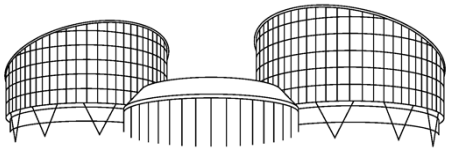

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MIRZOYAN v. ARMENIA

(*Application no. 57129/10*)

JUDGMENT

STRASBOURG

23 May 2019

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 Mirzoyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski,
Gilberto Felici, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 5 March and 30 April 2019,

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

PROCEDURE

1. The case originated in an application (no. 57129/10) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Robert Mirzoyan ("the applicant"), on 22 September 2010.

2. The applicant was represented by Mr Y. Khachatryan, a lawyer practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that the State failed to protect his son's life during his mandatory military service in the Armenian army. He further alleged that he had no possibility to claim compensation from the State for non-pecuniary damage suffered as a result of the loss of his son.

4. On 1 September 2015 notice of the complaints concerning the failure to protect the life of the applicant's son and the impossibility to claim compensation for non-pecuniary damage was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Marmarashen village.

6. In June 2006 the applicant's son, Gegham Sergoyan, was drafted into the Armenian army.

7. On 8 November 2006 he was assigned to military unit no. 37673 (the "military unit") situated in the unrecognised Republic of Nagorno Karabakh (the "NKR").

8. On 9 April 2007 Gegham Sergoyan underwent surgery on a toe on his left foot.

9. On the same date the military unit doctor temporarily discharged Gegham Sergoyan from his duties until 16 April 2007. Because of the surgery, he was allowed to wear slippers instead of army boots.

10. On 15 April 2007 Gegham Sergoyan was put on duty. On that day lieutenant H.G. was the duty officer in charge of the military unit.

11. By an order of the Deputy Minister of Defence of Armenia of 29 December 2003, H.G. had been hired to perform military service for a period of five years and assigned to the military unit with the rank of junior lieutenant.

According to the personal report provided by the military unit command, H.G. had been a weak officer from the first day of service. He had been the subject of several disciplinary penalties, including a "strict reprimand" and "not fully fit for service" in September and October 2004 respectively. In July 2006 H.G. was given another reprimand. It was further indicated by his superiors that H.G.'s performance was deficient and his professional training poor.

12. On 15 April 2007 at 9.40 p.m. H.G., upon seeing Gegham Sergoyan in the duty station room, reproached the latter for having entered without permission and for not wearing uniform, including for being in slippers instead of army boots. Although Gegham Sergoyan admitted his mistake and tried to leave the room, H.G. verbally abused him and violently pushed him against the wall. Then H.G. pointed his gun at Gegham Sergoyan's head and fired a shot.

13. On the same date Gegham Sergoyan was taken to Stepanakert Military Hospital in the "NKR" (the SMH) where he underwent surgery.

14. Upon admission to Stepanakert military hospital, the diagnosis of ballistic trauma of the cervical vertebrae with axis (second cervical vertebra) fracture and mandibular fracture with displacement of the right side was noted in Gegham Sergoyan's medical records.

15. On 16 April 2007 at 10 a.m. Gegham Sergoyan was examined by doctors H.E., N.C. and A.G. of the SMH who indicated in the relevant record that Gegham Sergoyan had sustained a ballistic trauma to the cervical vertebrae with axis fracture, and that he had a fracture of the right side of the lower jaw.

16. On the same day Gegham Sergoyan was transferred to the Central Military Hospital of the Ministry of Defence of Armenia (the CMH) in Yerevan pursuant to the transfer certificate issued by Doctor H.E. The same diagnosis, namely ballistic trauma and fracture of the right side of the jaw, was mentioned in the certificate.

17. On the same day the Askeran No. 1 Garrison Military Prosecutor's Office instituted criminal proceedings under Article 34-104 § 1 of the Criminal Code of Armenia (attempted murder).

18. On 17 April 2007 Gegham Sergoyan was admitted to the CMH in Yerevan. It was indicated in the medical record that, according to the transfer diagnosis, Gegham Sergoyan had suffered ballistic trauma to the cervical vertebrae. Mandibular fracture with displacement on the left side and fracture of the second cervical vertebra was also mentioned, with a question mark. The clinical diagnosis made by the doctors of the CMH stated ballistic trauma to the neck with lesion of the cervical part of the spine (second cervical vertebra) and ballistic fracture of the second and third vertebrae with traumatic spinal cord injury.

19. During his stay at the CMH, Gegham Sergoyan was examined by forensic medical expert A.D. of the Republican Centre of Forensic Medicine of the Ministry of Health of Armenia (the Republican Centre of Forensic Medicine) who stated in his conclusion, *inter alia*, that the bullet had penetrated from the left side of the lower jaw and, according to descriptions contained in the medical records, it was directed from left to right and upwards from front to back.

20. On 18 April 2007 H.G. was officially charged with attempted murder and abuse of power resulting in grave consequences (Articles 34-104 § 1 and 375 § 1 of the Criminal Code).

21. On the same day H.G. was questioned and fully admitted his guilt. He submitted, in particular, that he had been on duty on 15 April 2007 when at 9.40 p.m. he had seen his assistant, J.G., and Gegham Sergoyan watching television together in the duty room. Given that Gegham Sergoyan was in slippers, he had reprimanded him for violation of the uniform code and for having entered the duty room without permission, and had sworn at him, grabbed him by the chest and pushed him against the wall. Gegham Sergoyan and J.G. had been laughing while watching television and he had thought they were laughing at him. Although Gegham Sergoyan had said that he would leave the room, he became even angrier since the latter had been laughing while speaking to him. At that moment he had taken out his gun, loaded it and, pointing the gun at the left side of Gegham Sergoyan's face, had sworn at him and shot him in the head. He had shot Gegham Sergoyan with the gun attributed to him.

22. On 2 May 2007 Gegham Sergoyan died in hospital without having regained consciousness.

23. On the same day the investigator of the Askeran No. 1 Garrison Military Prosecutor's Office ordered a post-mortem examination of Gegham Sergoyan's body to be conducted in Yerevan by forensic medical expert A.L.D. of the Republican Centre of Forensic Medicine. The expert was requested to determine, *inter alia*, the cause of death, the existence of any injuries on the body, the time and method of their infliction and their

possible link with the death. The expert was also asked to determine whether there were any other external injuries on the body apart from the ballistic trauma, the time of their infliction and their gravity.

24. On 10 May 2007 the Minister of Defence of Armenia issued an order concerning the incident with the applicant's son and the imposition of disciplinary penalties on persons responsible. The order stated, *inter alia*, the following:

> "... The internal investigation has revealed the following:
>
> - the military unit command had not thoroughly examined [H.G.'s] moral character or his personal and professional preparation, there had been no proper control over the observance of the daily schedule;
>
> - the instructions from the personnel responsible for the daily timeline in the military unit had been of a formal nature;
>
> - there had been an unhealthy moral environment among the officers and draft soldiers...
>
> With a view to penalising the persons liable for the incident I order
>
> 1. The imposition [of the following penalties]
>
> a. a "reprimand" in respect of the commander of [the military unit] ... for poor supervision of personnel responsible for the daily timeline;
>
> b. a "strict reprimand" in respect of:
>
> - the deputy commander of [the military unit] ... for failure to organise properly [military] service;
>
> - the deputy commander of [the military unit] responsible for the armoury ... (in charge of the military unit on the day of the incident) ...
>
> - the deputy commander of [the military unit] responsible for working with the personnel ... for the tense moral environment among the officers and draft soldiers.
>
> 2. Commanders of military units
>
> - to discuss the incident ... and to undertake concrete measures to prevent the occurrence of such ..."

25. On an unspecified date in May 2007 the Ministry of Defence of Armenia paid the applicant 2,250,000 Armenian Drams (AMD) (approximately EUR 4,650 at the relevant time), including compensation for Gegham Sergoyan's funeral expenses and a lump sum insurance payment for the family.

26. On 15 May 2007 the investigator made a decision to involve the applicant in the proceedings as Gegham Sergoyan's legal heir.

27. On 1 June 2007 the post-mortem examination, including an autopsy, was completed. Forensic medical expert A.L.D. concluded that Gegham Sergoyan's death had been caused by acute penetrating ballistic trauma to the neck. The expert stated, *inter alia,* that on 17 April 2007 Gegham Sergoyan had been examined by a maxillofacial surgeon who had

not detected any jawbone pathology on the basis of X-ray computed tomography and radiography results.

28. On 9 June 2007 the investigation into Gegham Sergoyan's death was taken over by the Military Prosecutor's Office of Armenia.

29. On 14 September 2007 the charges against H.G. were modified and he was charged with murder motivated by hooliganism and abuse of power resulting in grave consequences (Articles 104 § 2 (10) and 375 § 1 of the Criminal Code).

30. On 13 February 2008 the case, together with the finalised bill of indictment, was transmitted to the Southern Criminal Court for examination on the merits. Thereafter the case was transmitted to the Syunik Regional Court for reasons of territorial jurisdiction.

31. On the same date the Military Prosecutor filed a civil claim against H.G. seeking to recover AMD 2,789,153 (approximately EUR 6,200 at the relevant time) from the latter. This amount included the expenses borne from the State budget, including the medical expenses paid by the State and AMD 2,250,000 paid to Gegham Sergoyan's family for funeral expenses and insurance benefit.

32. In the course of the proceedings before the Syunik Regional Court the applicant lodged a civil claim against the Republic of Armenia, namely the Ministry of Defence and the Ministry of Finance of Armenia, seeking compensation in the amount of EUR 300,000 for non-pecuniary damage sustained as a result of the murder of his only son, which had caused him deep sorrow and severe mental suffering: he had lost the normal rhythm of life and his health had deteriorated. The applicant relied, in particular, on Article 18 of the Civil Code of Armenia and Articles 2 and 13 of the Convention.

33. In the course of the proceedings before the Regional Court H.G. pleaded guilty.

34. A number of witnesses were questioned during the proceedings, including Gegham Sergoyan's fellow servicemen. In particular J.G., who had personally witnessed the events of 15 April 2007, testified that he had seen H.G. swear at Gegham Sergoyan and shoot him in the face.

35. Several officers of the military unit stated that to their knowledge Gegham Sergoyan had never had any problems with lieutenant H.G. before.

36. On 1 September 2009 the Syunik Regional Court found H.G. guilty as charged and sentenced him to fifteen years' imprisonment. The Regional Court rejected the applicant's civil claim by stating that no possibility of compensation for non-pecuniary damage was envisaged under the law. It further stated that, although the accused had committed the crime while in military service, the crime had been committed on a personal level and therefore any damage incurred should be compensated by the person liable for it.

37. On 1 October 2009 the applicant lodged an appeal. He submitted, *inter alia*, that lieutenant H.G. had committed the crime during his service while assigned to duty in the military unit on 15 April 2007. Gegham Sergoyan was murdered while performing his army service obligations when he was on duty according to the relevant orders of the military unit command. He further submitted that, although no possibility of compensation for non-pecuniary damage existed under Armenian civil law, such a requirement existed under the Convention: according to Article 6 of the Constitution ratified international treaties were a constituent part of the legal system of Armenia and, in the case of inconsistency with the national law, the norms of the treaty should prevail.

38. On 2 February 2010 the Court of Appeal rejected the applicant's appeal and upheld the judgment of the Regional Court. As regards the applicant's civil claim, the Court of Appeal relied on Article 1087 of the Civil Code to state that, in the event of the victim's death, only compensation for funeral expenses is envisaged under the civil law.

39. On 26 February 2010 the applicant lodged an appeal on points of law. The applicant submitted the same arguments as before and restated his position concerning his claim for non-pecuniary damages as expressed in his initial civil claim with the Regional Court and in his appeal before the Court of Appeal.

40. On 1 April 2010 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

II. RELEVANT DOMESTIC LAW

A. A. Criminal Code (in force since 1 August 2003)

41. Article 34 provides that attempted crime is the action (inaction) committed through direct wilfulness deliberately aimed at committing the crime if the crime was not completed for reasons beyond the person's control.

42. Article 104 § 1 provides that murder shall be punishable by imprisonment from six to twelve years.

43. Article 104 § 2 (10) provides that murder committed out of hooliganism shall be punishable by imprisonment from eight to fifteen years or life imprisonment.

44. Article 375 § 1 provides that abuse of authority or public position, exceeding public authority, as well as omission by a superior or public official, if such acts were committed for selfish ends, personal interest or the interests of a group and which resulted in grave damage, shall be punishable by imprisonment from two to five years.

B. Code of Criminal Procedure (in force since 12 January 1999)

45. Article 154 § 3 provides that the civil claim lodged in criminal proceedings is decided in accordance with the provisions of civil law.

C. The Civil Code (in force since 1 January 1999)

1. Relevant provisions as in force at the material time

46. According to Article 17 § 1 the person whose rights have been violated may claim full compensation for the damage suffered, unless the law or contract envisages a lower amount of compensation.

47. According to Article 17 § 2, damages are the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights, loss of his property or damage to it (material damage), including lost income.

48. Article 18 provides that damage caused to natural or legal persons as a result of unlawful actions (inaction) of state and local self-government bodies or their officials is subject to compensation by the Republic of Armenia or the relevant local community.

49. Article 1077 § 2 provides that damage caused to the life or the health of a person while performing, *inter alia*, military service is compensated in accordance with the rules prescribed by the Civil Code, if stricter liability is not provided for by statute or contract.

50. According to Article 1087, persons responsible for damage linked to the victim's death shall reimburse the necessary funeral expenses to the person who has incurred such expenses.

2. Amendments introduced by Law no. HO-21-N of 19 May 2014

51. Since 1 November 2014 Article 17 § 2 has included non-pecuniary damage in the list of the types of civil damage for which compensation can be claimed in civil proceedings. The Civil Code was supplemented by new Articles 162.1 and 1087.2 which regulate the procedure for claiming compensation for non-pecuniary damage. Until the introduction of further amendments on 30 December 2015 (in force from 1 January 2016), compensation in respect of non-pecuniary damage could be claimed where it had been established by a judicial ruling that a person's rights guaranteed by Articles 2, 3 and 5 of the Convention had been violated, and also in cases of wrongful conviction.

D. Decision of the Constitutional Court of 5 November 2013 on the conformity of Article 17 § 2 of the Civil Code with the Constitution adopted on the basis of the application lodged by Artur Khachatryan

52. The Constitutional Court found Article 17 § 2 of the Civil Code incompatible with Articles 3 § 2, 16 § 4, 18 § 1, 19 § 1 and 43 § 2 of the Constitution in so far as it does not envisage non-pecuniary damage as a type of civil damages and does not provide for a possibility to obtain compensation for non-pecuniary damage by impeding the effective exercise of the right of access to court and the right to a fair trial and at the same time hindering due compliance with its international obligations by the Republic of Armenia.

The Constitutional Court stated that Article 17 § 2 of the Civil Code would lose its legal force at the latest on 1 October 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicant complained that the State authorities had failed to protect his son's right to life, as provided in 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 ..."

A. Admissibility

1. The Court's jurisdiction

54. The Government did not contest the Court's jurisdiction over the events which took place in the "NKR" prior to the transfer of the investigation on 9 June 2007 to the Military Prosecutor's Office of Armenia. However, the Court considers that it should address the issue of the Court's jurisdiction to examine the events that took place on the territory of the "NKR" on its own motion.

55. A State's jurisdictional competence under Article 1 is primarily territorial (see *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, §§ 61 and 67, ECHR 2001-XII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 312, ECHR 2004-VII). That said, the Court has recognised in its case-law that, as an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of*

Judgments and Decisions 1996-VI and *Banković and Others*, cited above, § 69). Thus, whenever the State, through its agents, exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 137, ECHR 2011).

56. It is not disputed that Gegham Sergoyan's death on the territory of the "NKR" was caused by H.G., an officer of the Armenian Army. It follows that in the present case there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicant's deceased son.

2. The applicant's victim status

57. The Government contended that the applicant could no longer be considered a "victim" of a violation of Article 2 of the Convention, within the meaning of Article 34, since the authorities had acknowledged the breach and afforded him redress. The case was therefore inadmissible as incompatible *ratione personae* with the provisions of Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

58. The Government submitted, in particular, that the domestic authorities had acknowledged the breach of the applicant's son's right to life since the circumstances of the latter's death had been fully clarified in the course of the thorough, objective and comprehensive investigation. As a result, H.G. had been convicted by domestic courts and received an adequate punishment. Furthermore, the members of the command staff of the military unit, who were found to have been responsible for the tragic incident, had been subjected to disciplinary sanctions by the Minister of Defence. Lastly, the Government considered that the applicant had been provided with appropriate redress in that he had received AMD 2,250,000 from the Ministry of Defence following his son's death. According to the Government's submission this amount, apart from representing compensation for funeral expenses and a lump sum insurance benefit payment, was also aimed at compensating non-pecuniary damage suffered by the family as a result of Gegham Sergoyan's death.

59. The applicant maintained that he had standing to pursue his complaints before the Court. He submitted that the State should be held liable for failing to protect the life of his son during his compulsory military service. Furthermore, he had not been provided with appropriate redress in

view of the fact that no compensation had been made available to him by the State for the mental suffering and distress that he had experienced as a result of the loss of his son.

60. It is a well-established principle of the Court's case-law that an applicant may lose his victim status if two conditions are met: first, the authorities must have acknowledged, either expressly or in substance, the breach of the Convention and, second, they must have afforded redress for it (see, among many other authorities, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012, with further references). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 67, 2 November 2010).

61. The Court observes that the applicant does not as such contest the circumstances of his son's death as established during the official investigation. He submits, however, that the State failed to safeguard his son's right to life during his military service under the control of the authorities and, moreover, to provide him with adequate monetary compensation for the moral damage suffered as a result of the loss of his son.

62. The Court notes that H.G. was found responsible for killing Gegham Sergoyan and was convicted by the domestic courts (see paragraph 36 above) following the completion of the official investigation, the results of which were not disputed by the applicant. That is to say, in his application lodged with the Court the applicant initially complained that the investigation had not adequately addressed the presence of an injury on his son's lower jaw. However, this specific complaint was not considered well-founded by the Court and was declared inadmissible (see paragraph 4 above). The applicant did not have any other reservations with regard to the investigation and the course of the events established therein. That said, the Court observes that the question of the State's responsibility for the alleged failure to safeguard the applicant's son's right to life was not, and could not have been, objectively addressed within the framework of the domestic proceedings concerning H.G.'s individual criminal liability.

63. At the same time, the Court takes note of the fact that the members of the administration of the military unit were subjected to disciplinary responsibility for the incident, based on the results of the internal investigation into the incident (see paragraph 24 above). It is true that the internal investigation carried out by the Ministry of Defence and the resultant disciplinary penalties imposed on the commanding officers in question appear not to have conferred any rights on the applicant as the victim's legal heir to initiate a procedure whereby he could have obtained an official acknowledgement of the State's failure to protect the life of his son and claimed any compensation for the moral damage suffered. However, the Court considers that the imposition of disciplinary penalties in respect of

those found liable for the incident could be considered to have constituted an admission by the State's superior military command of the failure to protect the life of the applicant's son and hence an acknowledgement of the breach. That said, the Court notes that, contrary to the Government's claim, there is nothing to indicate that the applicant has received any monetary compensation for non-pecuniary damage suffered as a result of the loss of his son (see paragraph 81 below). In these circumstances the Court cannot accept the Government's claim that the authorities afforded redress for the breach and therefore considers that the second condition for an applicant's loss of victim status has not been met in the present case.

64. Against this background, the Court finds that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention and accordingly dismisses the Government's objection concerning the applicant's loss of victim status.

65. 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

66. The applicant submitted that the authorities, having been aware of H.G.'s negative characteristics, had failed to undertake the necessary measures to protect his son's right to life. In particular, despite the fact that H.G. had been reprimanded several times and found not fully fit for service, he had been allowed to continue service and to carry a weapon, with which he had intentionally killed Gegham Sergoyan.

67. The Government submitted that it had not been established that there had been a real and immediate risk to the applicant's son's life. The investigation had shown that H.G. had never had any dispute with the applicant's son or any other serviceman and the intention to kill the applicant's son had arisen rapidly and instantaneously, and could not have been anticipated by the commanding staff of the military unit. The Government argued that H.G. had been reprimanded for violation of internal service rules and daily schedule but his behaviour had never raised any doubts as to his adequacy and mental stability. Lastly, as had been established in the objective and thorough investigation, the dispute between H.G. and the applicant's son had arisen because the latter breached internal rules by entering the room without permission and not wearing his military hat. Therefore, according to the Government's submission, the applicant's son had exposed himself to a situation which had tragically led to his death.

2. The Court's assessment

(a) General principles

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

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

70. In the same context the Court has further held that the primary duty of a State is to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Mosendz*, cited above, § 91; *Perevedentsevy v. Russia*, no. 39583/05, § 94, 24 April 2014). Furthermore, the States are required to secure high professional standards among regular soldiers, whose acts and omissions – particularly *vis-à-vis* conscripts – could, in certain circumstances, engage their responsibility, *inter alia*, under the substantive limb of Article 2 (see, in particular, *Abdullah Yılmaz v. Turkey*, no. 21899/02, §§ 56-57, 17 June 2008; see also, *mutatis mutandis*, *Stoyanovi v. Bulgaria*, no. 42980/04, § 61, 9 November 2010).

(b) (b) Application of the general principles in the current case

71. The applicant's son, a draft soldier, was shot by military officer H.G., a lieutenant by rank, who served in the Armenian army on a contractual basis. As noted earlier, the incident took place when H.G. was on active duty and was moreover put in charge of his military unit. In this sense the context of the present case differs from the majority of cases where the Court examined whether or not the State complied with its positive obligation to take operational measures to prevent a real and immediate risk to the life of an identified individual from materialising (see,

for example, *Osman v. the United Kingdom*, 28 October 1998, §§ 115-122, *Reports of Judgments and Decisions* 1998-VIII; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 57-64, ECHR 2002-II). The question to be determined in the present case is whether the military authorities, in view of the information available to them and within the scope of their powers, failed to take the necessary measures to protect the life of the applicant's son, a conscript performing compulsory military service under their responsibility.

72. The Court notes that H.G. was subjected to criminal responsibility for having killed the applicant's son, based on the investigation, the results of which have not been disputed by the applicant (see paragraph 62 above). Furthermore, as a result of the internal investigation into the incident carried out by the Ministry of Defence the commanding officers of the military unit were found to have been responsible for the incident in question in so far as they had failed to assess properly H.G.'s personality, moral characteristics and professional competencies (see paragraphs 24 and 36 above). As noted above, the Court is prepared to accept that, in the particular circumstances of the present case, the disciplinary proceedings against the commanders of the military unit constituted an admission by the domestic authorities and therefore an acknowledgment by them of the breach of the State's positive obligation to protect the right to life of the applicant's son (see paragraph 63 above).

73. In these circumstances, the Court does not consider it necessary to make its own assessment of the underlying facts and finds that there has been a breach of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

74. The applicant complained of the dismissal of his claim against the State for non-pecuniary damage suffered as a result of the loss of his son. He 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."

75. The Government submitted that proper redress was available to the applicant. In the Government's submission, the domestic courts' dismissal of the applicant's claim against the State for non-pecuniary damage was in line with the state of the law at the relevant time. Furthermore, the payment of AMD 2,250,000 to the deceased's family, apart from covering funeral expenses, included an insurance benefit which was considerably higher than amounts of compensation for pecuniary damage commonly awarded in similar cases.

A. Admissibility

76. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

77. As the Court has stated on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Article 13 thus requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, amongst other authorities, *Aydın v. Turkey*, 25 September 1997, § 103, *Reports of Judgments and Decisions* 1997-VI).

78. The Court has previously held that in the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; *Paul and Audrey Edwards*, cited above, § 97; *Dölek v. Turkey*, no. 39541/98, § 96, 2 October 2007; and *Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, § 46, ECHR 2012).

79. On the basis of the results of the criminal and disciplinary proceedings carried out by the relevant domestic authorities, the Court found that the defendant State was responsible under Article 2 for failing to protect adequately the life of Gegham Sergoyan during his compulsory military service. The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 (see *Paul and Audrey Edwards*, cited above, § 98).

80. The Court observes that the applicant lodged a civil claim against the State, seeking compensation for non-pecuniary damage within the framework of the criminal proceedings against H.G. (see paragraph 32 above). However, no compensation for non-pecuniary damage was awarded to the applicant because that type of compensation was not envisaged by the domestic law (see paragraph 36 above).

81. The Government claimed that the amount of AMD 2,250,000 received by the deceased's family should be considered to have included

compensation also for the moral damage suffered as a result of the loss of their kin. The Court observes, however, that this claim is not supported by the material before it. In particular, the civil claim filed by the Military Prosecutor against H.G. in the course of the latter's trial expressly stated that the sum of AMD 2,250,000 paid to Gegham Sergoyan's family had been intended to cover funeral expenses and further included the insurance benefit in the event of death (see paragraph 31 above). Notably, this amount was to be recovered from H.G. as compensation for expenses paid from public funds with regard to Gegham Sergoyan's medical treatment and payments made to the family after this death. In these circumstances, the Court is not able to accept the Government's argument that the amount of AMD 2,250,000 could be considered to have constituted compensation for non-pecuniary damage paid to the applicant by the State.

82. In the above-mentioned case of *Poghosyan and Baghdasaryan* the Court has already found that the absence of the possibility at the relevant time to claim compensation for non-pecuniary damage suffered as a result of ill-treatment was contrary to the requirements of Article 13 of the Convention (see *Poghosyan and Baghdasaryan*, cited above, §§ 47-48). The Court considers that the possibility for the applicant to apply for compensation for non-pecuniary damage suffered as a result of the breach of his son's right to life should have been all the more available to him. Since no such avenue had been available to him under the law as it stood at the material time, the applicant was deprived of an effective remedy. In the Court's view, the possibility of obtaining an enforceable award of compensation for moral damage suffered as a result of the authorities' failure to protect the right to life of one's child is an essential element of an effective remedy under Article 13 for a bereaved parent.

83. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government contested this claim.

87. The Court, making its assessment on an equitable basis, considers it reasonable to award the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant did not make any claims for costs and expenses.

C. Default interest

89. 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 application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 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;

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

Done in English, and notified in writing on 23 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Deputy Registrar	Linos-Alexandre Sicilianos President