer V.B. reached him and started to push the door open. At that moment Seyran Ayvazyan stabbed V.B. in the arm and cheek with the knife, through the half-open door, and managed to shut the door. V.B. was taken by car to hospital, while A.A. and A.E., who remained at the house, called Tumanyan police station and reported the incident. Then they tried to persuade Seyran Ayvazyan to come out, but the latter refused to do so, threatening to kill anybody who tried to approach the house and sharpening his knives in full view. They contacted one of Seyran Ayvazyan's sisters, who lived in the same village, but she refused to come. Having received the call from A.A. and A.E, nine more police officers, including A.S., N.N., G.M., R.M., H.Gev., and H.Gri, led by Major A.B., the chief of Tumanyan police station, arrived at the house and surrounded it. The mayor of Odzun, an ambulance and the fire brigade were also called. Another attempt was made to have Seyran Ayvazyan's relatives, who lived in the same village, come to the scene in order to persuade him to surrender, but they refused to come. Then for about five hours the police officers tried to persuade Seyran Ayvazyan to surrender, but he continued to display the same threatening behaviour as earlier. In the meantime, the police officers contacted the head of Vanadzor Psychiatric Hospital, who told them that it would only be possible to tranquillise Seyran Ayvazyan only in hospital.

9. At around 5 p.m. it was decided to neutralise and apprehend Seyran Ayvazyan by spraying him with water from the hose of a fire engine. After the fire hose had been turned on, six police officers, A.S., N.N., G.M., R.M., H.Gev. and A.A., upon an order from the chief of Tumanyan police

station, pushed open the door and entered the house. H.Gev., who was the first to enter, held a small wooden table in front of him as a shield against a knife attack. After the police officers entered, they saw that the way from the corridor into the room had been barricaded with furniture. The police officers decided on the spot to leave the house and the entire group went out. Having seen that the police officers were leaving, Seyran Ayvazyan moved towards them with a knife in each hand, reached H.Gev. by the door to the porch, and stabbed him in the head with one of the knives. H.Gev. immediately fell as a result of the stabbing. As he was lying on the ground, Seyran Ayvazyan tried to stab him again, but at that moment another police officer, H.Gri., who was guarding the entrance, fired a warning shot in the air from his automatic rifle and, seeing that Seyran Ayvazyan was still trying to stab H.Gev., shot at Seyran Ayvazyan's legs. At the same time, and independently of those actions, police officers A.S., A.A. and R.M., seeing that H.Gev. had fallen as a result of the assault and that Seyran Ayvazyan was trying to stab him again, started to shoot with their pistols at Seyran Ayvazyan's legs. A.S. fired eight shots, while A.A. and R.M. fired three shots each. As a result of the shooting, Seyran Ayvazyan was wounded, fell and died.

10. During the subsequent on-site inspection, two knives were found in the porch, as well as a hand grenade and one more knife in the corridor.

11. During an inspection of Seyran Ayvazyan's clothes, two more knives and a medical lancet were discovered.

12. As a result of being assaulted by Seyran Ayvazyan, civilians H.Ch. and E.P. and police officers V.B. and H.Gev. received injuries that were of minor or medium severity, but not life-threatening.

13. The applicant contested these facts and alleged that in reality Seyran Ayvazyan had not posed a threat to police officer H.Gev.'s life and that the police officers had simply executed him in retaliation for his having injured one of their colleagues.

B. Criminal proceedings on account of Seyran Ayvazyan's armed assaults

14. On the date of the incident the Lori regional prosecutor's office decided to institute criminal case no. 55200706 for attempted murder under Article 104, in conjunction with Article 34 of the Criminal Code (CC), on account of Seyran Ayvazyan's actions, namely his armed assaults on civilians and police officers.

1. Investigative and other procedural measures

15. On the same date an inspection of the crime scene was conducted and a report produced, which included sketch maps. The house had two rooms, one behind the other, divided by a wall, with a passageway on the

right. All along the front of the house there was a porch, which measured 3 by 1.8 metres. There were windows onto the porch on the left, and the main entrance was on the right, in front of the above-mentioned passageway. The house also had windows on the right side. The sketch map also noted the positions of Seyran Ayvazyan and police officer H.Gev. at the time of the incident. Seyran Ayvazyan appears to have been on the porch just outside the main entrance and police officer H.Gev. appears to have been next to him. Police officers H.Gri. and R.M. were also on the porch to the left of the main entrance, while police officers A.S. and A.A. were outside the porch in front of the main entrance.

16. On 7 March 2006 an autopsy was conducted. According to the results, Seyran Ayvazyan had received wounds from ten bullets, nine of which had hit him in his calves and thighs and his left forearm and one of which had hit him in the chest. Six bullets had been shot at Seyran Ayvazyan from behind. The direct cause of Seyran Ayvazyan's death had been severe internal bleeding resulting from a bullet wound to the chest, which had damaged the lower part of the heart and a lung. Death had occurred shortly after Seyran Ayvazyan being wounded.

17. On 11 April 2006 An.A., one of Seyran Ayvazyan's four sisters, was granted victim status in the instituted criminal proceedings. This decision indicated that, as a result of a crime, physical damage, namely death, had been inflicted on Seyran Ayvazyan.

18. On 18 April 2006 a ballistic examination of cartridge cases and bullets retrieved after the incident was conducted. It was established that they had come from police ammunition. The weapons that had been used were three Makarov pistols and one Kalashnikov automatic rifle.

19. On 16 June 2006 a forensic examination concluded that the five knives and the medical lancet did not fall into the category of "bladed weapons". All of the knives but one were homemade.

20. On 22 June 2006 a forensic examination report was released. According to the report, Seyran Ayvazyan's clothes had been damaged by at least twelve bullets shot at close range.

21. On 10 August 2006 a medical expert produced his opinion regarding Seyran Ayvazyan's mental health, according to which, Seyran Ayvazyan had suffered from a mental disorder – paranoid schizophrenia, and had received treatment for his condition in various mental health institutions since 1993.

2. Questioning of police officers

(a) Police officers involved in the arrest operation and the fatal shooting

22. The investigator took statements from five of the seven police officers involved in the arrest operation and the fatal shooting (A.S., H.Gev., H.Gri., N.N., A.A., G.M. and R.M.). Three of the four police

officers who had fired shots, A.S., H.Gri. and A.A., were questioned on 6, 14 and 16 March 2006 respectively, while H.Gev. (who had been injured in the incident) and N.N. were questioned on 7 and 15 March 2006 respectively. The police officers were asked to provide an account of the incident.

23. Police officer A.S.'s account was as follows. Seyran Ayvazyan was in the second (rear) room when the six police officers entered the house. The door was barricaded with an armchair and a wardrobe. As they were entering, he proposed that Seyran Ayvazyan come out of the room but he held the knife as if he wanted to throw it and kept threatening to stab him. Realising that it was not possible to remove him from the room and that he could harm someone, A.S. told the other five police officers that they should all go outside and find another way to neutralise Seyran Ayvazyan. They left the house; the last one to leave was H.Gev., who was holding a table to protect himself in case a knife was thrown. A.S. went down from the porch and was already in the yard when those of his colleagues who had gathered there shouted "He has come out and attacked." H.Gev. was holding a table, defending himself against Seyran Ayvazyan. A.S. ran towards them and saw Seyran Ayvazyan stab H.Gev. in the head, so he shot at Seyran Ayvazyan's legs. Seyran Ayvazyan fell down and, while lying on the ground, he threw the same knife at H.Gev. Then he took out another knife and threw it at the police officers. A.S. fired again in his direction. Seyran Ayvazyan then took out a third knife, rolled over, while shouting, and tried to throw the knife in A.S.'s direction. A.S. fired again and Seyran Ayvazyan dropped the knife. The police officers approached and handcuffed him.

24. Police officer H.Gev.'s account was as follows. After the six police officers had entered the house, Seyran Ayvazyan threatened them and told them to leave. They left – that is to say he noticed that the others had already gone out. Realising that he was alone, he tried to leave the house while holding the table. He had not yet reached the door when suddenly Seyran Ayvazyan screamed and ran towards him with a knife in his hand. Seeing this, he tried to move faster towards the door. Seyran Ayvazyan reached him and stabbed him with the knife in the head. This happened in the doorway. Seyran Ayvazyan managed to stab him because he (that is to say Seyran Ayvazyan) was taller, although he (that is to say H.Gev) had managed to a certain extent to push Seyran Ayvazyan back with the table. He fell down on the porch. As he was lying on his side, facing the door and bleeding, he saw Seyran Ayvazyan trying to stab him a second time with the same knife, again in the head. Seyran Ayvazyan was still standing at a distance of one metre away while he (that is to say H.Gev) continued to use the table to defend himself. After Seyran Ayvazyan had tried to stab him for a second time, he heard a number of shots, but could not remember how many. He saw that the shots had hit Seyran Ayvazyan in the legs. Seyran Ayvazyan fell down, with his legs lying next to his own. Seyran Ayvazyan

then took out another knife. Seyran Ayvazyan must have thrown the first knife either in his direction or in the direction of those who were behind him, but he could not tell how far away the knife had been thrown. Seyran Ayvazyan subsequently wanted to get up and stab him again, but then he heard other shots. Seyran Ayvazyan was screaming loudly, but while the shots were being fired the others dragged him away from Seyran Ayvazyan and transported him to the hospital.

25. Police officer H.Gri.'s account was as follows. Seyran Ayvazyan hid behind the wardrobe with a knife in his hand and made death threats when the six police officers tried to approach. At that time he was standing with his rifle next to the porch windows. Then he heard Seyran Ayvazyan screaming and saw the others come out of the house and Seyran Ayvazyan, with a knife in his hand, run towards and reach H.Gev. (who had been the last to leave) and stab him in the head. H.Gev. squatted and started bleeding. With the same knife Seyran Ayvazyan tried to stab H.Gev., who was at that time lying on the ground, one more time. He fired a warning shot in the air but seeing that Seyran Ayvazyan was trying to stab H.Gev. again he fired at Seyran Ayvazyan's left leg, with the aim of neutralising him. Seyran Ayvazyan did not fall after his shot but stumbled back with a knife in his hand. One of the police officers at that moment managed to drag H.Gev. away from Seyran Ayvazyan, who then threw a knife at them and took out another knife to throw again. Seyran Ayvazyan was still standing. He heard a number of other shots but could not tell who had fired them, how many there had been and at which parts of Seyran Ayvazyan's body the shots had been fired. He did not fire any other shots apart from the above-mentioned two. Then the other police officers managed to approach and disarm Seyran Ayvazyan, who was already on the ground.

26. Police officer N.N.'s account was as follows. Police officer H.Gev. was the first to enter the house, holding a table as a shield, since Seyran Ayvazyan was holding a knife by its blade and was threatening to throw it. He and the others following H.Gev. entered the first room. Seyran Ayvazyan retreated into the second room and barricaded the door with an armchair, which prevented them from entering the second room. Seyran Ayvazyan refused to give up and would not allow them to advance, threatening them with a knife. They were forced to leave the house. While they were still on the porch, he N.N. heard the others saying "He's coming". He turned around and saw that Seyran Ayvazyan, having left the house, in the doorway stabbed H.Gev. in the head with a knife. H.Gev. immediately started bleeding. He had tried to defend himself with a table, but Seyran Ayvazyan had managed to stretch his hand over it and stab H.Gev., who had fallen down. As far as N.N. could recall, Seyran Ayvazyan then fell; after falling he threw the knife at them. Then Seyran Ayvazyan took out another knife and wanted to stab H.Gev. again. At that moment N.N.

heard shots but did not see who was firing. Then they managed to handcuff Seyran Ayvazyan.

27. Police officer A.A.'s account was as follows. Once the fire engine had started working, they broke down the door and entered the house. H.Gev. was the first to enter – or rather they all entered together, with a small table in front of them for protection. At that moment the fire engine was spraying water at Seyran Ayvazyan, who had barricaded himself in with a wardrobe and moved the wardrobe to protect himself from the water. Seyran Ayvazyan had also placed an armchair between the two rooms, so that they could not enter the second room. They tried to persuade him to throw down the knife, but he continued to threaten them. As Seyran Ayvazyan was not coming out and was refusing to calm down, A.A. received an order to leave the house in order that an alternative plan could be devised. As the six police officers were leaving, Seyran Ayvazyan unexpectedly ran towards them, screaming loudly. A.A. could not see whether Seyran Ayvazyan had a knife since he (that is to say A.A.) was facing the main entrance. He heard somebody outside say "Careful, he's about to strike". He then jumped out of the house and over the porch into the yard. Before rolling away, he heard two shots and saw H.Gev. lying in the porch on his back, facing the main entrance. Seyran Ayvazyan was squatting with a knife in his hand and was trying to stab H.Gev., who had already been injured. Thinking that the shots fired earlier had not touched Seyran Ayvazyan and that, if he did not shoot, Seyran Ayvazyan would strike again and kill H.Gev., he took out his weapon, took aim at Seyran Ayvazyan's legs and fired three shots at them. While shooting, he heard other shots and saw Seyran Ayvazyan fall next to H.Gev. He then saw two knives in Seyran Ayvazyan's hands.

28. The investigator posed between two to four questions to each of the police officers. A.S. was asked (a) whether it would have been possible to neutralise Seyran Ayvazyan without the use of firearms (answer: negative) and (b) how many firearms had been used for that purpose (three). H.Gev. was asked how much time had elapsed between their entering the house and the stabbing (three to four minutes). H.Gri. was asked who had been beside him at the time of the shooting (police officer A.S.) and how many knives Seyran Ayvazyan had had (at least three). N.N. and A.A. were asked whether they had received an order to shoot before they had entered the house (both: negative). A.A. was also asked (a) who had been beside him at the time of the shooting (he could not remember) and (b) to provide further details of the shooting incident. H.Gev., H.Gri., N.N. and A.A. were also asked whether they had noticed a grenade in Seyran Ayvazyan's hands or whether he had made threats with a grenade (all four: negative).

(b) Other police officers present at the scene

29. Between 20 March and 30 July 2006 the investigator took statements from six other police officers who had been present at the scene. Police officers H.Grig. and L.K., who had witnessed the shooting incident, were asked to provide accounts. Police officer D.K. submitted, *inter alia*, that neighbours and other villagers had been present and had watched the entire incident; this was confirmed by H.Grig. Police officer S.A. submitted, *inter alia*, that there had been between ten and twenty police officers at the scene. All the above-mentioned police officers submitted that the fire brigade and an ambulance had been called to the scene. L.K. further submitted that he had seen another police officer, A.T., filming the incident but was not sure whether he had been filming during the shooting. A.T., when asked about the video, submitted that no material was available since he had been mistakenly filming without a tape in the camera, which he had discovered only later.

3. Outcome of the investigation and appeals lodged with the prosecutors

30. On 3 October 2006 an investigator of the Lori regional prosecutor's office, decided to discontinue criminal case no. 55200706 in the light of the death of Seyran Ayvazyan. By the same decision the investigator refused to institute criminal proceedings against police officers A.S., A.A., R.M. and H.Gri. The wording of the decision first outlined the facts, as established by the investigation (see paragraphs 7-12 above), and concluded that the police officers had employed their service weapons in the light of the exigencies of the situation for the purpose of repelling a life-threatening attack on police officer H.Gev. Thus, their actions had been lawful, as they had been undertaken in compliance with the requirements of sections 32 § 2 and 33 of the Police Act.

31. On an unspecified date the applicant, together with An.A. and her two other sisters, lodged a complaint with the Lori regional prosecutor seeking to quash the part of the decision of 3 October 2006 relating to the refusal to institute criminal proceedings against the police officers.

32. On 16 November 2006 the Lori regional prosecutor informed them by letter that there were no legal grounds for quashing the decision of 3 October 2006 since it had been taken on the basis of an accurate legal assessment of the circumstances of the case.

33. The applicant and her three sisters then lodged a similar complaint with the General Prosecutor's Office of Armenia.

34. On 19 January 2007 the General Prosecutor's Office informed them that there were no grounds for quashing the decision of 3 October 2006 since, following a thorough and objective investigation, the actions of the police officers had been determined to have been lawful.

C. Court proceedings concerning the lawfulness of the decision of 3 October 2006

35. On 27 June 2007 An.A. lodged a complaint in her capacity as a victim with the Lori Regional Court against the decision of 3 October 2006, seeking to have invalidated the part of the decision concerning the refusal to institute criminal proceedings against the police officers for killing her brother. In particular, she complained that, despite the fact that her brother had been deliberately killed by the police officers, no separate criminal proceedings had been instituted and no criminal investigation had been conducted into the fact of his killing. She also complained that the police officers had opened fire on Seyran Ayvazyan in a situation where there had been no threat to life or limb for any of them. As to the finding of a grenade in Seyran Ayvazyan's house, An.A stated that this could not serve as justification for the police officers' actions, since it had been discovered only after the fatal incident had taken place, and her brother had never threatened the policemen that he would use it.

36. On 29 June 2007 the Lori Regional Court admitted the complaint for examination as having been lodged in compliance with Articles 185 and 263 of the Code of Criminal Procedure ("the CCP").

37. On 12 September 2007 the Lori Regional Court, relying on the facts, as established by the investigation, examined the complaint and decided to dismiss it, finding that the use of firearms by the police officers had been justified as they had opened fire to prevent, and protect themselves from, Seyran Ayvazyan's unlawful violent actions. It concluded that the police officers had acted in necessary defence, as provided for by Article 42 of the CC, and also in compliance with sections 32 § 2 and 33 of the Police Act. The Regional Court moreover held that there was no need to institute separate criminal proceedings concerning Seyran Ayvazyan's killing, since the investigation into that incident had been carried out within the framework of criminal proceedings instituted in relation to Seyran Ayvazyan's unlawful actions. Separately, the Regional Court found that the complaint against the refusal to institute criminal proceedings had been lodged outside the one-month time-limit prescribed by Article 290 of the CCP.

38. On 27 September 2007 An.A. lodged an appeal against the decision of the Regional Court raising the same arguments as those contained in her original court complaint. She also alleged that she had lodged her complaint in compliance with the procedural rules since neither of the applicable Articles of the CCP, namely Articles 185 and 263 (as in force at the material time), had provided any time-limit for lodging a complaint.

39. On 23 October 2007 the Criminal Court of Appeal examined the merits of the appeal and dismissed it, upholding the findings of the Regional Court concerning the lawfulness of the police officers' actions. It then also

examined the question of the compliance of An.A.'s court complaint with the procedural rules and found that it had not been lodged in compliance with Article 290 of the CCP.

40. On 1 February 2008 An.A. lodged an appeal on points of law against the decision of the Court of Appeal, raising the same arguments regarding both the admissibility and the merits of her court complaint.

41. On 4 March 2008 the Court of Cassation declared the appeal admissible.

42. On 23 May 2008 the Court of Cassation examined the appeal. Turning to the question of compliance with domestic time-limits, it found that the appeal procedure pursued by An.A. was indeed governed by Article 263 § 2, which at the material time had not prescribed any time-limits for contesting the prosecutor's refusal before the courts. However, the one-month time-limit prescribed by Article 290 was applicable to her case. The appeal had only been lodged on 27 June 2007 – namely outside that one-month time-limit. Thus, both the Regional Court and the Court of Appeal had exceeded their temporal jurisdiction by examining the merits of An.A.'s complaint. This in itself was sufficient grounds for rejecting the appeal; however, the Court of Cassation found it necessary – taking into account the fact that (a) both courts had examined the merits of the case and had reached findings on the merits, and (b) it was called upon to ensure uniform application of the law – to express a number of legal positions on the matter, which could provide guidance to lower courts in similar cases.

43. The Court of Cassation first examined the question of whether any criminal proceedings had been instituted and any investigation carried out into the killing of Seyran Ayvazyan. Referring to Articles 27 § 1, 175 and 182 §§ 1 and 2 of the CCP, the Court of Cassation concluded that it was impossible to answer that question unequivocally. In particular, a number of factors suggested that criminal case no. 55200706 had been instituted on account of the acts committed by Seyran Ayvazyan rather than his killing. Firstly, the proceedings had been instituted only under Article 104 § 2 (1), in conjunction with Article 34 of the CC (namely in respect of attempted murder of two or more persons) and therefore could not legally be characterised as applying to his killing. Secondly, the wording of the decision to discontinue the proceedings also contained a refusal to institute criminal proceedings against the police officers implicated in his shooting, which confirmed that no criminal proceedings had been instituted on account of that incident.

44. On the other hand, a number of factors suggested that the proceedings instituted had also been based on the fact that he had been killed, and an investigation had been carried out in that connection. Thus, the descriptive part of the wording of the decision to institute proceedings had mentioned the fact that Seyran Ayvazyan had been taken to hospital and had died. Furthermore, Seyran Ayvazyan's sister, An.A., had been granted

victim status in the criminal case by decision of the investigator, moreover, that decision had stated that Seyran Ayvazyan had been deprived of his life "as a result of a crime". Lastly, certain investigative measures taken in the course of the criminal proceedings had been aimed at obtaining evidence concerning the circumstances of Seyran Ayvazyan's death, including the inspections of the crime scene, of Seyran Ayvazyan's body and of his clothes, the autopsy, the forensic examination of his clothes and the interviews with the police officers who had shot at Seyran Ayvazyan or witnessed the shootings. This suggested that some investigation into his death had nevertheless been carried out. Having reached this conclusion, the Court of Cassation decided in any event to examine the question of whether the investigation had been adequate.

45. The Court of Cassation firstly noted that there had been no eyewitnesses to the shooting, other than the police officers. However, not all the police officers who had witnessed the shooting had been questioned. In particular, two of the six officers who had been present at the time of the shooting, namely G.M. and R.M, had not been questioned. Thus, the investigating authority had failed to secure all the evidence relating to the incident. As regards those officers who had been questioned, H.Gri. had been questioned eight days, N.N. nine days and A.A. ten days after the incident. No measures had been taken in the meantime to isolate them from each other. While there was no evidence to suggest that the police officers had colluded with each other, the fact that no steps had been taken to minimise such risk constituted a significant shortcoming in the investigation. Furthermore, no adequate assessment had been made of the direction of the bullets fired at Seyran Ayvazyan. In particular, no reasonable explanation had been determined by the investigation for the fact that six bullets had been fired at Seyran Ayvazyan from behind.

46. On the basis of those findings, the Court of Cassation concluded that the investigation into the killing of Seyran Ayvazyan had not been adequate. Nevertheless, the Court of Cassation decided to dismiss the appeal on points of law on the ground that neither the Lori Regional Court nor the Criminal Court of Appeal had had temporal competence to examine the complaint against the decision of 3 October 2006.

47. On an unspecified date Seyran Ayvazyan's sister, An.A., died.

II. RELEVANT DOMESTIC LAW

A. The Code of Criminal Procedure (as in force at the material time)

48. Article 182 §§ 1 and 2 provides that, if there are grounds for the institution of criminal proceedings, the prosecutor, the investigator or the body of inquiry shall adopt a decision to institute criminal proceedings. Such a decision shall mention, *inter alia*, the grounds for the institution of

criminal proceedings and the Article of the Criminal Code on the basis of which the criminal proceedings are instituted.

49. Article 185 §§ 1, 3, 4 and 5 provides that, in the absence of lawful reasons or grounds for the institution of criminal proceedings, the prosecutor, the investigator or the body of inquiry shall issue a decision refusing to institute criminal proceedings. This decision may be appealed against in accordance with the relevant procedure prescribed by the Code. On the basis of such an appeal the higher prosecutor shall either quash the contested decision and institute criminal proceedings or uphold it. The court, on the basis of an appeal against the decision to refuse to institute criminal proceedings, shall either quash the decision or uphold it. If the decision is quashed, the prosecutor shall be obliged to institute criminal proceedings.

50. Article 263 §§ 1 and 2, in its wording at the material time, provided that a victim might lodge an appeal with a higher prosecutor against a decision to terminate criminal proceedings or to discontinue criminal prosecution within seven days of receiving a copy of that decision. A refusal by the prosecutor to grant such an appeal may be contested before a court. On 7 April 2007 an amendment came into force modifying Article 263 § 2 by obliging prosecutors to adopt a decision on every such appeal, which could be contested before the courts within seven days of receipt of a copy thereof.

51. Article 290 §§ 2 and 3 provides that a suspect, accused, defence lawyer, victim, the participants in proceedings and other persons whose rights and lawful interests have been violated are entitled to lodge a complaint, challenging the refusal of a body of preliminary inquiry, an investigator or a prosecutor to receive information about crimes or to institute criminal proceedings, as well as decisions to suspend or terminate criminal proceedings or to discontinue a criminal prosecution, in cases prescribed by the Code. The complaint may be lodged with a court situated in the same district as the authority dealing with the case within one month of the date on which the person lodging the complaint was informed of the refusal or, if no reply to the complaint has been received, within one month of the expiry of one month following the date of the complaint being lodged.

B. The Criminal Code (in force from 1 August 2003)

52. Article 34 provides that an attempted offence is constituted by a premeditated act or premeditated inaction which is directly aimed at the commission of an offence, if that offence has not been completed through no fault of the would-be perpetrator or perpetrators.

53. Article 42 §§ 1, 2 and 5 provides that an act committed in necessary defence against an attacking person shall not be deemed a crime, provided

that the limits of necessary defence are not exceeded. Harm inflicted in the course of countering life-threatening violence may amount to any degree of health damage – even death. The use of arms against an armed assault shall not be deemed to constitute a transgression of the limits of necessary defence and shall not engage criminal liability.

54. Article 104 § 2 (1) provides that the murder of two or more individuals shall be punishable by imprisonment of between eight and fifteen years or by life imprisonment.

C. The Police Act (in force from 10 June 2001)

55. Sections 29-34 of the Act regulate the use of physical force, special means (*հատուկ միջոցներ*) and firearms by police officers.

56. Section 29, as in force at the material time, prescribed that police officers were obliged to undergo special training, as well as regular checks of their capacity to act in situations necessitating the use of physical force, special means and firearms. Before using physical force, special means and firearms, a police officer was obliged to issue an appropriate warning, save in cases where a delay would pose an immediate threat to the life and limb of civilians or police officers or might lead to other grave consequences, or when giving such a warning would be impossible in the situation in question.

57. Section 32 regulates situations in which police officers are entitled to use firearms. Sub-paragraph 2 provides that police officers may use firearms in order to repel an assault posing danger to the life or limb of a police officer.

58. Section 33 provides that an armed police officer is entitled to draw his firearm and to make it ready for use if he considers that a given situation may necessitate its use, as envisaged by section 32 of this Act.

59. Section 34 provides that for the purpose of personal defence a police officer is entitled to use a helmet, a shield, a bullet-proof vest, a gas mask and other means of personal defence.

THE LAW

I. THE APPLICANT'S VICTIM STATUS

60. The Court reiterates that close family members, including siblings, of a person whose death is alleged to engage the responsibility of the State, can themselves claim to be indirect victims of the alleged violation of Article 2 of the Convention, the question of whether they were legal heirs of the deceased not being relevant (see *Yaşa v. Turkey*, 2 September 1998,

§ 66, *Reports of Judgments and Decisions* 1998-VI; *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts); and *Van Colle v. the United Kingdom*, no. 7678/09, § 86, 13 November 2012). The Court is of the opinion that the applicant, in her capacity as a sister affected by the death of Seyran Ayvazyan, may claim to be a victim within the meaning of Article 34 of the Convention as regards the killing of her brother (see *Çelikbilek v. Turkey* (dec.), no. 27693/95, 22 June 1999, and *Renolde v. France*, no. 5608/05, § 69, 16 October 2008)

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. The applicant complained that her brother had been killed by the police in circumstances where this was not absolutely necessary and that the authorities had failed to conduct an effective investigation into his death. She relied on Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

62. The Government contested that argument.

A. Admissibility

63. The Government submitted that the applicant had failed to exhaust the domestic remedies. In particular, the domestic procedural requirements had not been complied with, given that the appeal against the decision of 3 October 2006 had not been lodged within the one-month time-limit prescribed by Article 290 of the CCP, as established by the domestic courts.

64. The applicant submitted that at the time when the General Prosecutor's Office had refused to grant the appeal against the decision of 3 October 2006, namely on 19 January 2007, Article 263 of the CCP, which was applicable in this case, had not prescribed any time-limits for contesting such a refusal. The one-month time-limit prescribed by Article 290 was not applicable. Furthermore, there were discrepancies between the time-limits prescribed by those Articles; the fact that those discrepancies existed was later confirmed by a decision of the Constitutional Court. Lastly, since the case concerned a murder, for which the statute of limitation was 15 years,

the authorities could not refuse to carry out an adequate investigation on formal grounds.

65. The Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see *Skałka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; and *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008). In the present case, the complaint against the investigator's decision of 3 October 2006 was found to have been lodged with the courts outside the one-month time-limit prescribed by Article 290 of the CCP. In spite of this, the domestic courts at all three levels of jurisdiction examined the substance of the above-mentioned complaint (see paragraphs 37, 39 and 41-46 above). In such circumstances, the Government's objection of non-exhaustion of domestic remedies must be dismissed.

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

67. The applicant submitted that in reality the police officers had killed Seyran Ayvazyan in order to punish him for having earlier injured one of their colleagues. He had not posed a real and immediate danger to anyone's life. Having been surrounded by police officers and other emergency services in his house, he had not been able to harm anyone. If Seyran Ayvazayn had been so close to a police officer as to pose a real threat, that officer would undoubtedly have been harmed by the numerous shots fired at Seyran Ayvazyan. In fact, having been hit in the leg by the first shot fired at him, Seyran Ayvazyan had fallen and could no longer have been dangerous. Furthermore, six of the ten bullets had been fired at Seyran Ayvazyan in a "back to front" direction, meaning that he had been standing with his back to the police officers, who could not have determined from that position whether or not he had had any weapon on him.

68. The applicant further submitted that four different types of combat weapons had been used during the arrest, in spite of the fact that Seyran Ayvazyan had been armed only with homemade knives. The grenade had been found only after the incident and could not justify the use of force, as Seyran Ayvazyan had never threatened to use it. The police

officers had not been sufficiently trained to use such special means as helmets and protective shields in order to be able to arrest him without using combat weapons and threatening his life. They had possessed none of this equipment and had had to use a small table as a protective shield. Furthermore, the police had known that he was suffering from a paranoid type of schizophrenia and had been hospitalised on numerous occasions. Therefore, they should have invited a psychiatrist to neutralise him with special measures. The argument that they "invited a doctor but he did not come" could not justify the "absolute necessity" of depriving him of his life. The number of shots fired at Seyran Ayvazyan could not be considered as self-defence either. In sum, the deprivation of life had not been "absolutely necessary" within the meaning of Article 2.

69. The applicant also argued that no objective, thorough and independent investigation had been conducted into Seyran Ayvazyan's death. No criminal proceedings had been instituted in that respect, while those proceedings that had been instituted had been aimed at investigating the acts committed by him rather than his death. Thus, there had been no investigation whatsoever. While the identity of the people who had shot dead Seyran Ayvazyan had been known to the investigator, none of them had been charged or had stood trial. As regards the investigation conducted within the scope of the instituted proceedings, a number of shortcomings in that investigation, as well as the inadequacy thereof, had been confirmed by the Court of Cassation (see paragraphs 45-46 above). The police officers had been the only witnesses and the authorities had failed to take sufficient measures to establish the facts accurately. Furthermore, the investigation had been conducted by an investigator of the Lori Regional Prosecutor's Office and the subsequent prosecutorial review had been carried out by a prosecutor of the same Prosecutor's Office. Thus, the investigation had not been carried out by an independent and objective body. All the complaints by her and her sister against the investigator's actions or inaction had been forwarded for examination to the same prosecutors.

(b) The Government

70. The Government submitted that the force used had been "absolutely necessary". The police officers had initially had no intention of using firearms but had been forced to do so by the exigencies of the situation. The police officers had had to take a speedy decision as there had been a real and immediate threat to police officer H.Gev.'s life, and also taking into account the unpredictability of Seyran Ayvazyan's behaviour because of his mental illness. The police officers, having assessed all the risks, had considered the use of force to be reasonable and necessary to eliminate any danger posed by him. Even though Seyran Ayvazyan's knives had been homemade, four persons had sustained injuries of medium severity. The police actions had therefore been in compliance with the domestic law,

namely the Police Act. Moreover, the circumstances of this case had been similar to those of *Andronicou and Constantinou v. Cyprus* (9 October 1997, *Reports of Judgments and Decisions* 1997-VI), in which a great deal of fire power had similarly been used but no violation had been found.

71. The Government further referred to all the measures taken by the police officers, arguing that the arrest operation had been executed in such a manner as to minimise the use of any means posing a threat to Seyran Ayvazyan's life. First they had tried for about five hours to persuade him to surrender. For this reason they had called the mayor of Odzun, the chief of Tumanyan police station and Seyran Ayvazyan's relatives. They had also contacted the chief of Vanadzor Psychiatric Hospital to obtain information about Seyran Ayvazyan's mental disorder and how it would be possible to tranquillise him. The ambulance and fire brigade had also been called for safety reasons, while the doctor who had also been called had not refused to come but had simply said that it would be possible to tranquillise Seyran Ayvazyan only in hospital. Having received this information, the police officers had called Seyran Ayvazyan's sister, A.M., who had refused to come, after which they had decided to disarm him by spraying water from the fire engine's hose.

72. The Government also argued that the authorities had complied with their obligation to carry out an effective and thorough investigation. A number of investigative measures had been taken in order to establish the circumstances: an inspection of the crime scene and of Seyran Ayvazyan's body and clothes, an autopsy, a ballistic examination, and the questioning of witnesses and injured parties. The Lori Regional Prosecutor's Office was an authority independent hierarchically, institutionally and practically from the officials implicated in the events. The fact that a number of investigative measures had been taken in order to establish the circumstances of Seyran Ayvazyan's death had also been confirmed by the Court of Cassation. At the same time, as a body called upon to provide guidance for lower courts, it found that there had been some shortcomings in the investigation. Nevertheless, the Court of Cassation had not been able to restore the breached rights and correct the situation because of the applicant's failure to lodge a timely appeal.

2. The Court's assessment

(a) General principles

73. The Court reiterates that Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. Any use of force must be no more than "absolutely necessary" for – and strictly proportionate to – the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) (see *McCann*

and Others v. the United Kingdom, 27 September 1995, §§ 148-149 and 200, Series A no. 324; *Andronicou and Constantinou*, cited above, § 171; *McKerr v. the United Kingdom*, no. 28883/95, § 110, ECHR 2001-III; and *Wasilewska and Kałucka v. Poland*, nos. 28975/04 and 33406/04, § 42, 23 February 2010).

74. The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see *McCann and Others*, cited above, § 200; *Andronicou and Constantinou*, cited above, § 192; and *Wasilewska and Kałucka*, cited above, § 42)

75. Where deliberate lethal force is used, not only the actions of the agents of the State who actually administer the force should be taken into consideration but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150). Thus, in determining whether the force used is compatible with Article 2, it may be relevant whether a law enforcement operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins v. the United Kingdom*, no. 50196/99, § 136, ECHR 2005-II (extracts)).

76. The Court further reiterates that Article 2 of the Convention contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (for a summary of the relevant general principles see the recent Grand Chamber judgment in the case of *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229 et seq., ECHR 2016).

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

(i) Procedural limb

77. The Court considers it necessary first to address the procedural aspect of the complaint under Article 2.

78. It notes at the outset that both the criminal proceedings that were instituted immediately after the fatal shooting of Seyran Ayvazyan and the investigation that followed were – at least formally – intended to investigate the alleged offences committed by him before his death, namely the armed assaults on two civilians and police officers, rather than the fact of his death. His actions were deemed to constitute attempted murder, and the only articles of the Criminal Code on which the proceedings were based were those providing punishment for such acts. The Court notes that this may

raise a question as to whether any investigation conducted on such a premise could be *per se* considered as an investigation whose purpose was to investigate truly and fully the circumstances of Seyran Ayvazyan's death and to collect evidence for that purpose.

79. It appears, however, that a number of investigative measures taken within the scope of that investigation did examine the circumstances of Seyran Ayvazyan's fatal shooting; eventually a decision was taken to refuse to institute criminal proceedings against the police officers involved. The Court accepts that some form of official investigation took place (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015). It remains to be seen if such an investigation was effective within the meaning of Article 2 of the Convention. In this context, the Court agrees with the Court of Cassation that there were a number of serious shortcomings, leading to a conclusion that the investigation into Seyran Ayvazyan's killing was not adequate (see paragraphs 45-46 above).

80. Firstly, no effort was made by the investigating authority to prevent possible collusion between the police officers involved in the incident. In particular, none of the seven police officers involved were kept apart after the incident, and only two of them, A.S. and H.Gev., were questioned on the same or the following day. Three others, H.Gri., N.N. and A.A., were questioned with significant delays of eight, nine and ten days respectively (see paragraph 22 above). While there is no evidence to suggest that these officers colluded with each other or with their colleagues in the Tumanyan police force, the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II).

81. Secondly, two of the police officers involved in the incident, G.M. and R.M., were not questioned at all (see paragraph 22 above). This is a matter of particular concern, taking into account that R.M. was one of the four police officers who had fired at Seyran Ayvazyan.

82. Thirdly, having regard to the manner in which those interviews which did take place were conducted, the Court observes that the police officers were for the most part simply asked to provide an account of the incident and very few questions were posed to them, despite the numerous apparent contradictions and inconsistencies in their statements (see paragraphs 23-28 above). Even those few questions which were asked appear either not to have been sufficiently inquisitorial and detailed or incapable of clarifying the circumstances of the fatal shooting (see paragraph 28 above). A number of highly relevant facts were ignored and, without seeking proper clarification, the investigator merely accepted the accounts of the police officers, who could not have been impartial witnesses. No attempts were made to determine, *inter alia*, questions such as why six out of the ten bullets fired hit Seyran Ayvazyan in the back and

why, if all the police officers were allegedly aiming at the legs, at least one of them ended up shooting much higher – in the area of the chest (see, *mutatis mutandis*, *Karandja v. Bulgaria*, no. 69180/01, § 66, 6 October 2010). The interviews in question therefore appear to have been a pure formality and the Court does not regard them as constituting a serious and thorough attempt to establish the circumstances in which the fatal shooting took place.

83. Fourthly, no statements were taken from any of the persons not belonging to the police force who were apparently in the vicinity of the house during the arrest operation, such as the mayor of the village, the fire fighters and the ambulance doctors. It is true that the Court of Cassation stated that there had been no eyewitnesses to the shooting other than the police officers but it is not clear on what evidence this statement was based. It is undisputed that the incident took place outside on the porch and was visible even to those police officers who did not take part in the arrest operation and the fatal shooting (see paragraph 29 above). None of the persons mentioned above were, however, summoned for questioning for the purpose of clarifying whether and to what extent they had witnessed the incident. Nor did the investigator try to identify the villagers who, according to several police statements (see paragraph 29 above), had gathered at the scene, albeit at a distance, and might possibly have been able to shed some light on its circumstances.

84. As regards other investigative measures, the Court notes that the authorities failed to establish reliably – through a ballistics test or other means – the exact positions of the officers discharging their firearms at the time of the shootings. Thus, there was a clear contradiction between the statement of police officer H.Gri., who said that police officer A.S. had been next to him at the time of the shooting, and the sketch map of the incident, according to which H.Gri. had been on the porch and police officer S.M. had been next to him (see paragraphs 15 and 28 above). No attempt was made to determine the precise trajectories of the bullets and there was no reconstruction of the incident. Nor did the ballistics test clarify vital information such as who had fired the fatal shot. Furthermore, no confrontations were held between the police officers. Without such investigative measures being undertaken, it was impossible to check the arresting officers' accounts of the events. It is also notable that no assessment was made of whether the police officers' response to the alleged threat to police officer H.Gev.'s life was proportionate; this failure to make an assessment is especially striking given the number of shots fired (fifteen – of which ten hit the target) and the fact that Seyran Ayvazyan was not armed with a firearm but only a knife.

85. In view of the foregoing, the Court cannot but conclude that the authorities failed to secure a timely, proper and objective collection and assessment of evidence vital for the establishment of the circumstances of

the case and the effective outcome of the investigation. They therefore failed to comply with their obligation to carry out an adequate and effective investigation.

86. Accordingly, there has been a procedural violation of Article 2 of the Convention.

(ii) Substantive limb

(α) Actions of the police officers

87. The Court notes that the applicant contested the circumstances of Seyran Ayvazyan's fatal shooting, as established by the domestic investigation. She alleged that in reality he had not posed a threat to anyone's life and had been executed by the police officers in revenge for his having assaulted one of their colleagues.

88. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts), and *Mustafa Tunç and Fecire Tunç*, cited above, § 182). Nonetheless, where allegations are made under Article 2 of the Convention, the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts), and *Ramsahai and Others v. the Netherlands*, no. 52391/99, § 357, 10 November 2005).

89. In assessing evidence, the Court applies the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Ramsahai and Others* [GC], cited above, § 273).

90. In the present case, it must be noted at the outset that the domestic courts which examined the appeals against the decision not to prosecute the police officers did not carry out an independent establishment of facts but instead relied on the circumstances of the fatal shooting, as established by the investigation. The Court is mindful, however, of its finding above that the investigation undertaken by the authorities, including the way in which the facts in question were established, was not adequate and effective. The

circumstances of the fatal shooting as established by the investigation cannot therefore be considered as sufficiently reliable and objective.

91. On the other hand, the Court clearly does not have sufficient material before it to conclude that Seyran Ayvazyan was in reality executed by the police officers, as alleged by the applicant. It follows that the Court, owing to the failures of the investigation, is not in a position to make a reliable assessment of the question of whether the actions of the police officers were in compliance with the guarantees of Article 2 (see, *mutatis mutandis*, *Önkol v. Turkey*, no. 24359/10, § 83, 17 January 2017).

92. The Court therefore cannot but conclude that there has not been a violation of the substantive limb of Article 2 of the Convention on this count.

(β) Planning and control of the operation

93. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred, as well as to the way in which the situation developed. Its sole concern must be to evaluate whether, given the circumstances, the planning and control of the operation at Seyran Ayvazyan's house showed that the authorities had taken appropriate care to ensure that any risk to his life had been minimised and that they had not been negligent in their choice of action (see *Andronicou and Constantinou*, cited above, § 181, and *Bubbins*, cited above, § 141).

94. The Court observes at the outset that the parties were not in dispute as to the circumstances surrounding the planning and control of the operation at issue. It notes that the police operation was mounted in response to the violent behaviour demonstrated earlier that day by Seyran Ayvazyan, who was mentally ill, whereby three persons had been injured, including two civilians and one police officer. Thus, the police officers were facing an alarming situation in which they were to neutralise and arrest a mentally ill and violent person whose actions were unpredictable.

95. The Court notes, however, that at the time when the police squad arrived at the scene Seyran Ayvazyan was already inside his house and, after the police had sealed off the area, he cannot be said to have posed an immediate and serious threat to any third party. While shouting threats and making threatening gestures through the windows, he did not, however, make any attempts to flee or to launch an attack. This situation lasted for several hours. Thus, the police officers can be said to have had time at their disposal to plan the arrest operation, as opposed to having to deal with a random operation which may have given rise to unexpected developments to which the police may have been called upon to react without prior

preparation (see *Rehbock v. Slovenia*, no. 29462/95, §§ 71-72, CEDH 2000-XII, and *Celniku v. Greece*, no. 21449/04, § 56, 5 July 2007).

96. It appears that the arrest operation was overseen by the chief of Tumanyan police station. It further appears that the police officers first tried to persuade Seyran Ayvazyan to surrender himself. It is not clear what methods exactly were used but it does not appear that a medical or other similar professional was involved in this process. It is not certain that the involvement of such a professional would have produced a different result, but since Seyran Ayvazyan's violent behaviour appears to have been caused by his medical condition, the police officers should have at least tried that option.

97. The Court further notes that there was no specially trained or designated squad deployed to deal with the situation; rather, the operation was entrusted to the officers of a nearby police station and their chief (see, by contrast, *Andronicou and Constantinou*, cited above, § 185). While the Police Act required police officers to undergo "special training", the Government did not provide any details of the training (if any) that the police officers in question had undergone and whether such training had included any techniques for handling situations similar to the one in question. Nor do the police officers appear to have been equipped with any specialised protective uniforms or gear. Thus, they had to make do with whatever they had at hand, thereby increasing significantly the risk of their having to resort to lethal weapons in the event of a possible attack. Judging by the way the events seem to have unfolded thereafter it does not appear that the police officers had a clear plan as to how to effect the arrest in the given circumstances.

98. In view of the foregoing considerations, the Court finds that the authorities failed to comply with their obligation to minimise the risk of loss of life. The manner in which the operation was planned and controlled cannot be said to have demonstrated sufficient consideration for the pre-eminence of the right to life.

99. There has accordingly been a substantive violation of Article 2 of the Convention as regards the planning and the control of the operation.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

100. The applicant also complained under Article 1 of Protocol No. 13 that the circumstances of Seyran Ayvazyan's death amounted to a deliberate deprivation of life akin to the death penalty.

101. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 2,000 euros (EUR) in respect of pecuniary damage, namely the costs of Seyran Ayvazyan's funeral, although she admitted that no evidence substantiating these costs had been preserved. She further claimed EUR 80,000 in respect of non-pecuniary damage.

104. The Government submitted that the claimed sum of EUR 2,000 had in fact been spent jointly by the applicant and her sisters. She could not lay claim to the part spent by her sisters, who were not applicants in the present case, while the size of her share was unclear. In any event, the applicant had failed to substantiate this claim with any proof. Nor had she submitted any evidence in respect of her claim for non-pecuniary damage, which was, in any event, exorbitant.

105. The Court notes that the applicant's claim in respect of pecuniary damage is not substantiated by any evidence; it therefore rejects this claim. On the other hand, it awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicant also claimed a total of EUR 3,970 for costs and expenses. Of this sum, EUR 1,470 had been incurred before the domestic courts by her sister, An.A., before her death, while the remaining sum of EUR 2,500, which had not been paid yet, was to be paid by the applicant under a contractual obligation in respect of postal costs and representation before the Court.

107. The Government submitted that An.A. was not an applicant in this case and that her expenses could not be the subject of a claim. In any event, the applicant had failed to submit any proof of these costs, such as itemised bills and invoices. As regards the applicant's own expenses, the contract between her and her representative had specified the deadline for payment as 20 June 2010. Several years had passed since then but the applicant had failed to meet her contractual obligation and the scope of her obligations

following that date was unclear. Moreover, this amount also included postal costs, which had not been substantiated with documentary proof. Lastly, only part of the applicant's complaints had been communicated and a reduction in expenses claimed should therefore be applied.

108. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the absence of any supporting documents, the Court decides to reject the applicant's claims for costs and expenses.

C. Default interest

109. 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. *Declares* the complaints concerning Seyran Ayvazyan's death and the alleged lack of effective investigation admissible under Article 2 of the Convention and the remainder of the application inadmissible;

2. *Holds* that there has been a procedural violation of Article 2 of the Convention on account of the authorities' failure to carry out an effective investigation into the circumstances of Seyran Ayvazyan's death;

3. *Holds* that there has been no substantive violation of Article 2 of the Convention on account of Seyran Ayvazyan's death as regards the actions of the police officers;

4. *Holds* that there has been a substantive violation of Article 2 of the Convention on account of Seyran Ayvazyan's death as regards the planning and control of the operation;

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, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 1 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President