



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

FIRST SECTION

CASE OF MEHRABYAN v. ARMENIA

(Application no. 247/11)

JUDGMENT

STRASBOURG

19 March 2020

This judgment is final but it may be subject to editorial revision.

In the case of Mehrabyan v. Armenia,

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

Krzysztof Wojtyczek, *President*,

Armen Harutyunyan,

Pere Pastor Vilanova, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to:

the application against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian national, Ms Laura Mehrabyan (“the applicant”), on 18 December 2010;

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

the parties’ observations;

Having deliberated in private on 25 February 2020,

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

INTRODUCTION

In her application the applicant complained that the national authorities had failed to conduct an effective investigation into the circumstances of her husband’s death following an accident at his workplace. She relied on Articles 2 and 8 of the Convention.

THE FACTS

1. The applicant was born in 1941 and lives in Yerevan. She was represented by Mr A. Ghazaryan, a lawyer practising in Yerevan, and Mr A. Zeynalyan.

2. 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.

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

4. The applicant is the widow of the late Mr Albert Mkrtumyan who worked for Yerevan Thermal Power Plant State CJSC (YTPP) as a power plant maintenance electrician. He had forty-five years’ experience as an electrician, including thirty-six years at the YTPP.

5. On 5 March 2008 a request was made for maintenance work in the six-thousand-volt turbine hall of the power plant. According to the relevant work order, Albert Mkrtumyan was assigned to perform the maintenance of the first section of the six-thousand-volt turbine hall. The work order further indicated the equipment which was to be disconnected to ensure safety

during the works. In particular, voltage transformers 41T and 64T were to be shut off and the first section of the six-thousand-volt turbine hall was to be grounded.

6. On the same day at around 10 a.m., Albert Mkrtumyan and his assistant V.M. started the works. According to the relevant record in the operative journal which lists all the works carried out in the production unit, at 10.30 a.m. voltage transformer 41T was shut down and repair work on the first section started at 10.45 a.m.

7. On 6 March 2008 the works were resumed. At around 3 p.m. Albert Mkrtumyan was killed instantly as the result of an electric shock while performing repair works in the reserve power supply room of the first section of the six-thousand-volt turbine hall.

8. On the same day the administration of the YTPP informed the police of the accident. The investigator examined the scene of the accident and assigned an autopsy of the deceased.

9. In March and April 2008 the investigator questioned the head of the production unit, his deputy, the shift chief, the head of the security service of the company, the chief engineer and the only eye witness, V.M. The latter was questioned on 27 March 2008 and stated, *inter alia*, that he had reminded Albert Mkrtumyan that the reserve power supply cell was wired but the latter had opened its door with his working tools and entered the cell where he received an electric shock shortly after.

10. On 3 April 2008 the autopsy was completed. The expert concluded that Albert Mkrtumyan had died as a result of an electric shock caused by technical electricity. The expert's opinion also stated that, in the absence of the record of the examination of the scene of the accident, it was not possible to determine the exact time of death.

11. Upon request by the director of the YTPP, on 7 March 2008 a Commission was set up by the State Energy Inspectorate with the purpose of conducting an administrative investigation into the accident. The Commission comprised specialists from the State Energy Inspectorate, the YTPP and the Electrical Trade Union. The relevant parts of the Commission's conclusion delivered on 4 April 2008 read as follows:

“The Commission concludes that the reason for the accident was that Albert Mkrtumyan had breached work discipline and expanded the working space and the work limits stated in the work order by arbitrarily performing the mentioned works in the wired reserve power supply cell. Ignoring ... warning and prohibiting posters, he had opened the door of the reserve power supply cell ... , and entered the cell ... , had confused the locations of live and deactivated wires, had approached at an unauthorised distance the solid wires supplied from transformer 9T and received an electric shock.

At the same time, the Commission considers that the accident in question took place as a result of a combination of circumstances in the absence of the victim's intention to harm himself.”

12. On 10 March 2008 the investigator asked the Electrical Trade Union to look into the accident which had taken place on 6 March 2008 at the YTPP. According to its conclusion of 18 April 2008, the accident had taken place as a result of Albert Mkrtumyan's failure to respect the power plant safety regulations. The conclusion further stated that no person had been found to be responsible for the accident.

13. On 22 April 2008 the investigator made a decision to refuse to institute criminal proceedings on the ground that no crime had been committed. The decision referred to the conclusions of the Electrical Trade Union and the commission set up by the State Energy Inspectorate as well as V.M.'s statements. The decision stated that it had been revealed during the investigation that Albert Mkrtumyan had arbitrarily performed work which had not been assigned to him by trying to repair the reserve power supply cell which, according to the relevant work order, had been wired and no repair works were to be performed therein. The decision further stated that Albert Mkrtumyan had opened the door of the reserve power supply cell with working tools in his possession and, *inter alia*, tried to clean the insulators which he believed were not wired. He had then approached six-thousand-volt solid wires at an unauthorised distance and received an electric shock.

14. On 4 May 2008 the applicant asked the investigator to provide her with the decision of 22 April 2008 and the conclusions of the Electrical Trade Union and the commission set up by the State Energy Inspectorate. The applicant was only provided with a copy of the decision of 22 April 2008.

15. On 7 May 2008 the applicant lodged a complaint with the Prosecutor against the decision of 22 April 2008. She complained that she had been provided only with the decision on refusal to institute criminal proceedings, although she had also requested copies of the specialists' conclusions. Therefore, she had no possibility to consult the materials of the case file. The applicant submitted that there were a number of inconsistencies in the investigator's conclusions with regard to the circumstances of the accident.

16. On 21 May 2008 the Prosecutor replied to the applicant that the investigator's decision of 22 April 2008 was lawful and there were no grounds to quash it.

17. On 3 June 2008 the applicant lodged a claim with the Shengavit District Court of Yerevan (the District Court) raising similar complaints to those submitted in her complaint to the Prosecutor.

18. On 19 June 2008 the District Court granted the applicant's claim and quashed the decision of 22 April 2008. It stated that criminal proceedings should be instituted to clarify a number of questions which remained unanswered, including the exact volume of work that was to be performed according to the work order, the equipment that was supposed to be disconnected, the responsible person who had possession of the key to the

reserve power supply cell, and how Albert Mkrtumyan was able to open that door without the key. The District Court also indicated that the investigating authority should consider whether the administration of the YTPP had respected the power plant safety regulations and that relevant forensic examinations should be assigned in view of the fact that the conclusion of the Electrical Trade Union could not be considered an expert conclusion satisfying the requirements of the procedural law.

19. The Prosecutor lodged an appeal mainly objecting to the findings of the District Court in respect of circumstances which needed to be further investigated.

20. On 10 July 2008 the Criminal Court of Appeal rejected the Prosecutor's appeal. In doing so, it found that the investigating authority had failed to substantiate its conclusions with relevant evidence and that forensic examinations, including those with involvement of experts in different fields, should have been assigned to clarify a number of circumstances with regard to the accident.

21. On 23 July 2008 the Prosecutor decided to institute criminal proceedings.

22. On 29 July 2008 the applicant requested the status of the victim's legal heir in the proceedings. The applicant also submitted questions and requested that they be included in the list of questions to be put to the handwriting, electrical and medical experts when forensic examinations were to be assigned.

23. On 30 July 2008 the investigator assigned a forensic electrical examination. The expert was asked to determine, *inter alia*, the following:

(a) whether Albert Mkrtumyan was authorised to enter the reserve power supply cell to perform the work assigned to him according to the work order;

(b) the concrete works to be carried out according to the work order;

(c) whether the reserve power supply cell was disconnected during the repair works and whether it could have suddenly become live;

(d) whether the door to the reserve power supply cell could be opened without its key and, if so, with the help of what kind of tool;

(e) taking into account Albert Mkrtumyan's height and the size of the cell, could his body be expected to be in the position in which it had been found?

(f) whether there had been a breach of the power plant safety regulations while performing the repair works and, if so, who were the persons responsible?

24. By a letter of 8 August 2008 the investigator informed the applicant that there were no sufficient grounds to recognise her as the victim's legal heir. At the same time, it was stated that her questions would be included in the lists of questions to the experts.

25. In the end, most of the applicant's questions addressed to the electrical expert were not included in the list of questions submitted by the investigator.

26. In his opinion of 15 August 2008, the electrical expert concluded that the accident had taken place because of a breach of work discipline, as a result of the failure to respect the power plant safety regulations. It was mentioned in the expert's conclusion that on 4 August 2008 he had examined the scene of the accident, the reserve power supply cell of the first section of the six-thousand-volt turbine hall, but the state of the cell after the accident had not been preserved and therefore he had based his conclusions on the materials of the case file and the results of the examination. The expert stated, *inter alia*, that Albert Mkrtumyan's qualifications did not authorise him to enter the reserve power supply cell and that he was assigned to repair the first section of the six thousand volt turbine hall, according to the work order. He further stated that the door of the reserve power supply cell had been closed from the inside and that it could have been opened from the outside with tongs, two screwdrivers or other tools. The expert also stated that the reserve solid wires of the six-thousand-volt first section supplied from transformer 9T had been wired. As to the question concerning non-observance of safety regulations, the expert stated that Albert Mkrtumyan had breached these by performing arbitrary works not stated in the work order and having approached live wires at an unauthorised distance (less than 0.6 metres).

27. On 2 September 2008 the investigator assigned a forensic handwriting examination to establish whether the signature on the work order belonged to Albert Mkrtumyan.

28. On 4 September 2008 the applicant requested the State Labour Inspectorate to state whether the YTPP had informed it promptly about the accident of 6 March 2008 as required by law.

29. By a letter of 17 September 2008 the State Labour Inspectorate stated that the YTPP had not reported the accident of 6 March 2008 promptly and that the materials concerning the administrative investigation into the accident had been sent on 25 April 2008.

30. By an opinion of 22 September 2008 the handwriting expert confirmed that Albert Mktrumyan had signed the work order.

31. On 23 September 2008 the investigator decided to terminate the criminal proceedings on the ground that Albert Mkrtumyan had died as a result of non-observance of safety regulations and arbitrary performance of repair works in the reserve power supply cell, which was contrary to the work order. In particular, he had entered the reserve power supply cell and approached the live wires supplied from transformer 9T at an unauthorised distance, as a result of which he had received an electric shock. On the same day the investigator provided the applicant with a copy of this decision.

32. On 29 September 2008 the applicant lodged a complaint with the Prosecutor, complaining in the first place that the investigator had unlawfully refused to recognise her as her deceased husband's legal heir in the proceedings and that he had also failed to include the questions submitted by her in the lists of questions to the experts. She further complained that the investigator had also failed to ask the expert the questions indicated by the District Court in the decision of 19 June 2008.

33. By a letter of 12 November 2008 the Prosecutor informed the applicant that there were no grounds to recognise her as the victim's legal heir in the proceedings, since it had not been established that Albert Mkrtumyan had suffered damage as a result of a crime. At the same time, the Prosecutor stated that the applicant had no right to complain against the decision to terminate the criminal proceedings.

34. On 24 November 2008 the applicant lodged a complaint with the District Court seeking the annulment of the investigator's decision of 23 September 2008. She complained in particular of the fact that she was not provided with a possibility to consult the case file, lodge applications and put questions to the only eye witness. She argued, *inter alia*, that the investigator had failed to take measures to preserve the state of the scene of the accident and that the case file contained only photographs in this respect. As a result, the electrical expert reiterated the conclusions of the Electrical Trade Union and of the Commission, which included the representatives of the YTPP. She further argued that the investigator had failed to investigate who, in what manner, had unlocked the door of the reserve power supply room and which official was responsible for keeping the key. The applicant raised a number of other flaws in the investigation and also complained of the fact that the YTPP had initiated an administrative investigation only a month after the accident and had failed to inform her about it. Moreover, the YTPP had failed to inform the State Labour Inspectorate promptly about the accident, as it was required to do by law.

35. On 3 April 2009 the District Court granted the applicant's complaint and quashed the decision of 23 September 2008 on the ground that the investigative body had failed to answer the questions indicated in its decision of 19 June 2008 as upheld by the decision of the Criminal Court of Appeal of 10 July 2008.

36. On 19 May 2009 the Criminal Court of Appeal rejected an appeal lodged by the Prosecutor, to which the applicant had responded, and upheld the District Court's decision of 3 April 2009. The Court of Appeal found, in particular, that the investigator had not taken all the necessary measures to investigate the accident properly.

37. On 15 June 2009 the Prosecutor issued an instruction to the investigating body, indicating that it should resume the criminal

proceedings, recognise the applicant as the victim's legal heir and question the electrical expert in relation to his opinion.

38. On 18 June 2009 the investigator made a decision to resume the proceedings and inform the applicant of this.

39. On 19 June 2009 the applicant asked to be recognised as Albert Mkrtumyan's legal heir. Her request was granted on the same day.

40. In the course of the re-opened proceedings, the investigator once again questioned V.M., the head of the production unit and his deputy. The investigator also questioned the electrical expert.

41. On 9 July 2009 the applicant asked to be provided with the materials of the case file and for time to submit applications.

42. On 10 July 2009 the investigator decided to terminate the criminal proceedings on the same grounds. The copy of the relevant decision was sent to the applicant by letter of 13 July 2009. The records of interviews with V.M., the head of the production unit, his deputy and the electrical expert were attached to the letter.

43. On 13 July 2009 the applicant requested the investigator to assign a complex forensic examination and submitted questions to be put to the experts.

44. On 17 July 2009 the applicant sent a written request to the Prosecutor asking for the investigator's decision of 10 July 2009 to be quashed. She argued that the investigator had not provided her with an opportunity to consult the case file and had failed to address her request of 13 July 2009. Moreover, the investigator had failed to comply with the requirements of the courts' decisions and assign a complex forensic examination to establish the true version of the events.

45. By a letter of 3 August 2009 the Prosecutor informed the applicant that the case had been remitted to the investigator since he had failed to comply with the requirements of Article 262 of the Code of Criminal Procedure (the CCP). In particular, the investigator had failed to inform her, as the victim's legal heir, of her right to consult the case file and appeal against the decision.

46. According to the applicant, on 5 August 2009 the investigator visited her at home and took her signature confirming that she had consulted the case file. The applicant submits that she signed this document because she had received the copies of the records of interviews with the expert and the three witnesses, together with the decision to terminate the criminal proceedings. However, the investigator did not provide her with copies of any additional documents on that day.

47. On 10 August 2009 the applicant complained to the Prosecutor that she had no opportunity to consult the case file while the investigation was pending.

48. By a letter of 21 August 2009 the Prosecutor informed the applicant that her complaint of 10 August 2009 had been rejected. The copy of the

Prosecutor's decision was attached to the letter. The decision stated, *inter alia*, that the investigator had made the case file available to her for consultation and had provided her with copies of case file documents. The decision further stated that there was no right under the CCP for the victim's legal heir to consult the entire case file during the investigation or to lodge applications seeking to have additional investigative measures or decisions taken after the proceedings had been terminated. Moreover, according to Articles 262 and 263 of the CCP, the victim's legal heir had the right to consult the case file only after the termination of the criminal proceedings, and to appeal against the relevant decision in case of disagreement.

49. On 4 September 2009 the applicant appealed to the District Court against the decision of 10 July 2009. She complained, *inter alia*, that the decision to recognise her as Albert Mkrtumyan's legal heir had been of a formal nature since she had had no genuine part in the proceedings. Thus, despite her specific request in that regard, she was not provided with the materials of the case file so as to be able to consult them and her requests were left unexamined. The applicant also complained that the investigator had once again failed to comply with the courts' previous decisions concerning the measures to be taken in order to ensure the effectiveness of the investigation. In particular, the investigator had failed to assign a complex forensic examination and had merely questioned the electrical expert in relation to his opinion, which was no substitute. The applicant also raised a number of other questions that had not been clarified during the investigation, including her allegations that the journal of work orders had been falsified in respect of the dates when the maintenance works were to be performed.

50. On 10 November 2009 the District Court ruled for the applicant and ordered the reopening of the investigation, stating that a number of questions mentioned in the decisions of the District Court and the Court of Appeal of 19 June 2008 and 10 July 2008 respectively had not been clarified in the course of the investigation. The District Court referred to the failure to clarify whether Albert Mkrtumyan had the right to perform the work stated in the work order and the failure to assign a forensic examination to find out the possible position of his body.

51. The Prosecutor lodged an appeal against this decision. The applicant submitted her objections to the appeal by reiterating her statements before the District Court.

52. On 15 January 2010 the Criminal Court of Appeal upheld the District Court's decision of 10 November 2009. In doing so, the Court of Appeal stated that some of the questions subject to clarification, pointed out by the courts in the two previous sets of proceedings, had not been addressed during the investigation. In particular, it was necessary to establish the position of Albert Mkrtumyan's body before and after he received the electric shock, whether with his qualifications he had the right

to perform the work assigned and to clarify the inconsistencies in V.M.'s statements. Also, the assertion that Albert Mkrtumyan had opened the door to the reserve power supply cell with his own working tools was groundless and not duly substantiated. The Court of Appeal found that the Prosecutor's arguments were not supported by relevant facts or evidence gathered during the investigation. The Court of Appeal also referred to the applicant's arguments against the investigator's conclusions in the decision to terminate the proceedings and stated that those should be taken into account by the investigator.

53. On 4 February 2010 the criminal proceedings were resumed once again.

54. On 23 February 2010 the investigator decided to assign a forensic document examination to find out whether the work order had been altered.

55. On 3 March 2010 the forensic document expert produced his opinion, according to which the relevant chart in the work order, which listed the transformers to be shut off, had been altered to state transformer 41T instead of the original 42T.

56. On 4 March 2010 the applicant requested permission to copy documents from the case file and to be given time to consult the documents and submit her applications in writing.

On the same day the applicant was provided with copies of documents relating to the investigative activities carried out after the proceedings were resumed on 4 February 2010.

57. On the same day the investigator decided to terminate the criminal proceedings on the same grounds as before. The decision referred, *inter alia*, to the records of additional questioning of V.M. and the forensic medical expert.

58. On 11 March 2010 the applicant complained to the investigator's superior that the investigator had failed to inform her whether she could consult the materials of the case file, make copies from it and lodge applications.

59. On 20 March 2010 the applicant lodged a complaint with the Prosecutor about the actions of the investigator and the grounds for terminating the criminal proceedings stated in the decision of 4 March 2010. She argued that the investigator had failed to comply with the decision of the Criminal Court of Appeal of 15 January 2010.

60. By a letter of 24 March 2010 the Prosecutor informed the applicant that none of the provisions of the CCP guaranteed the right of the victim's legal heir to consult the materials of a case file before the end of the investigation or lodge applications seeking to have additional investigative measures or procedural decisions taken after the completion of the investigation. Rather, according to Articles 262 and 263 of the CPC, the victim's legal heir had the right to consult the case file only after the proceedings had been terminated.

61. By a decision of 15 April 2010 the Prosecutor rejected the applicant's complaint of 20 March 2010 and fully upheld the investigator's decision to terminate the criminal proceedings on the same grounds.

62. The applicant disputed the investigator's decision of 4 March 2010 to terminate the criminal proceedings in the District Court. She mainly reiterated her arguments submitted in her complaint to the Prosecutor and argued that the investigator had failed to comply with the requirements of the decision of the Criminal Court of Appeal of 15 January 2010.

63. On 10 May 2010 the District Court rejected the applicant's complaint, stating that there were no grounds to quash the decision of 4 March 2010.

64. The applicant lodged an appeal raising similar arguments. In addition, the applicant complained that the District Court had disregarded the fact that the investigator had failed to address the questions raised by the Court of Appeal in the decision of 15 January 2010.

65. On 18 June 2010 the Criminal Court of Appeal rejected the applicant's appeal as groundless.

66. The applicant lodged an appeal on points of law. In addition to her previous arguments concerning the alleged flaws of the investigation, the applicant argued that the decisions of the District Court and the Court of Appeal of 10 May and 18 June 2010 respectively were not reasoned.

67. On 4 August 2010 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. The Code of Criminal Procedure

68. Article 59 sets out the victim's rights, including the latter's right to consult the records of those investigative measures in which he has participated (Article 59 § 1(8)) and the right to consult all the materials of the case file and make copies from it once the investigation is over (Article 59 § 1(9)).

69. Article 80 § 1 provides that a victim's close relative who expresses a wish to perform a deceased or incapacitated victim's rights and obligations in criminal proceedings is recognised as his legal heir. The decision to recognise a victim's close relative as his legal heir upon the request of the relative is taken by the investigating authority, the Prosecutor or by the court (Article 80 § 2). The victim's legal heir participates in the criminal proceedings in place of the victim and has the latter's rights and obligations, except for making statements and performing other non-transferable rights and obligations (Article 80 § 4). The victim's legal heir has other rights and obligations under the CCP (Article 80 § 6).

70. Article 247 § 1 sets out the rights of, *inter alia*, the victim when assigning or performing a forensic examination including the victim's right to consult the expert's opinion within ten days of its receipt by the investigator (Article 247 § 1(8)).

71. According to Article 262 § 1 the investigator sends a copy of the decision to terminate criminal proceedings and stop the prosecution, *inter alia*, to the victim and his representative. The victim has the right to consult the materials of the case file concerning the terminated proceedings (Article 262 § 3).

72. Article 263 § 1 provides that, *inter alia*, the victim has the right to appeal to the supervising Prosecutor against the decision to terminate the criminal proceedings and stop the prosecution within a period of seven days from the moment of receipt of a copy of that decision.

B. The Labour Code

73. According to Article 261 § 1 an administrative investigation is conducted to establish the reasons for accidents in an organisation.

74. Article 261 § 2 provides that the victim or his representative can participate in the administrative investigation into the workplace accident, has the right to consult the materials concerning the administrative investigation and should be provided with the relevant act drafted as a result of the administrative investigation and, in case of disagreement, can dispute its results before the Chief Labour Inspector or in court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

75. Relying on Articles 2 and 8 of the Convention, the applicant complained that the domestic authorities had failed to investigate effectively the circumstances surrounding her husband's death. The Court considers that the applicant's complaints fall to be examined under the sole 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. Submissions by the parties

76. The applicant submitted that the domestic authorities had had a positive obligation to conduct an effective investigation in order to elucidate the circumstances surrounding the accident which had caused her husband's death. However, they had failed in meeting this obligation. In particular, their conclusions with regard to the cause of her husband's death and the circumstances surrounding it were based on mere assumptions rather than

evidence-based findings. A number of important issues, despite her numerous requests, were not clarified, notably the position of the body, the manner in which the locked door to the reserve power supply cell had been opened, the reason why the power supply had not been shut off during maintenance works, the reasons behind the alteration of the work order and so on. Furthermore, the investigation had not been accessible to her to the extent necessary to safeguard her legitimate interests.

77. The Government stated that the domestic authorities had complied with their positive obligation under Article 2 as they had carried out an effective investigation into the accident in a prompt manner. The Government stressed in that connection that the obligation to conduct an effective investigation was not an obligation as to the result but as to means. The domestic authorities had undertaken the available and necessary measures to secure the evidence concerning the accident while the investigation was accessible to the applicant to the extent necessary to safeguard her legitimate interests as the victim's legal heir. In particular, she had been able to lodge appeals against the decisions to terminate the investigation and had been successful in her appeals.

B. Admissibility

78. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. General principles

79. 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 involves a duty to take reasonable measures to ensure the safety and to safeguard the lives of individuals within its jurisdiction as necessary (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, Reports of Judgments and Decisions 1998-III; *Osman v. the United Kingdom*, 28 October 1998, § 115, Reports of Judgments and Decisions 1998-VIII; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

80. Such positive obligation under Article 2 covers a wide range of sectors (see *Ciechońska v. Poland*, no. 19776/04, §§ 62-63, 14 June 2011) and, in principle, will arise in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 71 and 89-96, ECHR 2004 XII).

81. In the event of serious injury or death, the duty under Article 2 of the Convention must also be considered to require the State to have in place an effective independent judicial system so as to secure legal means capable of

establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. Such a system may, and under certain circumstances must, include recourse to the criminal law. However, where negligence has been shown, the obligation may 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. The Court stresses that this obligation is not an obligation as to result but as to means only (see *Sinim Turkey*, no. 9441/10, § 59, 6 June 2017, and the cases cited therein).

2. Application of those principles to the present case

82. The Court observes that the applicant's husband, an electrician with forty-five years' work experience, died as a result of an accident in a State power plant.

83. The Court notes that, in view of the material before it, there is nothing to indicate that the death of the applicant's husband was caused intentionally. Furthermore, the applicant herself does not allege that the State authorities were responsible for the accident. She rather complains of their failure to establish properly, by means of an effective investigation, the circumstances of the accident that caused her husband's death, including the possible disregard of safety regulations during the maintenance works assigned to him.

84. The Court observes that the applicant did not have recourse to any civil remedies and that the Government did not argue that any effective remedies were available to her other than criminal proceedings. In any event, 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.

85. The Court reiterates that compliance of an official investigation with the requirements of Article 2 is assessed on the basis of several essential parameters, including the adequacy of the investigative measures, the promptness of the investigation and the involvement of the deceased person's family. These are criteria which, taken jointly, enable the degree of effectiveness of an investigation to be assessed (see *Sinim*, cited above, § 65).

86. The Court notes in this connection that a criminal investigation was indeed promptly initiated on account of the applicant's husband's death. The fact that the investigator refused to institute criminal proceedings after the initial inquiry and that there were certain delays, such as for example the questioning of the sole eyewitness, V.M., only twenty days after the accident, does not affect this finding. That being said, the Court finds the investigation conducted by the domestic authorities to have been unsatisfactory for a number of reasons.

87. The Court observes that the investigation into the death of the applicant's husband was discontinued on four occasions and that three times

the decision to discontinue the investigation was quashed following judicial review because the investigating authorities had failed to establish fully the circumstances of the accident (see paragraphs 18, 35 and 50 above). The Court further observes that the judicial decisions whereby the decisions to discontinue the investigation were quashed indicated in detail the inconsistencies and deficiencies in the investigation which in the courts' opinion were to be addressed, whereas the investigating authorities failed each time to comply fully with those instructions; this fact was pointed out by subsequent judicial decisions (see paragraphs 35, 50 and 52. above). Moreover, as opposed to the previous judicial decisions granting the applicant's appeals against the decisions to discontinue the investigation, the decisions which upheld the termination of the criminal proceedings did not address the deficiencies pointed out in the earlier decisions and the question of whether or not those had eventually been rectified by the investigative authorities (see paragraphs 63 and 65 above).

The Court finds that the repetition of judicial decisions, whereby the case was remitted to the prosecution as a result of errors committed by the investigating authorities within one set of proceedings, disclosed in the applicant's case a serious deficiency in the operation of the judicial system (see, *mutatis mutandis*, *Byrzykowski v. Poland*, no. 11562/05, § 111, 27 June 2006).

88. Furthermore, there were many shortcomings, particularly at the early stage of the proceedings, which negatively affected any prospect of establishing the facts of the case. In particular, the scene of the accident was not preserved and no expert opinion was requested by the investigator in the aftermath of the accident. This was done only after the District Court quashed the decision refusing to institute criminal proceedings and specifically instructed the prosecution to obtain an expert opinion (see paragraph 18 above). As a result, a forensic electrical examination was ordered more than four months after the accident. However, the expert was unable to carry out a first-hand examination of the scene of the accident since the state of the reserve power supply cell of the first section of the six-thousand-volt turbine hall had not been preserved (see paragraph 26 above). In addition a number of issues, for instance, the position of the body, the volume of work assigned and the observance of relevant safety regulations by the personnel responsible for work safety at the YTPP, the opening of the door to the reserve power supply cell and the reasons for altering the work order, as established by the forensic document expert after the third remittal of the case (see paragraph 55 above), were not elucidated during the investigation (see paragraphs 52. and 59 above).

89. Lastly, the Court cannot overlook the difficulties which the applicant encountered in her attempts to have her status as the victim's heir recognised and therefore to fully participate in the proceedings (see paragraphs 24, 32 and 33 above).

90. 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 accident which resulted in the death of the applicant's husband fell short of the requirements of Article 2 of the Convention. It therefore concludes that there has been a violation of Article 2 of the Convention under its procedural limb. Having reached this conclusion, the Court considers it unnecessary to examine whether the other aspects of the investigation met the requirements of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

93. The Government considered this claim to be excessive.

94. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court decides to grant the applicant's claim in respect of non-pecuniary damage and to award her EUR 10,000 under this head.

B. Costs and expenses

95. The applicant claimed EUR 1,600 in respect of costs and expenses. She submitted a contingency fee agreement signed with her representative Mr A. Ghazaryan in support of her claims under this head.

96. The Government submitted that the applicant had failed to specify the number of hours of work performed by her representatives and their hourly rates in support of her claims for costs and expenses and requested that they be rejected in their entirety.

97. The Court has previously recognised the validity of contingency fee agreements for the purposes of making an award for legal costs (see, for example *Asatryan v. Armenia*, no. 3571/09, §§ 78-79, 27 April 2017; and *Safaryan v. Armenia*, no. 576/06, §§ 62-63, 21 January 2016). The Court sees no reason to depart from that approach in the present case and awards the applicant EUR 1,600 in respect of costs of the proceedings before the Court.

C. Default interest

98. 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*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 19 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Deputy Registrar

Krzysztof Wojtyczek
President