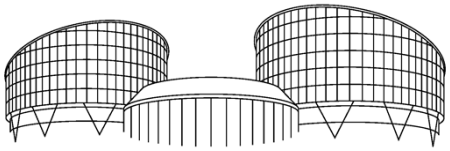

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF STEPANYAN v. ARMENIA

(Application no. 12105/13)

JUDGMENT

STRASBOURG

24 January 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Stepanyan v. Armenia,

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

Anja Seibert-Fohr*, President*,

Armen Harutyunyan,

Ana Maria Guerra Martins*, judges*,

and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 12105/13) 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") on 18 January 2013 by an Armenian national, Mr Grigor Stepanyan, born in 1983 and living in Abovyan ("the applicant"), who was represented by Ms M. Grigoryan, a lawyer practising in Abovyan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the parties' observations;

Having deliberated in private on 13 December 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicant's daughter, M. Stepanyan, was born on 1 July 2009.

2. On 6 July 2010 at around 9 p.m. M. Stepanyan, who was weak, had vomited and had diarrhoea, was admitted to Abovyan Medical Centre. She was examined by Dr H.A., who diagnosed acute intestinal infection, gastroenteritis and toxicosis with exicosis and placed her in the intensive therapy room.

3. On 7 July 2009, at 6.55 a.m., M. Stepanyan's condition sharply deteriorated and an intensive care specialist was urgently invited. The child died at 7.45 a.m.

4. On the same date criminal proceedings were instituted under Article 130 § 2 of the Criminal Code (medical negligence resulting in death).

5. According to the autopsy report of 9 August 2010, the cause of death had been cardiopulmonary arrest as a result of myocarditis, cardiomyocyte contractile dysfunction, oedema, interstitial lung disease and bronchial desquamation.

6. The expert panel report received on 4 November 2010 found, *inter alia*, that M. Stepanyan's examinations after her admission to hospital had been insufficient and deficient while the provided treatment had been incomplete and incorrect. Taking into account the child's extremely severe condition upon admission, intensive care with mechanical ventilation to support vital

functions had been necessary. Considering the child's acute condition, it could not be stated definitively whether it would have been possible to save her life, however, had the tests been fully done and the treatment organised in the intensive care unit, the probability of saving the child would have been higher. Thus, H.A. should have placed the child in the intensive care unit.

7. On 18 February 2011 an additional expert panel report was delivered which found, *inter alia*, that M. Stepanyan's cardiopulmonary pathology had not been diagnosed as a result of the failure to carry out the necessary medical examinations (blood and urine tests, electrocardiogram and chest X-ray). As a result, the child had not been provided with the treatment that had been necessary for her condition. In case of treatment in the intensive care unit the chances of a positive outcome could possibly have been higher. However, there was a high mortality rate among children suffering from such diseases and a negative outcome could not be ruled out even in case of correct diagnosis and treatment.

8. On 4 March 2011 the investigator decided to terminate the criminal proceedings finding that there was no causal link between the shortcomings in M. Stepanyan's treatment and her death and that even with requisite and timely medical treatment a negative outcome could not possibly be ruled out.

9. Upon the applicant's appeal, by a decision of 15 June 2011 the Kotayk Regional Court set aside the decision to terminate the proceedings, finding that the investigator had failed to consider properly the results of the forensic medical examinations. It stated that Article 130 of the Criminal Code envisaged responsibility for failure by medical personnel to perform their professional duties properly and did not envisage exoneration from it for having secured a high or low probability of saving a patient's life. There was sufficient forensic evidence that H.A. had failed to place M. Stepanyan in the intensive care unit and had wrongly diagnosed her illnesses, as a result of which H.A. had not provided any treatment in respect of the patient's actual illnesses.

10. The criminal proceedings were reopened and, upon the request of H.A., an additional expert examination was assigned. In its opinion of 21 December 2011 the new panel essentially reiterated the findings of the previous expert reports.

11. On 26 December 2011 the investigator decided to terminate the criminal proceedings on the same grounds as before.

12. The applicant's appeals against that decision were dismissed in the final instance on 14 July 2012 by the Court of Cassation.

13. Relying on Articles 2 and 13 of the Convention, the applicant complained that the domestic authorities failed to conduct an effective investigation into his daughter's death and that no effective mechanism was in place to enable him to obtain compensation.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

14. The applicant's complaints are most appropriately examined under Article 2 of the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017).

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

16. The applicable general principles concerning the State's procedural obligations in the field of medical negligence have been summarised in *Lopes de Sousa Fernandes*, cited above, §§ 214-21; see also, under Article 8 of the Convention, *Botoyan v. Armenia*, no. 5766/17, §§ 90-95, 8 February 2022).

17. The applicant did not allege that the death of his daughter had been caused intentionally. Nor do the facts of the case suggest otherwise. Therefore, Article 2 of the Convention did not necessarily require a criminal-law remedy (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII). In so far as such a remedy was provided and the applicant availed himself of it (see paragraph 4 above; see also *Botoyan*, cited above, § 110), such proceedings would by themselves be capable of satisfying the procedural obligation of Article 2, if deemed effective (see *Lopes de Sousa Fernandes*, cited above, § 232, and *Scripnic v. the Republic of Moldova*, no. 63789/13, §§ 31 and 35, 13 April 2021).

18. The Court notes that the criminal investigation opened into M. Stepanyan's death was terminated twice (see paragraphs 8 and 11 above) for absence of a causal link between the medical negligence and the death of the applicant's child. In view of the Regional Court's findings that the investigation prior to its decision of 15 June 2011 had not been effective (see paragraph 9 above), the Court will examine the investigation which took place after that decision (*Baranin and Vukčević v. Montenegro*, nos. 24655/18 and 24656/18, § 141, 11 March 2021).

19. Despite the existence of two expert reports (see paragraphs 6 and 7 above), the validity of which was not questioned during the initial investigation and which were relied on by the Regional Court in its decision of 15 June 2011 as valid and admissible evidence (see paragraph 9 above), the investigator assigned yet another forensic medical examination upon the request of the doctor (see paragraph 10 above).

20. Although the third expert report did not contain any new findings, the criminal proceedings were once again terminated on the same grounds as before (see paragraphs 8, 10 and 11 above) in a situation where, as pointed out by the Regional Court, there was sufficient evidence already showing that H.A. had failed to carry out all the necessary medical examinations, thereby

failing to diagnose and provide corresponding treatment to the applicant's child (see paragraphs 5, 6, 7 and 9 above).

21. Against this background, the Court considers that the investigation's conclusions were not based on a thorough and objective analysis of all relevant elements (see *Muradyan v. Armenia*, no. 11275/07, § 135, 24 November 2016; *Nana Muradyan v. Armenia*, no. 69517/11, § 126, 5 April 2022; and contrast *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 85, 19 July 2018). The Court concludes therefore that the criminal proceedings in the present case fell foul of the procedural requirements of Article 2 of the Convention.

22. In view of the above finding, the Court must examine whether the applicant had other notably civil or disciplinary measures available to him (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I, and *Vo*, cited above, § 90).

23. However, the Court has already found in a previous case that there were no effective civil or administrative remedies in the Armenian legal system in respect of complaints concerning alleged medical negligence (see *Botoyan*, cited above, §§ 116-30).

24. Nothing in the present case allows the Court to reach a different conclusion. The Court therefore considers that there was no effective procedure available for the applicant to bring his medical claim and obtain compensation for the medical malpractice to which his child had fallen victim (see, *mutatis mutandis*, *Botoyan*, cited above, § 131).

25. There has accordingly been a violation of Article 2 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, 500,000 Armenian Drams (AMD) (approximately EUR 925) in respect of costs and expenses incurred before the domestic courts and AMD 900,000 (approximately EUR 1,660) for those incurred before the Court.

27. The Government contested those claims.

28. The Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand 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;

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

Done in English, and notified in writing on 24 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Anja Seibert-Fohr President