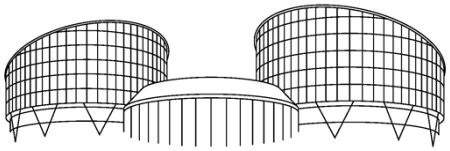

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DERENIK MKRTCHYAN AND GAYANE MKRTCHYAN v. ARMENIA

(Application no. 69736/12)

JUDGMENT

Art 2 (substantive) • State school, unaware of pupil's health vulnerability, not responsible for his death following unexpected beating, in teacher's absence, by classmates with no record of violence • Absence of a real and immediate risk to child's life Art 2 (procedural) • Lack of effective investigation

STRASBOURG

30 November 2021

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

In the case of Derenik Mkrtchyan and Gayane Mkrtchyan 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 Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 69736/12) 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 two Armenian nationals, Mr Derenik G. Mkrtchyan ("the first applicant") and Ms Gayane Mkrtchyan ("the second applicant", together "the applicants"), on 15 October 2012;

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

the parties' observations;

Having deliberated in private on 12 October 2021,

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

INTRODUCTION

1. The applicants are the grandfather and the mother of Derenik G., who died following a fight at a State school. The applicants complained, under Article 2 of the Convention, that the State had failed to protect Derenik G.'s life while he was under the control of the school and, under Articles 2 and 13 of the Convention, that the domestic authorities had failed to carry out an effective investigation into the circumstances of his death.

THE FACTS

2. The applicants were born in 1948 and 1976 respectively and live in the village of Alapars. They were granted legal aid and were represented before the Court by Mr A. Zalyan, a lawyer practising in Vanadzor, and Ms J. Evans, Ms J. Gavron, Mr P. Leach and Ms K. Levine, lawyers from the European Human Rights Advocacy Centre in London.

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

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

I. THE SCHOOL INCIDENT

5. At the material time Derenik G., aged 10, was a fourth-grade pupil at School No. 5 in Charentsavan ("the school"). According to the applicants, he was in good health.

6. At 9.30 a.m. on 5 June 2010 the second applicant took Derenik G. to school, where a mathematics examination was scheduled to take place at 11 a.m. Before that time the children were to prepare for the examination.

7. The form teacher, S.K., seated the pupils in the classroom and wrote down the assignments on the blackboard. She then left the classroom to have a conversation with A.A., another teacher, who was the mother of one of the pupils. According to the Government, the form teacher left the classroom for only a few minutes. The applicants disagreed that this had been the case.

8. While the form teacher was away, the pupils had a fight, as a result of which Derenik G. was beaten up by two of his classmates, I.H. and V.H., who were brothers. During the fighting, Derenik G. and other pupils screamed loudly.

9. Having heard the noise, the janitor entered the classroom. Thereafter, the form teacher and other teachers came in. They found Derenik G. lying unconscious on the floor. Trying to revive him, they slapped his face, performed artificial respiration, sprinkled water on his face and tried to draw out his tongue. Since Derenik G. did not regain consciousness, they took him into the corridor, where another janitor joined them in their attempts to revive him. As their attempts were unsuccessful, the janitors took Derenik G. out of the school building. After further unsuccessful attempts to bring him back to consciousness, he was taken to hospital.

10. Derenik G. was already dead when he was admitted to hospital.

II. THE INITIAL INVESTIGATION

11. On the same day the police ordered a forensic medical examination to determine the cause of Derenik G.'s death, the existence of any injuries on his body, their location and type, the time and method of their infliction and their gravity. The expert was also asked to determine whether Derenik G. had suffered from any illness while alive and, if so, in what way he had been affected by such illness, and what possible link it might have had with his death.

12. On 12 June 2010 the police took written statements (*բացատրություն*) from A.A. (see paragraph 7 above) and S.A., a military instructor working at the school.

In her statement, A.A. mentioned that she had asked S.K. to come out of the classroom into the corridor to talk about her daughter, who was in the same class as Derenik G. While they spoke, she and S.K. had walked to the toilets on the same floor about twenty metres from the classroom. From there, she had gone to the staff room, while S.K. had returned to the classroom.

S.A. stated that at around 9.30 a.m. on 5 June 2010, he had been outside the school with A.Av., the sports teacher. Suddenly, they had heard noises coming from the window and ran towards the school entrance. S.A. had then seen A.Av., who had reached the entrance first, carrying Derenik G. out of the school building, together with the janitors. They had laid him down and A.Av. had performed artificial respiration and cardiac massage while S.A. had started rubbing the boy's feet to try to improve his blood circulation. Seeing that Derenik G. was not regaining consciousness, they had taken him to the school gates to put him in an ambulance. However, because the ambulance had been slow to arrive and in order not to waste time, they had taken Derenik G. to hospital using a van parked nearby.

13. On 6 July 2010 the forensic medical examination was completed. The expert mentioned in his report that since early childhood Derenik G. had received medical assistance on several occasions, mainly for infectious diseases. In June 2009 Derenik G. had been examined by a paediatrician. The parents had informed the paediatrician that the child had lost consciousness for no reason two weeks previously, during a sports class. They had also said that, two years earlier, he had fallen and hit his head at school, as a result of which he had lost consciousness. The paediatrician had referred Derenik G. to a children's hospital in Yerevan for further examination, where he was eventually diagnosed with syncope (fainting) and active supervision had been recommended. Thereafter the parents had not complained of the child having fainted. The expert concluded that the cause of Derenik G.'s death was acute respiratory failure and acute oxygen deprivation, which were the consequence of a number of changes in his internal organs discovered during the forensic examination and confirmed by the forensic analysis of his tissues. The report stated that he had suffered from severe muscular dystrophy and fatty degeneration of the heart, conditions which were linked to the cause of his death. Furthermore, syncope (fainting) could have been a factor contributing to his death. A haemorrhage in the area of the left temple and cheek was also discovered. It was concluded that this had been caused by a blunt, hard object while he was still alive and was not directly linked to the cause of the death.

14. On 15 July 2010 the first applicant enquired of the Prosecutor General whether criminal proceedings had been instituted in respect of his grandson's death and asked to be provided with a copy of the relevant decision. He also asked to be involved in the proceedings as his grandson's legal heir.

15. On 21 July 2010 criminal proceedings were instituted under Article 118 of the Criminal Code in respect of the beating of Derenik G.

16. On 26 July 2010 the first applicant was joined in the proceedings as the victim's legal heir.

17. On 20 August 2010 the second applicant was questioned by the investigator and stated, *inter alia*, that her son had been healthy. To the investigator's question of whether there had been prior incidents of Derenik G. fainting, the second applicant mentioned two such episodes in the past. In reply to the investigator's question as to whether she had requested Derenik G.'s teachers to be attentive towards him, the second applicant stated that she had never made such a request.

18. In September 2010 the first applicant lodged a complaint with the Prosecutor General, requesting that criminal proceedings be instituted in respect of Derenik G.'s death and not merely in relation to the beating prior to his death. He also complained that the police had not instituted criminal proceedings promptly and had not carried out the necessary investigative measures, such as questioning the witnesses or examining the scene of the incident.

19. On 15 September 2010 the first applicant requested that an additional forensic medical examination be conducted, on the grounds that the expert had not given conclusive answers to the questions asked. In particular, the exact time of the death and of the infliction of injuries and their gravity had not been determined and the connection between Derenik G.'s medical conditions and the cause of death had not been clearly established. In addition, the first applicant had not been provided with the decision to order a forensic medical examination and had not had an opportunity to put questions to the expert. That request was rejected.

20. During the investigation Derenik G.'s parents questioned two of his classmates in connection with the events of 5 June 2010 and recorded their answers. The two pupils questioned mainly confirmed that they had witnessed their classmates, brothers I.H. and V.H., beating up Derenik G. The recordings were submitted to the police.

21. On 8 October 2010 the investigator examined the recordings.

22. On 3 November 2010 the investigator sent a letter to the Chief of the State Education Inspectorate. Referring to the need to ensure a full and objective investigation of the case, he asked the State Education Inspectorate to examine the incident of 5 June 2010 in so far as the actions of the school's administration and the teaching staff were concerned.

23. By a letter of 15 November 2010, the Chief of the State Education Inspectorate stated that Derenik G.'s death was not attributable to any inaction or omission on the part of the school's administration or the teaching staff. The letter stated in particular that A.A., not finding it appropriate to have a conversation with S.K. in front of the entire class, had asked the latter to have a word outside the classroom. During S.K.'s absence

several pupils, including Derenik G., had had a fight and hit each other. As to the observance of the requirement to ensure the safety of the pupils, point 1(9) of part 3 of the model contract for the provision of free schooling services between a State school and the parent of a pupil, as established by the Order of 26 December 2009 of the Minister of Education and Science (see paragraph 42 below), had been included in the internal rules of conduct of the school and the relevant contract had been signed with the parents of all pupils, including Derenik G.'s parents. The school had been renovated and the necessary conditions for ensuring the safety of the pupils were in place.

24. On 18 November 2010 the criminal proceedings were terminated. According to the police, Derenik G. had been beaten by I.H. and V.H. during a fight while S.K. was away from the classroom. After the fight Derenik G. had approached the blackboard to see more clearly what was written there. Upon returning to his desk, he had suddenly fallen to the floor and lost consciousness. The decision then referred to S.K.'s statement that she had been outside the classroom for only five minutes. It went on to say that I.H. and V.H. could not be prosecuted under Article 118 of the Criminal Code for beating Derenik G., since they had not attained the age of criminal responsibility.

25. On 27 November 2010 the first applicant lodged a complaint with the Prosecutor General against the investigator's decision to terminate the criminal proceedings. His complaint was rejected.

26. On 7 December 2010 the first applicant lodged a complaint with the Kotayk Regional Court ("the Regional Court") disputing the decision to terminate the criminal proceedings. He argued, in particular, that Derenik G. had died as a result of a fight among the children while they had been left alone in the classroom without a teacher's supervision. The administration had not taken any measures to prevent the fight. Also, the police had not instituted separate criminal proceedings in respect of Derenik G.'s death. Although it had been established that Derenik G. had been beaten, the causal link between the beating and his death had not been properly examined.

27. On 18 March 2011 the Regional Court allowed the first applicant's complaint and set aside the decision of 18 November 2010, finding that the police had failed to investigate a number of issues properly, such as the exact length of time the form teacher had been away from the classroom, the exact time when Derenik G. had been beaten, whether or not a physician had been available at the school at the time of the events, and whether it would have been possible to save his life had he received timely first aid. Also, no expert panel had carried out a forensic examination to find out the reason for the changes to Derenik G.'s internal organs and whether such changes were connected with the blows sustained by him or to determine the period of time between those changes and the time of his death, the type

of intervention that would have been necessary to save his life, whether his death could have occurred in other circumstances, how his diseases might have progressed had he lived, and after how long they might have caused his death.

28. On 7 June 2011 the Criminal Court of Appeal, upon an appeal by the prosecutor, fully upheld the Regional Court's decision. In addition to the findings of the Regional Court, it found that the cause of Derenik G.'s death had not been established in the course of the investigation and that it was still to be determined whether the blows sustained to different parts of his body during the fight were linked to his death or not. Furthermore, the investigator had referred the matter to the State Education Inspectorate instead of making his own legal assessment of the actions of the school's administration.

III. THE FURTHER INVESTIGATION

29. On 7 July 2011 the criminal proceedings were resumed.

30. On 22 July 2011 an additional forensic medical examination by an expert panel was ordered to determine the cause of Derenik G.'s death and the injuries discovered on his body, as well as the types of diseases he had suffered from and whether those diseases were linked to his death. The expert panel was further requested to determine whether Derenik G.'s injuries, if they had resulted from him having been beaten, were directly linked to his death and whether those injuries in any way aggravated, or could have aggravated, the diseases that were directly linked to his death.

31. On 16 November 2011 the additional forensic medical examination was completed. The relevant parts of the report issued by the expert panel read as follows:

> "... according to the results of the [initial] forensic medical examination of the body, a haemorrhage in the area of the left temple and cheek was discovered which had been caused while [Derenik G.] was still alive by a blunt, hard object, possibly as a result of one or more than one action ...
>
> While he was still alive, Derenik G. had suffered from tubular atrophy, mild ... infection of the liver and atrophic changes of the heart muscle which could possibly have progressed during [his] epileptic seizure of 5 June 2010 and its aftermath. The other pathological changes in his internal organs mentioned in [the expert report of 6 July 2010] ... could have developed during the epileptic seizure and upon his death.
>
> The medical evidence submitted and the material in the criminal case file [statements of the sport teacher and school janitors] also lead to the conclusion that in 2009 [Derenik G.] had had (two) seizures accompanied by a loss of consciousness, which, however, had not been diagnosed as epileptic seizures ..., having been recorded as syncope (fainting).
>
> ...
>
> As regards the link between the blows sustained by [Derenik G.], the sudden worsening of his state of health, his loss of consciousness accompanied by a seizure

> and his death, it should be noted that in view of the above-mentioned pathological changes in his internal organs which occurred while he was alive, the blows coupled with [Derenik G.'s] psychological and emotional state at the given moment could have contributed to the epileptic seizure and to the development of acute respiratory failure and cardiac function disorder connected with [the seizure], which caused [his] death."

32. On 7 December 2011 the investigator decided to terminate the criminal proceedings. The decision stated, *inter alia*, that, although the conclusion of the panel of experts had established a causal link between Derenik G.'s death and his beating by I.H. and V.H., his assailants could not be prosecuted for homicide since the element of intention on their part was absent. In any event, I.H. and V.H. had not attained the age of criminal responsibility for any type of crime. The decision further stated that S.K. and the school principal had been unaware of Derenik G.'s epileptic seizures. In those circumstances they had not realised, and could not have realised, the danger inherent in their actions (or inaction).

33. The first applicant disputed the investigator's decision before the prosecutor, who rejected the complaint.

34. On 9 January 2012 the first applicant lodged a complaint with the Regional Court against the investigator's decision of 7 December 2011. He argued, in particular, that Derenik G. had died as a result of the failure on the part of the school's administration to properly implement its duty to protect its pupils. He also complained that no separate criminal proceedings had been instituted in respect of Derenik G.'s death, notwithstanding the fact that the causal link between the beating and his death had been established.

35. On 22 February 2012 the Regional Court granted the first applicant's complaint and set aside the decision to terminate the criminal proceedings. It referred to its previous decision of 18 March 2011 (see paragraph 27 above) and considered that, following the reopening of the proceedings, the police had still failed to find out whether or not a physician had been available at the school at the time of the incident and whether it would have been possible to save Derenik G.'s life had he received timely first aid.

36. On 1 March 2012 the prosecutor lodged an appeal, stating, in particular, that it had been revealed during the investigation that, in accordance with the relevant order by the director of the Charentsavan Medical Centre, one physician had been put in charge of the school in question and one other State school in Charentsavan. On the day of the events, in accordance with the schedule, the physician had been on duty at the other school.

37. On 3 April 2012 the Criminal Court of Appeal granted the prosecutor's appeal and quashed the Regional Court's decision of 22 February 2012. It found, *inter alia*, that the police had not addressed the question of whether it would have been possible to save Derenik G.'s life had he received timely first aid from a physician for objective reasons,

given the fact that on 5 June 2010 the latter had been on duty at the other school.

38. On 3 May 2012 the first applicant lodged an appeal on points of law. He argued in detail that an effective investigation had not been carried out, mainly because the police had failed to take the necessary steps to find those responsible for Derenik G.'s death. He reiterated his previous arguments in relation to the fact that no separate criminal proceedings had been instituted in respect of Derenik G.'s death, although it had been established that the cause of the latter's death was the beating by his classmates.

39. On 8 June 2012 the Court of Cassation declared the first applicant's appeal inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

40. Article 118 of the Criminal Code provides that beating or other violent actions that have not generated the consequences envisaged by Article 117 (intentional infliction of bodily harm which causes short-term deterioration of health) are punishable by a fine, the maximum amount of which is one hundred times the fixed minimum wage, or a maximum of two months' detention.

41. Section 22(1) of the Public Education Act of 10 July 2009 provides that, for the purpose of the implementation of the educational programme, the educational institution must ensure, *inter alia*, safe and secure conditions, normal work routines, medical assistance and the necessary conditions for the physical development and maintenance of the health of the pupils.

42. The Order of 26 December 2009 of the Minister of Education and Science on establishing the model contract for the provision of free schooling services between a State school and the parent of a pupil provides an example of the contract to be signed between State schools and the parents (or legal representatives) of pupils educated in State schools. Part 3 of the model contract sets out the rights and responsibilities of the parties, including those of the school principal. Point 1(8) states that the school principal must ensure the necessary conditions for, *inter alia*, the maintenance of the pupils' health. Point 1(9) states that the school principal must secure the life and safety of the pupils by implementing legitimate actions to protect them from any interference with their interests and by taking preventive measures and keeping them away from narcotic substances, explosives, begging, vagrancy and other criminal and unlawful activities. Part 6 provides that the parties bear responsibility under the law for the failure to perform their obligations in relation to, *inter alia*, securing the life and safety of a pupil.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

43. The applicants complained that Derenik G. had died as a result of the failure of the school's administration and the teaching staff to properly perform their duty to protect his life and safety while he was under their supervision. They further complained that the authorities had failed to conduct an effective investigation into his death. They relied on Articles 2, 6 and 8 of the Convention.

44. The Court, as master of the characterisation to be given in law to the facts of the case (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that it is 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

45. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicants maintained that the State had failed to protect the right to life of Derenik G. The incident had occurred inside the school building and during the time when the children had been entrusted to the school's supervision. In their view, by leaving the children unattended in the classroom and not ensuring proper medical aid and assistance on the day of the incident, the school's authorities had failed in their duties to ensure the safety and security of the children while they were under their control. They submitted that it had been the primary duty of the school's authorities, including S.K. as the form teacher, to ensure the proper supervision of the pupils in order to protect them from any violence to which they might be subjected during the period while they were under their supervision. However, the school's authorities had failed to properly fulfil that duty. Furthermore, no physician or nurse had been available at the school to provide medical assistance to Derenik G. after the incident.

The applicants further maintained that the authorities had failed to conduct an effective investigation into the circumstances of Derenik G.'s

death. They argued, *inter alia*, that the investigation had not been accessible to them.

47. The Government argued that the school's authorities, including the principal of the school and the form teacher, S.K., had been unaware of Derenik G.'s health issues. In that respect they referred to the second applicant's statement to the investigator to the effect that she had never drawn the attention of Derenik G.'s teachers to his health (see paragraph 17 above). Hence, they had not known and could not have known of the existence of a real and immediate risk to his life and could not have been expected to take special measures to prevent such a risk. The Government submitted that S.K. had been absent from the classroom for only a few minutes and she could not have supposed that a fight would happen during her absence and that, moreover, such a fight could lead to the pupil's death on account of his diseases. The Government pointed out that immediately after the incident the teachers and other members of the school personnel had done everything possible to help Derenik G. regain consciousness. When they were unable to do so, they had taken him to the school gates and then to hospital.

The Government further argued that the authorities had complied with their obligation to conduct an effective investigation into the circumstances of Derenik G.'s death. They submitted in that connection that the investigation had been prompt, thorough, independent and accessible to the applicants. In particular, the first applicant's status as the victim's legal heir in the proceedings had been recognised on 26 July 2010, five days after the criminal proceedings had been initiated. Furthermore, on the day of the incident the police had ordered a forensic medical examination. The investigator had then questioned Derenik G.'s classmates, S.K. and other teachers. Other investigative measures had also been carried out, such as an examination of the scene of the incident and the questioning of witnesses. The Government provided copies of the written statements (*բացատրություն*) of two teachers of the school, dated 12 June 2010 (see paragraph 12 above).

2. The Court's assessment

(a) General principles

48. The basic principles concerning a State's positive obligation to protect the right to life under Article 2 were set out by the Grand Chamber in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, §§ 130-31, ECHR 2014) and most recently in *Kurt v. Austria* ([GC], no. 62903/15, §§ 157-160, 15 June 2021).

49. The State's positive obligation under Article 2 has been found to be engaged in the context of public education. Thus, the Court has found that school authorities have an obligation to protect the health and well-being of

pupils, in particular young children, who are especially vulnerable and are under their exclusive control (see *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 35, 10 April 2012, and *Kayak v. Turkey*, no. 60444/08, § 59, 10 July 2012).

50. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For this positive obligation to arise, it must be established that the authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (the so-called "*Osman* test" – see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII) (see *Kurt*, cited above, § 158). Furthermore, the assessment of the nature and level of risk constitutes an integral part of the duty to take preventive operational measures where the presence of a risk so requires. Thus, an examination of the State's compliance with this duty under Article 2 must comprise an analysis of both the adequacy of the assessment of risk conducted by the domestic authorities and, where a relevant risk triggering the duty to act was or ought to have been identified, the adequacy of the preventive measures taken (ibid., § 159).

51. The Court reiterates in this connection that the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means (see *Ilbeyi Kemaloğlu and Meriye Kemaloğlu*, cited above, § 37).

52. Furthermore, the Court has considered that the State's duty to safeguard the right to life also requires, in the event of serious injury or death, to have in place an effective independent judicial system securing the availability of legal means capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. This obligation does not necessarily require the provision of a criminal-law remedy in every case. Where negligence has been shown, for example, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts. However, Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in

theory: above all, it must also operate effectively in practice (see, among other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, §§ 132-33).

(b) Application of those principles to the present case

(i) Alleged failure of the school's authorities to safeguard Derenik G.'s right to life

53. In the present case, Derenik G., aged 10 at the material time, lost his life in the aftermath of a fight in the classroom during which he was beaten by two of his classmates while the class teacher had left the room (see paragraph 8 above). As was subsequently established, the cause of his death had been the development of acute respiratory failure and cardiac function disorder because of an epileptic seizure possibly linked to the beating and to his psychological and emotional state (see paragraph 31 above).

54. The Court notes that two forensic medical examinations were ordered to determine the cause of Derenik G.'s death and related issues (see paragraphs 11 and 30 above), both of which confirmed that there had been pathological changes to his internal organs which had possibly progressed during the epileptic seizure and thereafter (see paragraphs 13 and 31).

55. It is not disputed between the parties that the school's authorities were unaware of Derenik G.'s particular vulnerability due to his health issues. The Court observes in this regard that the parents had sought medical advice following the second instance of Derenik G. having had fainted but he had not been diagnosed as suffering from epileptic seizures and no specific recommendations had been made (see paragraphs 13 and 31 above). In those circumstances, the school authorities had not been requested to pay particular attention to Derenik G. (see paragraph 17 above).

56. The Government argued that, being unaware of Derenik G.'s health problems, the school authorities and staff had not known and could not have known of the existence of a real and immediate risk to his life and could not have been expected to take special measures to prevent such a risk (see paragraph 47 above).

57. The Court reiterates the principle cited above that not every risk to life can entail for the authorities a requirement under the Convention to take operational measures to prevent that risk from materialising (see paragraph 50 above).

58. It is common ground between the parties that the school authorities were unaware of Derenik G.'s particular vulnerability due to his health condition. It is also undisputed that no medical personnel were available in the school on the day of the incident to provide medical assistance to Derenik G. In these circumstances, the questions to be resolved by the Court are the following: firstly, whether the form teacher nevertheless knew or ought to have known that Derenik G. would be exposed to a life-threatening

danger during her absence from the classroom which should have prompted her to take the necessary measures to protect his life and, secondly, whether by not ensuring the presence of medical personnel on the school premises on the day of the incident, the domestic authorities failed to take measures which might have avoided a risk to Derenik G.'s life.

59. As regards the first question, in the Court's opinion, a particular degree of vulnerability would need to be demonstrated in order to impose on the teacher a stringent requirement not to leave the classroom at any time and under any circumstances. In this connection, the Court reiterates its position expressed in *Kayak* (cited above, § 60), according to which, while in principle the educational institution is under an obligation to supervise pupils during the period they spend in its care, the members of the teaching staff cannot be expected to ensure the permanent supervision of each pupil in order to respond instantly to any unpredictable behaviour. The Court is fully cognisant of the range of risks to which children may be exposed and the paramount duty of school authorities to take supervisory measures to ensure the security of pupils and protect them from all forms of violence to which they might be subjected while under their supervision (see, for example, *Kayak*, cited above). However, there is nothing to suggest that on the day of the incident there existed any factors warranting special attention or measures on the part of the form teacher (compare and contrast *Kayak*, §§ 61-62, and *Ilbeyi Kemaloğlu and Meriye Kemaloğlu*, § 41, both cited above) since, as already noted, she was unaware of Derenik G.'s particular vulnerability due to his health condition (see paragraph 55 above). There is likewise nothing to suggest that any incidents of violence among the pupils had previously occurred in Derenik G.'s class. The Court, in these circumstances, considers it difficult to maintain that, by merely leaving the classroom, the form teacher could be said to have compromised Derenik G.'s safety, thereby engaging the responsibility of the school's authorities under Article 2 of the Convention.

60. As regards the second question, the Court observes that it already concluded that it had not been established in the present case that the school authorities knew or ought to have known at the relevant time of the existence of a real and immediate risk to Derenik G.'s life. There is therefore no call for the Court to assess the second part of the *Osman* test (see paragraph 50 above), namely whether the school authorities had taken the measures which could reasonably have been expected of them (see *Ražnatović v. Montenegro*, no. 14742/18, §§ 43-44, 2 September 2021).

61. For these reasons, the Court considers that there are insufficient elements in the evidence before it to conclude that the school's authorities failed to comply with their obligation under Article 2 of the Convention to provide the requisite standard of protection for Derenik G.'s life.

Consequently, there has been no violation of Article 2 of the Convention in its substantive limb.

(ii) Alleged ineffectiveness of the judicial response

62. The Court notes at the outset that the applicants have resorted only to criminal-law remedies in connection with Derenik G.'s death. The Court further notes that the Government did not argue that any effective remedies were available to the applicants other than criminal proceedings. The general position in the Court's case-law is that the form of investigation that will achieve the purposes of Article 2 may vary depending on the circumstances (see *Ribcheva and Others v. Bulgaria*, nos. 37801/16 and 2 others, § 139, 30 March 2021). The Court considers that, given the circumstances of the present case, an effective criminal investigation was in principle appropriate to satisfy the requirements of Article 2 of the Convention. To be seen as effective such an investigation must display the characteristics of independence, promptness, reasonable expedition, adequacy, thoroughness, objectivity and sufficient involvement of the next of kin (ibid.).

63. The Court observes that on the day of the incident, 5 June 2010, the police ordered a forensic medical examination to determine the cause of Derenik G.'s death (see paragraph 11 above). However, it was not until 21 July 2010 (see paragraph 15 above), a month and a half after the school incident (see paragraphs 6-10 above), that the investigative authorities instituted criminal proceedings. Even then, the criminal proceedings were instituted following the first applicant's enquiry to the Prosecutor General (see paragraph 14 above), and solely in relation to the beating. In the Court's opinion, this inevitably narrowed the scope of the investigation, directing it towards the incident of the beating alone without it being required to properly examine the entire chain of events which led to Derenik G.'s death, including the wider issue of the responsibility of the school authorities for the incident. The Court notes in this connection that, although the decisions to terminate the criminal proceedings briefly addressed the issues relating to the possible responsibility of the school authorities, this was done in a rather perfunctory manner and with reference to a simple letter from the Chief of the State Education Inspectorate, a supervisory body acting under the Ministry of Education which is responsible for overseeing compliance by educational establishments with legal provisions in the field of public education (see paragraphs 23, 24 and 32 above).

64. Moreover, there is nothing in the material before the Court to indicate that the investigative authorities collected evidence at the scene and questioned witnesses in a timely manner in order to shed light on the circumstances of Derenik G.'s death. Although the Government argued that the investigator had examined the scene of the incident (see paragraph 47 above), no evidence was produced to support this. Furthermore, the written statements (*բացատրություն*) of the two school staff members (see paragraph 12 above) show that their statements were obtained on 12 June

2010 – one week after the incident. There is likewise nothing to indicate that the investigating authorities carried out any other investigative measures prior to the institution of criminal proceedings.

65. The Court further observes that it was not until Derenik G.'s parents conducted their own private investigation by questioning his classmates that it was revealed that it had been I.H. and V.H. who had beaten him during the fight in the classroom (see paragraph 20 above). Even then, having been provided with the relevant recordings of those statements on 8 October 2010, the investigator asked the State Education Inspectorate to examine the circumstances of the incident almost one month later, on 3 November 2010 (see paragraphs 21 and 22 above). The Court notes in this connection that the investigating authority was subsequently criticised by the Court of Appeal for having referred the matter to the State Education Inspectorate instead of making its own assessment of the actions of the school administration (see paragraph 28 above). Still, the investigation continued with regard to the incident of the beating alone (see paragraph 29 above). As a result, having concluded that I.H. and V.H. were not subject to prosecution, the investigating authority briefly mentioned in the decision of 7 December 2011 that the school administration could not be held liable for the incident since it had been unaware of Derenik G.'s health condition (see paragraph 32 above).

66. However, there is nothing to indicate that the investigating authority ever examined whether the school administration had properly fulfilled its duty to look after the pupils while they were under its supervision and control so as to avoid incidents such as the one during which Derenik G. had been subjected to violence. Neither did the investigation address the issue of medical assistance in the school on the day of the incident, including whether the death could have been prevented had medical assistance been provided or the type and the time frame for such assistance, despite the fact that the Regional Court had twice drawn the investigating authority's attention to the matter (see paragraphs 27 and 35 above). At the same time, in its decision of 3 April 2012 the Court of Appeal readily accepted the prosecution's argument submitted in its appeal against the Regional Court's decision of 22 February 2012 that the school physician had been absent on the day of the incident, having been on duty at another school, without any examination of whether or not the unavailability of medical assistance on the day of the incident had had the effect of compromising Derenik G.'s health condition (see paragraphs 36, 37 and 60 above). In those circumstances, the Court considers that the investigation failed to meet the requirement of thoroughness (see paragraph 62 above).

67. Regard being had to the serious deficiencies and shortcomings discerned above, the Court is of the view that the investigation into the circumstances of the school incident which resulted in the death of Derenik G. fell short of the requirements of Article 2 of the Convention. In

view of that conclusion, the Court considers it unnecessary to examine whether the other aspects of the investigation met the requirements of the Convention (see *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 272, 27 August 2019, and *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 101, 7 May 2020).

68. There has accordingly also been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. The applicants complained that they had no effective domestic remedies at their disposal in respect of the alleged breach of Article 2 of the Convention. They relied on Article 13 of the Convention, which reads as follows:

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

70. The applicants initially complained in their application that the domestic authorities had failed to carry out an effective investigation into the circumstances of Derenik G.'s death. In their observations submitted on 12 February 2016 in reply to those of the Government, they complained, with reference to the same provision, that there had been no legal possibility for them under Armenian law to claim compensation for damage in a situation where no one had been found responsible for the death, despite the fact that Derenik G. had died as a result of an incident which had occurred while he was under the control of the school authorities.

71. The Government contested the applicants' arguments relating to the ineffectiveness of the investigation. As regards the complaint concerning the lack of legal grounds on which to claim compensation, the Government submitted that the applicants had not raised such a complaint in their initial application to the Court.

72. The Court notes that the applicants' complaint, in so far as it reiterates their complaint that the domestic authorities had failed to carry out an effective investigation into Derenik G.'s death, is linked to the ones examined above and must therefore likewise be declared admissible.

73. Having regard to the findings relating to the procedural aspect of Article 2 of the Convention (see paragraphs 67 and 68 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 of the Convention (see, *mutatis mutandis*, *Muradyan v. Armenia*, no. 11275/07, § 161, 24 November 2016, and *Anahit Mkrtchyan*, cited above, § 105).

74. As regards the applicants' complaint with regard to the lack of legal grounds under Armenian law on which to claim compensation for damage suffered as a result of the death of a family member, having regard to the

applicants' initial submissions in their application (see paragraph 70 above), the Court considers that it amounts to raising a new and distinct complaint under Article 13 of the Convention (see *Radomilja and Others*, cited above, § 135). While nothing prevents an applicant from raising a new complaint in the course of the proceedings before the Court, such a complaint must, like any other one, comply with the admissibility requirements (ibid.).

75. The Court notes that the domestic proceedings in the present case ended on 8 June 2012 (see paragraph 39 above). However, as noted above, the applicants raised this complaint as late as in their observations of 12 February 2016 (see paragraph 70 above), that is, outside the period of six months from the final domestic decision.

76. Even though no plea of inadmissibility concerning compliance with the six-month rule was made by the Government in their observations (see paragraph 71 above), the Court reiterates that it is not open to it to set aside the application of the six-month rule solely because the Government have not made a preliminary objection to that effect (see, for example, *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 28-31, 29 June 2012).

77. It follows that the applicants' complaint under Article 13 of the Convention, in so far as it concerns their new argument that it was impossible to claim compensation for Derenik G.'s death which had occurred while he was under the control of the school's authorities, is inadmissible under Article 35 § 1 of the Convention for non-compliance with the six-month rule and must therefore be rejected pursuant to Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

80. The Government contested their claim.

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

B. Costs and expenses

82. The applicants were granted legal aid by the Court, and they did not seek to be reimbursed for any additional costs or expenses. Consequently, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Articles 2 and 13 of the Convention concerning Derenik G.'s death and the failure to carry out an effective investigation into his death admissible, and the complaint under Article 13 of the Convention about the applicants' inability to claim compensation inadmissible;

2. *Holds*, by five votes to two, that there has been no violation of Article 2 of the Convention in its substantive limb;

3. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention in its procedural limb;

4. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention about the alleged failure to carry out an effective investigation into Derenik G.'s death;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 24,000 (twenty-four 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*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Yonko Grozev
Registrar	President

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

Y.G.R.
A.N.T.

PARTLY DISSENTING OPINION OF JUDGE HARUTYUNYAN JOINED BY JUDGE PASTOR VILANOVA

The case concerns the tragic death of a young schoolboy after he was beaten by his classmates during a fight while the teacher had left the children in the classroom without supervision. The applicants alleged a violation of Article 2 of the Convention under its substantive and procedural limbs.

For the reasons set out below, I respectfully disagree with the majority's finding that there has been no violation of Article 2 of the Convention in its substantive limb in the present case.

While there are a number of facts which remain unknown on account of the domestic authorities' own failure in their duty to properly investigate the circumstances surrounding Derenik G.'s death (see paragraphs 63-66 of the judgment), we do know the following. While the form teacher was absent from the classroom, where the pupils had been seated for an examination, Derenik G. was subjected to violence. She was not near enough to hear the noise coming from the classroom and it was the janitor who first discovered what was happening. As was subsequently established by the forensic experts, Derenik G. had suffered an epileptic seizure that day. Furthermore, his death had been caused by the development of acute respiratory failure and cardiac function disorder because of the epileptic seizure possibly linked to the beating and to his emotional and psychological state. It was also established that the child had received several blows to the temple with a blunt object. This would probably not have happened in the presence of the teacher. Lastly, no nurse or physician had been available at the school premises to provide medical assistance to Derenik G. (see paragraphs 7-9, 13 and 30 of the judgment).

The majority's assessment considered whether at the material time the school authorities knew or ought to have known that there was a real and immediate risk to Derenik G.'s life (the so-called "*Osman* test" – see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII), a question which they answered in the negative on the facts as known. In particular, having regard to the fact that the school authorities were unaware of Derenik G.'s particular vulnerability due to his health, the majority concluded that the first limb of the *Osman* test, that is, the assessment of the risk, had not been met and there was therefore no need to examine whether any preventive measures ought to have been taken. In my view, however, the present case was not suitable for the application of that very stringent test given the particular context of the case, that is, having regard to the school authorities' obligation to protect the health and well-being of pupils, in particular young children, who are especially vulnerable and are under the exclusive control of the authorities (see

Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey, no. 19986/06, § 35, 10 April 2012), including their primary duty, as established in the Court's case-law, to take supervisory measures to ensure the security of pupils and protect them from all forms of violence to which they might be subjected while under their supervision (see *Kayak v. Turkey*, no. 60444/08, § 59, 10 July 2012).

The majority focused mainly on the foreseeability of the risk to Derenik G.'s life and disregarded the primary responsibility of an educational establishment to perform its paramount duty to properly supervise the children while they are under its exclusive control. The performance of that duty requires an even higher level of diligence in the case of children of such a young age (compare and contrast *Ercankan v. Turkey* (dec.), no. 44312/12, § 51, 15 May 2018). I find that, in the circumstances of the present case, where the incident took place during class time inside the classroom, it could reasonably have been expected that the class teacher would be present in the classroom to supervise the pupils or to ensure that they were not left unattended for more than a few moments if she needed to leave.

I consider therefore that, in view of the relatively young age of Derenik G. and his classmates (around ten years old), leaving them unsupervised in the classroom could in itself have exposed them to a real and immediate risk to their life and well-being since their behaviour at that age could be unpredictable.

Although it is not disputed that the duration of the teacher's absence from the classroom was not established, I find it particularly problematic that she had left the classroom for a period of time long enough for the children to be engaged in a fight which could have resulted in any child being subjected to violence, whether or not they had particular health problems. In particular, there is nothing to suggest that the teacher had left her classroom for a pressing reason. While death is normally unpredictable, a fight or an accident in a classroom is not.

As regards the issue of the lack of medical assistance for Derenik G. on the day of the incident, I note that indeed it was not established that it would have been possible to save Derenik G.'s life had he received timely first aid from a qualified medical worker. While in my view the obligation to ensure the safety and security of pupils can in no way be interpreted as requiring the permanent presence of medical personnel on the school premises, I nevertheless note that under domestic law, the school appears to have had an obligation to ensure that medical assistance was available to the pupils in order to maintain their health (see paragraph 41 of the judgment). Instead, it was the janitor and then the teachers of the school who tried to help Derenik G. to regain consciousness by slapping his face, performing artificial respiration, sprinkling water on him and trying to draw out his tongue. In any event, it was not disputed by the Government that there was

such an obligation on the school authorities. Nor did they argue that the relevant members of the staff had the requisite training to provide emergency first aid.

In sum, I consider that in the specific circumstances of the instant case, the duty to supervise the pupils under the care of the school was not properly fulfilled. The school authorities did not display the required level of diligence to prevent the occurrence of violence during class time and failed in their obligation to provide medical assistance. The school authorities therefore failed to comply with their positive obligations under Article 2 of the Convention.