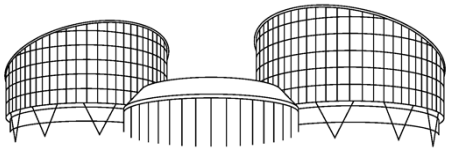

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF OHANJANYAN v. ARMENIA

(Application no. 70665/11)

JUDGMENT

Art 2 (procedural and substantive) • Ineffective investigation into the death of the applicant's son during his compulsory military service • Failure to discharge obligation to provide plausible explanation for his death

STRASBOURG

25 April 2023

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 Ohanjanyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 70665/11) 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 Suren Ohanjanyan ("the applicant"), on 8 November 2011;

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

the parties' observations;

the letter from the applicant's widow informing the Court of the applicant's death and of her wish to pursue the application lodged by him;

Having deliberated in private on 4 April 2023,

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

INTRODUCTION

1. The case concerns the death of the applicant's son, allegedly as a result of an accident, during his compulsory military service and raises issues under Article 2 of the Convention.

THE FACTS

2. The applicant was born in 1953 and lived in Yerevan prior to his death, which occurred on 26 August 2017. The applicant was represented by Mr M. Shushanyan, a lawyer practising in Yerevan.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. In November 2006 the applicant's son, Mr T. Ohanjanyan, was drafted into the Armenian army. In May 2007 he was transferred to military unit

no. 28418 ("the military unit") in the village of Kartchaghbyur in Gegharkunik, Armenia.

6. According to the official version of events, which was disputed by the applicant, on 30 August 2007 at 10.30 p.m. T. Ohanjanyan had left the armoury after the evening roll-call to go to the backup checkpoint of nearby military unit no. 28233. On the way, his neck and left wrist accidentally came into contact with the guy-wires of the antenna mast of the R-419 radio relay station of military unit no. 28233; he was electrocuted and died instantly. Junior Sergeant A.G., who was on duty at the checkpoint, had heard strange sounds coming from the signal corps of military unit no. 28233 and walked in the direction of the sounds. Having reached the territory surrounding the signal corps, A.G. had found T. Ohanjanyan lying on the ground under the metal guy-wires of the R-419 radio relay station antenna mast. Thinking that T. Ohanjanyan was unwell, A.G. called for help. A number of servicemen came, including a military paramedic who tried to provide first aid. Having established that T. Ohanjanyan was dead, the paramedic organised the transfer of his body to hospital. At 11.35 p.m. the body was received at Vardenis garrison military hospital. After death was confirmed, the body was transferred to Yerevan for an autopsy.

II. INVESTIGATION INTO THE APPLICANT'S SON'S DEATH

A. Initial investigation

7. The same day Vardenis Military Police officers visited the scene of the incident. Since it was night-time, they did not perform an inspection of the scene but performed a check for electric current in the R-419 radio relay station telescopic mast guy-wire and a record was drawn up which stated that the telescopic mast guy-wire had shown a 180-volt electrical current when the R-419 radio relay station was switched on.

8. On 31 August 2007 the Sevan Garrison Military Prosecutor's Office instituted criminal proceedings under Article 376 § 2 of the Criminal Code (see paragraph 100 below) for negligence in carrying out military duties. The decision stated in particular the following:

> "... On 30 August 2007 at around 23.20 ... [T. Ohanjanyan's] body was taken to Vardenis garrison hospital.
>
> The inspection of the body has revealed roundish, abrasion-like injuries 15 and 4 centimetres long on the right part of the neck. Another injury of a diameter of about 0.2 centimetres has been discovered on the outer surface of [T. Ohanjanyan's] left index finger.
>
> ..."

9. On the same date the Sevan Garrison Military Prosecutor asked the Ministry of Defence to carry out an inspection at the scene of the incident to

find out the reason for the presence of an electrical current in the antenna guy-wires and whips.

10. On the same date G.M., senior prosecutor of the Sevan Garrison Military Prosecutor's Office, took over the investigation of the case.

11. On the same date G.M. performed an inspection of T. Ohanjanyan's body in Vardenis garrison military hospital in the presence of attesting witnesses and a military doctor. The following was recorded:

> "... there is vomited substance on the left thigh part of the trousers ... Two roundish abrasions parallel to each other are present on the right half of the neck ... the upper abrasion is 11.5 [centimetres] long. The other one [is] 4 [centimetres long]. There is an abrasion ... on the [second] finger of the left hand ... there is also a circular abrasion with uneven edges in the same place ... No other bodily injuries have been found ..."

12. On the same date the Chief of the Military Medical Department of the Ministry of Defence received the following telephone report from Vardenis Military Police:

> "... there is a small abrasion and a bruise on the outer part of T. Ohanjanyan's left hand, two abrasions on the right part of the neck, one of which is 15 centimetres and the other one 3 centimetres long ... which look like the result of a burn ... [T. Ohanjanyan] could have received an electric shock immediately after the roll-call, having accidentally touched the metal wires of the signal corps antenna ... of neighbouring military unit no. 28233. The body of [T. Ohanjanyan] was discovered in an unconscious state by ... A.G., who immediately informed [the officer on duty]. A.G. had mechanically touched with his right palm the fastening wire, as a result of which he had received an electric shock and fallen down but he had not sustained any injury. According to preliminary information, [T. Ohanjanyan] possibly died as a result of an electric shock ..."

13. By a decision of the same date G.M. ordered a forensic medical examination, including an autopsy to determine, among other things, the cause of T. Ohanjanyan's death, the presence of any injuries on his body and whether, after having received the injuries, he would have been able to perform any actions such as moving, shouting, and so on. The applicant was present for the autopsy and took pictures of the body before the doctor started the procedure.

14. On the same date Senior Lieutenant K.K. presented to a military police officer, in the military unit, a military uniform, a hat and a belt with a buckle and stated that the items of clothing had belonged to T. Ohanjanyan. A record was drawn up according to which, in particular, the left and right armholes of the outerwear were ripped, there were traces of vomit on the collar and down the chest, and the coat of arms had been ripped from the outer pocket of the sleeve.

15. Junior Sergeant A.G. (see paragraph 6 above) was interviewed on the same date. He stated, among other things, the following:

> "... I have been assigned to military unit no. 28233 ... I was on duty [on 30 August 2007] from [10 p.m.] until 1 a.m. ... At around [11 p.m.] I heard a sound in the bushes ... in the direction of the signal corps of military unit no. 28233 ... but since there was

no wind at that time I thought that something had fallen from the tree and at that very moment I heard a strange human moan of severe pain, it sounded more like an animal, for a moment it seemed to me that the sound was coming from the forest and the sound stopped several times for short intervals, I was walking in the direction of the sound to figure out where it was coming from ... I went towards the signal corps and the sound stopped, I turned around to go back but heard the same sound again and I figured out where it was coming from ... I saw a person in military gear lying on the ground on his back ... I approached him and recognised him as one of the servicemen of our military unit ... there was a yellowish substance that had come out of his mouth, he was not moving or making any sound, I did not touch him ... When I was going back I was curious about the [sound in the bushes previously heard] and I was inspecting the territory ... soldiers were asking me to come back, not to get involved ... on my way back I noticed a steel wire fastening the signal corps antenna that was attached to the ground, I touched the steel wire with my right palm and received an electric shock and fell down ... I was helped to stand up ...

Question: The serviceman whom you found unconscious is [T. Ohanjanyan], who served in military unit no. 28418, do you know him? ... what was the reason for him being in that area at that hour ...?

Answer: I have known him since June-July 2007 ... I have never communicated with him, did not know his name, only recognised his face... I do not know the reason for him being in that area ..."

16. On the same date G.M. (see paragraph 10 above) ordered a forensic medical examination of A.G. to determine the nature and the manner of the infliction of his injuries.

17. On the same date serviceman G.A., who had been T. Ohanjanyan's friend, was interviewed. He stated, among other things, that on the day of the incident T. Ohanjanyan had participated in the evening roll-call but he had no idea where he had gone after that or for what reason he had been found near the signal corps.

18. From 31 August to 2 September 2007 military officers from various departments of the General Staff of the armed forces of Armenia carried out an internal investigation into the circumstances of T. Ohanjanyan's death.

19. On 1 September 2007 G.A. was questioned additionally and stated, in particular, that after the evening roll-call T. Ohanjanyan had asked him to go to the backup checkpoint to fetch his trainers. He had refused since he had already changed his shoes and T. Ohanjanyan left, stating that he was going to the backup checkpoint. When asked to clarify the reason for the discrepancy between this information and his initial statement, G.A. said that he could not explain with certainty why he had not mentioned the fact in question when interviewed previously.

20. On the same date the medical expert's report in respect of A.G. (see paragraph 16 above) was received. It stated, in particular, that the injuries to A.G.'s right hand appeared to be electrical wounds and had caused slight damage to his health.

21. On 2 September 2007 serviceman D.H., T. Ohanjanyan's close friend, was questioned. He stated, among other things, that earlier on the day of the

incident he had accompanied T. Ohanjanyan to receive a package from his aunt. The package had contained some food which he and T. Ohanjanyan had shared on their way back to the military unit. D.H. also stated that T. Ohanjanyan had not had any trainers and that he did not know the reason for his having gone to military unit no. 28233.

22. On 3 September 2007 the Sevan Garrison Military Prosecutor's Office received a letter from the Head of the Building Construction and Housing Division of the Ministry of Defence in reply to the enquiry of 31 August 2007 (see paragraph 9 above). The relevant parts of the letter read as follows:

> "In reply to your ... letter concerning [T. Ohanjanyan's] so-called electrocution ... I inform you that as a result of the inspection of the [scene of the incident] on 31 August 2007 the following has been clarified:
>
> - in the area referred to there could not have been any electric current in the antenna guy-wires and whips since the R-419 radio relay station has no direct connection with mains electricity;
>
> - the passage of electric current from the aerial cable to the transmitter antenna, all the more so to the guy-wires and the whips through [the antenna], is not possible ...
>
> - during the inspection of the scene of the incident the guy-wires and the whips have been checked for electric current.
>
> As a result, it has been shown that there is no current."

23. On the same date the Sevan Garrison military prosecutor sent a letter to the commander of the Second Corps to instruct the relevant services not to change anything at the scene of the incident or its surrounding area and to refrain from displacing or disposing of the radio relay stations and other equipment in the signal corps, since there were a number of investigative measures to be undertaken. On an unspecified date the radio relay station in question was nevertheless dismantled.

24. On the same date G.M. (see paragraph 10 above) took a sample from the telescopic mast guy-wire to be given to a forensic medical expert.

25. On the same date G.M. ordered a forensic electrical examination to determine, among other things, how T. Ohanjanyan's electrocution had occurred and whether there had been a breach of technical requirements, and if so, by whom.

26. At some point during the investigation it became known that on 6 August 2007 G.A. (see paragraph 17 above) and two other servicemen had received a disciplinary penalty in the form of detention in a military isolation facility. The penalty was not carried out.

27. On 19 September 2007 Ms Gohar Sargsyan, the applicant's wife and T. Ohanjanyan's mother, was questioned. She stated, in particular, that her son had told her sister on 7 August 2007 that he had been involved in a fight and was supposed to be sent to the military police to be detained but he had then been given several days' holiday. Furthermore, on 22 August 2007 her

other son had visited T. Ohanjanyan and noticed that his eye was red and bloodshot and appeared to have been injured.

By a decision of the same date the applicant was recognised as the victim's legal heir in the proceedings.

28. At some point during the investigation it became known that, according to medical records held by the military unit, on 27 August 2007 T. Ohanjanyan had been assisted by the medical personnel of the military unit in relation to what was described as a "laceration on the distal phalanx of the hallux of the right lower limb" (that is, a laceration on the big toe of the right foot).

29. On 1 October 2007 Senior Lieutenant N.M., who had been in charge of the military unit on 30 August 2007, was questioned. He stated, in particular, that T. Ohanjanyan had been present at the evening roll-call, as he had taken the roll-call of servicemen under his command and signed the register of who was present and who was absent. Thereafter he had seen T. Ohanjanyan on the stairs in the armoury. When asked where he was going, T. Ohanjanyan had replied that he was going to wash his feet. N.M. had then instructed T. Ohanjanyan to hurry up. N.M. said that he did not know how T. Ohanjanyan had been found near the signal corps and added that he had not asked permission to fetch his trainers, and that, if he had asked, he would have refused him permission to leave the military unit at such a late hour.

30. On 4 October 2007 G.M. (see paragraph 10 above) seized the military unit no. 28233 signal corps' telescopic mast guy-wire. The relevant record stated, in particular, that after the incident of 30 August 2007 the telescopic mast had been dismantled for safety reasons on the order of the command of military unit no. 28233.

31. On 8 October 2007 the autopsy report (see paragraph 13 above) was received. The relevant parts of the report read as follows:

> "... [T. Ohanjanyan's] death resulted from ... electrocution, which is substantiated by the electrical wounds on the neck, left wrist, fingers and the first toe of the right foot and the ecchymosis on the right foot ... The following injuries were discovered during the forensic medical examination of [the body]: electrical wounds on the neck, left wrist, fingers and first toe of the right foot and an ecchymosis on the right foot: these would have been caused by an electric current and are directly linked to the death ...
>
> After having received the above-mentioned injuries [T. Ohanjanyan] could not perform any actions independently: move, shout and so on.
>
> Apart from the above-mentioned [injuries], abrasions on the right forearm and left elbow joint, which would have been inflicted by blunt objects while [T. Ohanjanyan was] still alive, have been discovered. Those injuries are not linked to the death and do not constitute slight damage to health..."

32. On the same date G.M. ordered a forensic biological examination of the telescopic mast guy-wire seized on 4 October 2007 (see paragraph 30 above). The experts were asked to determine whether there were any traces of human skin or blood residue on the guy-wire provided to them.

33. On 10 October 2007 the Deputy Military Prosecutor sent a letter to the Sevan Garrison Military Prosecutor stating that the investigation into T. Ohanjanyan's death was not being conducted with the necessary promptness and that a number of urgent investigative measures had not been performed in a timely manner or had not been performed at all.

34. On 16 October 2007 G.M. ordered a forensic biological examination of T. Ohanjanyan's clothes, specifically his outerwear and trousers, in order to examine the traces of vomit on them.

35. On 26 October 2007 the forensic biological examination of the telescopic mast guy-wire (see paragraph 32 above) was completed. No traces of human skin or blood residue were discovered on the guy-wire that was examined.

36. In November 2007 Lieutenant Colonel S.S., who had been the commander of the military unit since 2002, was transferred to another military unit, where he started service as its chief of staff.

37. On 9 November 2007 the forensic biological examination of T. Ohanjanyan's clothes (see paragraph 34 above) was completed. The expert stated in his report that it had not been possible to determine the origin of the substance of the dried traces on the clothes.

38. On 16 November 2007 the forensic electrical examination (see paragraph 25 above) was completed. The expert had been provided with the autopsy report and a diagram of the electrical framework of the R-419 radio relay station and had visited the scene of the incident on 7 September 2007. He concluded that as a result of the antenna power supply cable insulation having been damaged, the antenna mast and the guy-wires had become connected to the mains current, since the mast did not have the necessary earthing. His report also stated that the R-419 radio relay station had been installed and operated in breach of technical requirements and that the people in charge of the radio relay station were responsible for the accident.

39. By a decision of 1 December 2007 the Investigative Department of the Ministry of Defence took over the investigation. The case was assigned to H.S., an investigator of cases of special importance.

40. At some point during the investigation D.H. (see paragraph 21 above) stated, in the applicant's presence, that the former commander of the military unit, S.S. (see paragraph 36 above), had hit T. Ohanjanyan.

41. On 21 January 2008 the investigator questioned S.S. in the presence of the applicant, who was allowed to put questions to him. S.S. denied having ever hit T. Ohanjanyan.

42. On 21 February 2008 D.H. was questioned further. He insisted that on the day of the incident T. Ohanjanyan had been present at the evening roll-call, but could not explain how the latter's signature was missing from the register, as pointed out to him by H.S. (see paragraph 39 above). When asked about T. Ohanjanyan's relationship with the senior officers of the military

unit, D.H. stated that at the end of May or beginning of June 2007 he had witnessed S.S. slap T. Ohanjanyan in the face.

43. On 22 February 2008 N.M. (see paragraph 29 above) was questioned further to clarify in particular the discrepancy between his statement that T. Ohanjanyan had performed the evening roll-call and signed the register and the fact that the inspection of the register had shown that T. Ohanjanyan's signature was missing. N.M. insisted that T. Ohanjanyan had been present in the armoury during the evening roll-call at 10.45 p.m. and stated that he had previously affirmed with certainty that T. Ohanjanyan had signed the register based on the assumption that he must have done so.

44. On 18 March 2008 the investigator held a face-to-face confrontation between S.S. and D.H. The latter insisted on his previous statement that S.S. had slapped T. Ohanjanyan (see paragraphs 40 and 42 above), while S.S. continued to deny that that had happened (see paragraph 41 above).

45. By a decision of 28 April 2008 the investigator decided not to prosecute S.S. The decision stated, in particular, the following:

> "... [D.H.] stated that ... S.S., being angry with [T. Ohanjanyan] ... had slapped him in his presence ...
>
> [S.S.] denied [D.H.'s] statement ...
>
> ... during the confrontation ... [S.S.] denied it, while [D.H.] insisted on his statement. The latter also mentioned that only the three of them had been present on the day of the incident ... nobody else had seen it...
>
> The fact of [S.S.] having slapped [T. Ohanjanyan] has therefore not been substantiated during the investigation ..."

46. By decisions of the same date H.S. (see paragraph 39 above) brought charges of negligence under Article 376 § 2 of the Criminal Code (see paragraph 100 below) against Captain R.A., the chief of the signal corps of military unit no. 28233 and Junior Sergeant K.T., the head of the signal corps radio bureau. The charges were based on the forensic electrical expert's report of 16 November 2007 (see paragraph 38 above).

47. During their interviews R.A. and K.T. expressed disagreement with the electrical expert's report, mainly with the finding that the antenna connected to the R-419 radio relay station should have been earthed, which had not been done.

48. On 5 May 2008 the electrical expert was questioned and reiterated that the failure to check the earthing system had resulted in the antenna mast and the guy-ropes becoming connected to the mains current and causing the incident.

49. On 8 May 2008 G.M. (see paragraph 10 above) was questioned in relation to the initial stage of the investigation. The relevant parts of the interview read as follows:

> "Question: According to the material in the case file, on [16 October 2007] you took a decision to order a forensic biological examination ... What was the reason for your

submitting [T. Ohanjanyan's] uniform, outerwear and trousers to the expert fifty-six days after the incident?

Answer: In view of the fact that [T. Ohanjanyan] had received an electric shock in the neck and the submission of the uniform for forensic examination would not have revealed anything new, I did not find it necessary...

...

Question: Why did you not take photographs of the body when you performed an inspection of the body in Vardenis garrison military hospital ...?

Answer: ... I did not have a camera with me ...

...

Question: On [8 October 2007] you took a decision to order a forensic biological examination [of the guy-wire] ... you asked the experts to determine whether there were any traces of human skin ... or blood... on the guy-wire ... Why did you submit the guy-wire to the experts thirty-eight days after the incident when there were no longer fresh traces?

Answer: There were more urgent investigative measures to undertake ... that is, a number of witness interviews, other forensic examinations ... Besides, I was investigating another complex case at that time ..."

50. On 13 May 2008 the applicant lodged a complaint with the Military Prosecutor, submitting the photographs of his son's body taken prior to the autopsy (see paragraph 13 *in fine* above), which he claimed clearly showed that his son had suffered injuries. In particular, his son was missing teeth, there was an injury to the back of his head, there were burn marks on the sole of his foot and injuries to his head, ear and jaw and under his eye, none of which had been recorded by the expert.

51. On 16 May 2008 the forensic medical expert who had performed the autopsy was questioned and insisted on the accuracy of his report.

52. On 30 May 2008 R.A. and K.T. (see paragraph 46 above) were indicted for having installed and operated the R-419 radio relay station in breach of technical requirements, as a result of which the antenna power cable, being connected to the mast, which was not properly earthed, had caused the mast and guy-wires to become connected to the mains current, resulting in T. Ohanjanyan being electrocuted when he had accidentally touched the radio relay station antenna mast guy-wires.

B. Trial

53. The case was taken over by the Gegharkunik Regional Court ("the Regional Court") for examination on the merits.

54. By a decision of 23 June 2009, the Regional Court ordered a combined electrical and medical forensic examination to be performed following the exhumation of T. Ohanjanyan's body.

In so far as the electrical examination was concerned, the experts were requested to determine, among other things, whether or not the antenna had

an insulator and if so, whether the conduct of current from the antenna to the mast and the steel guy-wires would have been possible. The electrical experts were also asked to determine whether the radio relay station subframe, from which the electrical cable was connected to the antenna, was able to produce a 180-volt current and whether the technical requirements for operating the antenna included the earthing of the antenna mast.

As for the medical part of the examination, the experts were asked to determine, among other things, the cause of T. Ohanjanyan's death and, if there were any injuries on his body, to determine the time and the manner of their infliction and their gravity.

55. The applicant requested a document-based forensic medical examination on the grounds that the specialists could not guarantee the effectiveness of a forensic examination after exhumation when two years had already passed since the death. The request was granted while the questions put to the experts remained the same.

56. The relevant parts of the report of the combined electrical and medical examination produced on 20 October 2009 read as follows:

> "... There was an insulator between the R-419 radio relay station and the mast. Power transfer from the antenna to the mast is possible if the insulation of the insulator breaks down.
>
> ...
>
> The R-419 radio relay station ... subframe from which the electrical cable leads to the antenna operates with a 27-volt stable current, and therefore the subframe referred to is unable to produce 180-volt power.
>
> ... On the basis of the [autopsy report] and primarily the results of forensic histopathological examination, it can be concluded that the injuries found on the body (right side of the neck, left wrist) have signs of the impact of electricity. At the same time, a number of factors should be noted, including the scarce and unclear information about the circumstances of the incident, as well as the failure to carry out an additional forensic medical examination of the body after exhumation [and] the impossibility of now obtaining new additional information because of the ... lapse of time.
>
> In view of the foregoing, the forensic medical commission does not have sufficient grounds either to confirm or to reject unequivocally electrocution as being the cause of [T. Ohanjanyan's] death ... Having regard to the question concerning the time of infliction of the injuries found on the body, it should be noted that the injury to the first toe of the right foot, according to the material on file, had been recorded in the military unit medical records earlier, on 27 August 2007 and had been diagnosed as a 'laceration' ... the uncertain clinical assessment of the injury to the first toe of the right foot ... , the failure to make a credible determination of the reason for the changes described on both feet, the location of the electrical wounds mentioned in the [autopsy report] do not make it possible precisely to [determine the location of entry and exit of the electrical current] ..."

57. On 13 January 2010 the Regional Court acquitted R.A. and K.T. The relevant parts of the Regional Court's judgment read as follows:

"... On the day of the incident [the officers of] Vardenis Military Police performed a check for electric current in the radio relay station telescopic mast guy-wire with electrical test equipment provided by the [military servicemen] of the signal corps and found out that the telescopic mast guy-wire was carrying a 180-volt electric current. [In that connection] a record was drawn up without any attesting witnesses being present ... That evidence, which had been obtained in breach of the ... requirements of the [Code of Criminal Procedure], could not be used against the accused ... [Furthermore,] the soldiers were not authorised to perform such actions.

The next day ... [G.M.] performed an inspection of the scene of the incident. As a result of the electrical testing (about ten hours after the testing by the military police), no electric current was discovered in the guy-wires or the whips either when the radio relay station was switched on or when it was switched off...

According to [A.G.], ... he had heard a swish, there was no wind and he had thought that something had fallen from the tree and at that very moment had heard a strange human moan of severe pain... According to the [autopsy report], [T. Ohanjanyan] was unable to move as a result of the injuries sustained ...

Furthermore, ... it was not clarified ... why the same electric current could have caused a grave injury having a fatal outcome for [T. Ohanjanyan] ... and be almost harmless in the case of [A.G.] ...

... the report of the initial forensic electrical examination ... was based on [technical regulations which were not in force at the relevant time and were in any event not applicable to the operation of R-419 radio relay stations].

... According to the [court-ordered combined forensic examination report], the R-419 radio relay station subframe from which the electrical cable leads to the antenna operates with a 27-volt stable current, and therefore the subframe referred to is unable to produce 180-volt power, whereas according to the initial forensic electrical report, as a result of the malfunctioning of the R-419 radio relay station ... the guy-wires had become connected to a 180-volt current ..., resulting in [T. Ohanjanyan's] receiving a 0.3A electrical current ... which caused his death.

Thus, there are significant conflicting points between the forensic medical and electrical examinations obtained during the investigation and the [court-ordered forensic examination].

..."

It was also mentioned in the Regional Court's judgment that the forensic medical expert who had performed the autopsy (see paragraph 31 above) had described the injury to the big toe on T. Ohanjanyan's right foot as the electrical current exit wound, whereas the histopathologists had not confirmed the presence of an electrical burn at the site of the injury in question. Lastly, the investigating authority had failed to determine the exact time of the incident since there were significantly conflicting accounts in that respect in the statements of different witnesses, in particular those of N.M. (see paragraph 29 above), the military paramedic and A.G. (see paragraph 6 above).

58. The prosecution lodged an appeal.

59. On 30 March 2010 the Criminal Court of Appeal fully upheld the judgment.

60. The prosecution lodged an appeal on points of law which was declared inadmissible for lack of merit by a decision of the Court of Cassation of 7 June 2010.

C. Further investigation

61. In July 2010 the investigation was taken over by the Investigative Service of the Ministry of Defence and the case was assigned to investigator L.P.

62. On 25 August 2010 L.P. ordered an additional forensic medical examination to be conducted by a commission of experts, on the grounds that the forensic medical part of the 20 October 2009 report (see paragraph 56 above) was unsubstantiated and did not establish the cause of T. Ohanjanyan's death.

63. The applicant submitted a list of questions to be put to the commission of experts, together with the photographs of the body taken prior to the autopsy (see paragraphs 13 *in fine* and 50 above).

64. On 12 January 2011 the expert commission's report was received. The report concluded, among other things, that the autopsy report had been scientifically substantiated.

65. On 24 January 2011 the applicant asked L.P. to establish that the commission's report of 12 January 2011 was inadmissible in evidence. He argued in particular that the report was not credible in that, instead of establishing the cause of T. Ohanjanyan's death and providing clear answers to the questions put, the commission had attempted to confirm the conclusions contained in the autopsy report and to discredit the report prepared by the court-appointed experts. A number of the findings in the report conflicted with the findings of the autopsy report. L.P. rejected that request.

66. By a decision of 4 April 2011 L.P. ordered an additional electrical examination to be conducted by a commission of experts. The relevant parts of the decision read as follows:

> "Taking into account that ... the section of the court-ordered combined forensic electrical and medical report ... on the electrical examination is unsubstantiated [and] doubtful... I have decided to order an additional forensic electrical examination to be conducted by a commission ... putting the following questions to the experts:
>
> 1. Which of the submitted forensic electrical reports is scientifically substantiated – the initial one... or the court-ordered one ...?"

67. On 8 April 2011 the applicant submitted a written objection to L.P.'s decision to order an additional electrical examination, arguing that its main purpose was to cast doubt on the court-ordered expert report. That objection was also dismissed.

68. On 11 November 2011 the commission of experts delivered its report which stated that there were a number of shortcomings in both the initial and

court-ordered electrical reports. Nevertheless, the commission confirmed the finding of the court-appointed experts that the malfunctioning of the radio relay high-frequency subframes could not possibly have resulted in the mains electrical current being supplied to the antenna.

69. By a decision of 2 October 2012 L.P. ordered a forensic examination of the photographs of T. Ohanjanyan's body taken by the applicant prior to the autopsy (see paragraphs 13 *in fine*, 50 and 63 above). According to the report of 8 November 2012, the photographs in question had not been edited.

70. In December 2012 L.P. additionally questioned the forensic medical expert who had conducted the autopsy and showed him the photographs produced by the applicant. The expert insisted that he had recorded all the injuries that he had identified, stating that the photographs were of poor quality.

71. The investigation was then taken over by the Investigative Committee and assigned to investigator A.M.

72. In February 2015 the applicant asked A.M. to be provided with information concerning the investigative measures undertaken during 2014 and 2015 in order to establish the circumstances of his son's death. In reply, A.M. informed the applicant that the victim's legal heir had the right to see the records of the investigative measures on completion of the investigation.

73. By a decision of 7 December 2015 A.M. decided to suspend the proceedings on the grounds that all possible investigative measures had been undertaken during the investigation but the radio relay station that was in use on the day of the incident had not been found (see paragraph 23 *in fine* above). Moreover, it had not been clarified how and by whose fault the guy-wires of the relay station antenna had become connected to the mains current; it had equally not been clarified in what circumstances T. Ohanjanyan had touched the antenna mast guy-wire.

D. The applicant's appeals

74. An appeal by the applicant against the decision of 7 December 2015 was rejected by the Military Prosecutor's Office on 11 January 2016.

75. On 25 January 2016 the applicant sought judicial review of the decisions of 7 December 2015 and 11 January 2016, arguing that the investigating authorities had failed to comply with their positive obligation to conduct an effective investigation to clarify the circumstances of T. Ohanjanyan's death and punish those responsible.

76. By a decision of 18 March 2016 the Arabkir and Kanaker-Zeytun District Court of Yerevan upheld the applicant's complaint, finding that the investigation after the resumption of the proceedings following the Regional Court's judgment of 13 January 2010 (see paragraph 57 above) had not been effective. The investigation had not been prompt and diligent and had failed to address the applicant's arguments. The failures included not properly

examining and assessing the photographs the applicant had produced which showed a number of injuries on the body, including missing teeth, which had not been recorded by the forensic medical expert during the autopsy (see paragraph 50 above). The investigator had confined himself to interviewing the forensic medical expert and had failed to duly follow up the results of the forensic examination confirming the authenticity of the photographs in question (see paragraphs 69 and 70 above).

77. On 5 May 2016 the Criminal Court of Appeal rejected an appeal by the prosecution.

E. Parallel proceedings

78. In a separate set of judicial proceedings the applicant contested the investigative authorities' refusal to prosecute G.M. (see paragraph 10 above) on the basis of his earlier complaint that G.M. had deliberately distorted the facts of the case and had followed a wrong line of inquiry.

79. The applicant's complaints were dismissed at final instance by the Court of Cassation in a decision of 3 November 2011.

F. Further investigation, appeals and the applicant's death

80. On 1 June 2016 investigator A.M. (see paragraph 71 above) took a decision to resume the proceedings.

81. In May 2017 the applicant enquired about the progress of the investigation, to be told by A.M. in a letter of 26 May 2017 that a number of investigative measures had been undertaken but the relevant records could not be provided since no such procedure was envisaged by the Code of Criminal Procedure.

82. By a decision of 1 August 2017 A.M. suspended the proceedings on the same grounds as those summarised in paragraph 73 above.

83. On 16 August 2017 the applicant lodged a complaint against A.M.'s decision to the Military Prosecutor.

84. By a decision of 18 August 2017 the Military Prosecutor's Office dismissed the applicant's complaint.

85. On 26 August 2017 the applicant died.

86. On 5 September 2017 Ms Gohar Sargsyan (see paragraph 27 above) asked to be recognised as the victim's legal heir in the proceedings.

87. By a decision of 6 September 2017 A.M. resumed the proceedings and by another decision of the same date recognised Ms Gohar Sargsyan as the victim's legal heir in the proceedings.

88. On 11 September 2017 A.M. took a decision to suspend the proceedings on the same grounds as those summarised in paragraph 73 above. In particular, with reference to, among other things, the autopsy report, the additional forensic medical examination report (see paragraphs 31 and 64

above) and the report of the initial forensic electrical examination (see paragraph 38 above), it was stated that it had been confirmed that T. Ohanjanyan had died as a result of electrocution.

G. Appeals after the applicant's death

89. On 19 September 2017 Ms Sargsyan lodged a complaint with the Military Prosecutor against the decision of 11 September 2017, which was rejected on 22 September 2017.

90. On 4 October 2017 Ms Sargsyan sought judicial review of A.M.'s decision of 11 September 2017.

91. By a decision of 26 March 2018, the Yerevan Court of General Jurisdiction dismissed the complaint.

92. Ms Sargsyan lodged an appeal.

93. On 17 October 2018 the Criminal Court of Appeal upheld the appeal. The relevant parts of its decision read as follows:

> "... the disputed decision to suspend the proceedings has essentially considered it established that the cause of the victim's death was electrocution ... specifically, according to the [prosecution], the victim's death had been caused by the ... electric current from the R-419 radio relay station [but] the radio relay station in question was not submitted to the experts ... it was not found.
>
> The evidence gathered prior to [the Regional Court's judgment acquitting R.A. and K.T.], including the expert reports on which [the Regional Court's] judgment was based, essentially cast doubt on the fact of electrocution from an electric current as a result of inappropriate maintenance at the given radio relay station ... however, conclusions concerning the malfunctioning of the specific radio relay station and the possible consequences thereof can be based only on an examination of that specific [radio relay] station and not any other similar [radio relay] station.
>
> ...
>
> Moreover, no sufficient measures have been undertaken to find ... the other possible reasons for the victim's death...
>
> ... [I]n the present case ... not all of the investigative measures necessary to clarify the relevant circumstances have been carried out ... the investigation [which has been carried out] is not sufficient to be considered effective within the meaning of Article 2 [of the Convention].
>
> ..."

94. No appeal was lodged against the Court of Appeal's decision.

H. Further investigation

95. By a decision of 27 December 2018 A.M. (see paragraph 71 above) took a decision to resume the proceedings.

96. On 24 January 2019 A.M. requested a forensic trace examination of another (similar) radio relay station which had been requisitioned from military unit no. 28233. According to the relevant decision, during the

investigation it had not been possible to locate the R-419 radio relay station in question (with the serial number 190913) but it could not be ruled out that on the day of the incident a radio relay station of the same model but with a different serial number (160913) had been used by the signal corps. The resulting expert report of 7 June 2019 stated, among other things, that certain electrical cables at the radio relay station with the serial number 160913 had been damaged.

97. On 2 July 2019 A.M. requested a forensic electrical and technical examination in respect of the radio relay station with the serial number 160913, asking the expert to clarify certain points of the report of 7 June 2019. The resulting expert report of 30 July 2019 stated that, given how long it had been since the incident, it was impossible to answer the questions that had been put.

98. A number of enquiries were sent with the purpose of locating the radio relay station bearing the serial number 190913 but no relevant information was received. K.T. (see paragraph 46 above) was interviewed and insisted that on the day of the incident the radio relay station with the serial number 190913 had been in use but he could not clarify why it had not been found. There was also an attempt to interview R.A. (see paragraph 46 above), but it was found out that he was abroad.

99. According to information provided by the Government in their correspondence of 10 January 2022, the investigation of T. Ohanjanyan's death was still not yet completed. In particular, by a decision of 9 September 2021 the Yerevan Court of General Jurisdiction had upheld an appeal by Ms Sargsyan against the investigating authority's decision of 25 November 2020 to suspend the proceedings once again. Subsequently, the proceedings were reopened on 25 September 2021. No copies of the relevant documents have been provided.

RELEVANT LEGAL FRAMEWORK

100. Article 376 § 2 of the Criminal Code states that a military official's negligent attitude to service which has caused grave consequences is punishable by three to six years' imprisonment.

THE LAW

I. PRELIMINARY REMARKS

101. The Court notes at the outset that the applicant died on 26 August 2017 (see paragraph 85 above), while the case was pending before it.

102. The applicant's widow and T. Ohanjanyan's mother, Ms Gohar Sargsyan, who was recognised as the victim's legal heir in the domestic

proceedings after the applicant's death (see paragraph 86 above), informed the Court that she wished to pursue the application lodged by him.

103. The Government did not dispute Ms Sargsyan's standing to continue the proceedings before the Court in the late applicant's stead.

104. The Court has accepted on numerous occasions that where the applicant has died after the application was lodged, the next of kin are entitled to take his or her place in the proceedings, if they express their wish to do so and have a legitimate interest in obtaining a ruling from the Court (see, among other authorities, *Dalban v. Romania* [GC], no. 28114/95, §§ 38-39, ECHR 1999-VI; *Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 86-87, 15 June 2010; and *Ergezen v. Turkey*, no. 73359/10, §§ 27-30, 8 April 2014).

105. Accordingly, the Court holds that Ms Gohar Sargsyan has standing to continue the present proceedings in the applicant's place. For practical reasons, Mr Suren Ohanjanyan will continue to be called "the applicant" in this judgment, although Ms Gohar Sargsyan is now to be regarded as such (see, for example, *Dalban*, cited above, § 1).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

106. The applicant complained under the substantive and procedural limbs of Article 2 and under Article 13 of the Convention about the death of his son during military service, and alleged that the authorities had failed to carry out an effective investigation into the matter. Since it is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), the Court finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law."

A. The Government's request to have the application struck out under Article 37 § 1 of the Convention

107. On 10 January 2022 the Court received a unilateral declaration from the Government asking it to strike the application out of its list of cases pursuant to Article 37 § 1 of the Convention.

108. The applicant disagreed with the terms of the unilateral declaration.

109. It may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 of the Convention on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its

examination of the case (Article 37 § 1 *in fine*; see, among other authorities, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue (ibid., § 76).

110. Other relevant factors may include whether in their unilateral declaration the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which the Government intend to provide redress to the applicant (*ibidem*).

111. The foregoing factors are not intended to constitute an exhaustive list of relevant factors. Depending on the particular facts of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 of the Convention (ibid., § 77).

112. To this end, the Court has examined the declaration by the Government in the present case in the light of the principles emerging from its case-law, and in particular from the *Tahsin Acar* judgment (see paragraphs 109-111 above; see also *Jeronovičs v. Latvia* [GC], no. 44898/10, § 64, 5 July 2016).

113. At the outset the Court reiterates that the unilateral declaration procedure is an exceptional one. As such, when it comes to breaches of the most fundamental rights contained in the Convention, a unilateral declaration is not intended to allow the Government to escape their responsibility for such breaches (see *Jeronovičs*, cited above, § 117, and *Taşdemir and Others v. Turkey* (dec.), no. 52538/09, § 28, 28 April 2020).

114. The Court notes that the subject matter of the present application concerns, firstly, the respondent State's obligation under Article 2 of the Convention to account for the loss of life during military service (see, in particular, *Muradyan v. Armenia*, no. 11275/07, § 133, 24 November 2016, with further references). Secondly, the case concerns the obligation under Article 2 of the Convention to carry out an effective investigation when there is reason to believe that an individual has died in suspicious circumstances (see, among other authorities, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015, and *Muradyan*, cited above, § 134).

115. The Court observes that in their unilateral declaration the Government have acknowledged that the applicant suffered a violation of Article 2 of the Convention. Although the Government did not specify the nature of the violation(s) in question, the Court is prepared to accept that the unilateral declaration contains an acknowledgment of responsibility in

relation to the alleged violations of Article 2 of the Convention on the basis of the complaints raised by the applicant (see paragraph 106 above).

116. As to the manner of providing redress, the Government referred to the pending investigation and undertook "to take all appropriate measures to remedy the violations in the present case". They also undertook to pay Ms Gohar Sargsyan 21,500 euros (EUR) to cover all damage, as well as costs and expenses.

117. The Court notes, however, that apart from a general undertaking to take "appropriate measures to remedy the violations", without specifying what pertinent and practicable measures could be taken almost fifteen years after the events in question, the unilateral declaration made by the Government makes no reference to any measures to deal with the applicant's specific complaints and elucidate the circumstances surrounding the death of T. Ohanjanyan which remained obscure (see, *mutatis mutandis*, *Tahsin Acar*, cited above, § 83). Neither did the declaration contain an undertaking that the investigation, which had been reopened once again at the time the declaration was made (see paragraph 99 above), would be carried out in full compliance with the requirements of the Convention.

118. In addition, the Court is not satisfied that the amount of compensation proposed by the Government is consistent with the amount that it would award in respect of just satisfaction in a similar case (see, for example, *Muradyan*, cited above, § 167).

119. Against this background, the Court considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). The Court therefore rejects the Government's request to strike the application out and will accordingly pursue its examination of the admissibility and merits of the case.

B. Admissibility

1. Non-exhaustion of domestic remedies

120. The Government argued that the applicant's complaints were premature on the grounds that the investigation was still in progress after the proceedings had been resumed pursuant to the decision of the Criminal Court of Appeal of 17 October 2018 (see paragraph 93 above). In this connection, they referred to the Court's decision in *Harrison and Others v. the United Kingdom* ((dec.) nos. 44301/13, 44379/13 and 44384/13, 25 March 2014). They also suggested that the applicant had an opportunity to claim compensation for non-pecuniary damage from the State based on that decision.

121. The applicant submitted that the investigation that had been ongoing since 2007 had been inadequate and that, as a result of the lack of promptness

and diligence on the part of the authorities conducting it, it had not resulted in elucidating the circumstances of his son's death. The only impact of the decision of the Criminal Court of Appeal of 17 October 2018 had been the further reopening of the investigation which had already been ongoing for more than eleven years, and the investigative measures that had been undertaken after that were equally ineffective. The applicant further argued that the possibility of seeking damages from the State in civil proceedings could not be considered effective for complaints under Article 2 of the Convention as it could not lead to the identification and punishment of those responsible. In any event, the maximum amount of compensation to which he could potentially be entitled at domestic level would not constitute appropriate and sufficient redress.

122. The general principles concerning exhaustion of domestic remedies under Article 35 of the Convention are summarised in *Vučković and Others v. Serbia* ([GC] (preliminary objection), nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

123. The Court observes that the criminal proceedings in respect of the death of the applicant's son were instituted on 31 August 2007 (see paragraph 8 above), but that, at the date of the latest information available to the Court (which is 10 January 2022 – see paragraph 99 above), the investigation had still not been completed.

124. The Court considers that the Government's objection, in so far as they argued that the applicant's complaints were premature, raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. It therefore considers that these matters fall to be examined below under the procedural aspect of Article 2 of the Convention, and decides to join this part of the objection to the merits (see, *mutatis mutandis*, *Nana Muradyan v. Armenia*, no. 69517/11, § 106, 5 April 2022).

125. In so far as the Government argued that the applicant had failed to bring a civil claim for compensation in respect of non-pecuniary damage, the Court notes that it did not accept that argument in *Nana Muradyan*, in which the criminal proceedings concerning the death of a conscript were similarly reopened following a judicial ruling to the effect that the investigation had been ineffective (see *Nana Muradyan*, cited above, §§ 107-11, as well as §§ 78-83 for a summary of the relevant domestic law provisions). In particular, the Court found that the compensatory remedy suggested by the Government was not capable of providing sufficient redress (ibid., § 111).

126. The Court does not see any reasons to depart in the present case from its finding in *Nana Muradyan*. It therefore dismisses the Government's non-exhaustion objection in this regard.

2. Other grounds for inadmissibility

127. The Court notes that this complaint 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. The parties' submissions

(a) The applicant

128. The applicant submitted that a false narrative of electrocution had been advanced since the beginning of the investigation, based on a hypothesis which had been refuted by the evidence gathered during the investigation. At the same time, no effective investigation had been carried out into the violence against his son or into his death, which the applicant believed had been the result of murder.

129. He maintained that the investigation, which had been ongoing for twelve years at the time he made his submissions before the Court, had not yielded any tangible results because of its inadequacy and a lack of diligence on the part of the authorities conducting it. Nor could it be said that any meaningful steps had been or could have been taken by the authorities since the criminal proceedings had been resumed. The applicant believed that after so many years the possibilities of discovering the truth about the circumstances of his son's death had been practically exhausted.

(b) The Government

130. The Government did not comment on the applicant's complaint under the substantive aspect of Article 2 of the Convention.

131. In their submissions filed in March and August 2019 and in their further submissions filed in July 2020, the Government stated that after the investigation had been resumed in December 2018 (see paragraph 95 above) the authorities had carried out a number of investigative activities. In particular, additional forensic examinations had been commissioned, witnesses had been interviewed and a number of enquiries had been made in an attempt to locate the R-419 radio relay station in question (for a summary of the investigative activities undertaken since December 2018, see paragraphs 96-98 above).

2. The Court's assessment

(a) General principles

132. The Court refers to the general principles set out in cases under Article 2 of the Convention concerning deaths during military service (see, in particular, *Beker v. Turkey*, no. 27866/03, §§ 41-43, 24 March 2009;

Muradyan, cited above, §§ 132-33, with further references; and *Mosendz v. Ukraine*, no. 52013/08, §§ 92-93, 17 January 2013).

133. It is a well-established principle in the Court's case-law that persons in custody are in a vulnerable position and the authorities are under a duty to protect them. It is incumbent on the State to provide a plausible explanation for any injuries or deaths suffered in custody, failing which a clear issue arises under Articles 2 or 3 of the Convention. Conscripts are in a similar position to persons in custody in that they are entirely in the hands of the State and that any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities. The State is therefore also under an obligation to provide a satisfactory and convincing explanation for any injuries or deaths occurring in the army (see *Muradyan*, cited above, § 133, and the references cited therein).

134. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody or in the army, strong presumptions of fact will arise in respect of injuries and death occurring during that detention or service. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Nana Muradyan*, cited above, § 123, and *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, § 123, 8 November 2022).

135. Furthermore, the obligation to protect the right to life, as well as to duly account for its loss, requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent. In order to be effective, an investigation must firstly be adequate, that is, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Muradyan*, cited above, § 134, with further references).

136. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take all reasonable measures available to them to secure evidence concerning the incident at issue, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. However, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements.

Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible and is liable to fall foul of the required measure of effectiveness (see *Nana Muradyan*, § 126, and *Muradyan*, § 135, with further references, both cited above).

137. A requirement of promptness and reasonable expedition is implicit in this context (see, among other authorities, *Mustafa Tunç and Fecire Tunç*, cited above, § 178).

138. Lastly, the question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case (see *Mustafa Tunç and Fecire Tunç*, §§ 176 and 181; *Nana Muradyan*, § 127; and *Muradyan*, § 136, all cited above).

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

139. In line with the case-law cited above, the Court considers it appropriate to start its examination on the merits by first addressing the procedural limb of the applicant's complaint under Article 2 of the Convention, namely whether or not the domestic investigation into the circumstances of his son's death was effective, and then turning to the substantive limb, namely the question of whether the State can be held responsible for the death (see, *mutatis mutandis*, *Muradyan*, cited above, §§ 137-156).

(i) Procedural limb

140. The Court observes at the outset that the authorities reacted promptly to T. Ohanjanyan's death. Within hours after his death military police officers visited the scene of the incident and criminal proceedings were instituted promptly on the following day (see paragraphs 7 and 8 above). Furthermore, a number of investigative steps were undertaken on the same day and during the days immediately following, including an inspection of the scene and the body, ordering an autopsy and a forensic examination of A.G. and conducting witness interviews (see paragraphs 11-21 above).

141. That being said, the Court observes that the investigation into the circumstances of T. Ohanjanyan's death, which has been ongoing since 31 August 2007, has been stayed several times, and that each time the relevant decisions of the investigating and prosecuting authorities have been set aside by the courts following an appeal by the applicant, or by the applicant's widow after his death (see, in particular, paragraphs 73, 76, 82, 88 and 93 above, as well as paragraph 99 above summarising the latest updates about the investigation). As a result, as of 10 January 2022, that is, almost fourteen

and a half years after T. Ohanjanyan's death, the investigation had still not been completed (see paragraph 99 above).

142. In this connection, the Court reiterates that in Article 2 cases concerning proceedings instituted to elucidate the circumstances of an individual's death, lengthy proceedings such as these are a strong indication that the proceedings were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the way the proceedings were conducted (see *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 96, 7 May 2020, with further references). The Court observes that no such reasons have been provided by the respondent Government, who did not provide any explanation for the delay (see paragraph 131 above).

143. Furthermore, the investigation which, as already noted, was still ongoing more than fourteen years after T. Ohanjanyan's death, has, according to the latest information provided to the Court, so far failed to establish the circumstances surrounding his death.

144. According to the official version of events, which was strongly disputed by the applicant (see paragraph 128 above), his son died as a result of electrocution on accidentally touching the guy-wires of the antenna mast of a radio relay station with his neck and left wrist, in circumstances which have not been established during the investigation (see paragraphs 6, 52, 73 and 88 above).

145. The Court notes that the hypothesis of electrocution, including the manner in which it was alleged to have occurred, has been refuted by the domestic courts more than once.

146. In particular, in its judgment of 13 January 2010, whereby it acquitted the chief of the signal corps and the head of the signal corps radio bureau, who had been charged with negligence in relation to the incident (see paragraphs 46 and 52 above), the Regional Court seriously questioned the findings of the investigation, which had been largely based on the autopsy report and the opinion of the forensic electrical expert (see paragraphs 31 and 38 above), the reliability of which was expressly questioned in the judgment (see paragraph 57 above).

147. Furthermore, the Criminal Court of Appeal, in a similar way to the Regional Court and with reference to the latter court's judgment of 13 January 2010, expressed serious doubts about the hypothesis of electrocution in its decision of 17 October 2018 and criticised the investigation for not having undertaken sufficient measures to explore other possible reasons for T. Ohanjanyan's death (see, in particular, paragraph 93 above).

148. According to the most recent information submitted to the Court, by a decision of 9 September 2021 the Yerevan Court of General Jurisdiction upheld an appeal against yet another decision to suspend the proceedings (see paragraph 99 above). However, since a copy of that decision has not been made available to the Court, the grounds on which it was based remain

unclear. In any event, it was never suggested by the Government, who informed the Court of that development, that the Yerevan Court of General Jurisdiction had in any manner endorsed the hypothesis of electrocution.

149. In these circumstances, and in view of the Criminal Court of Appeal's findings that the investigation prior to that court's decision had not met the requirements of Article 2 of the Convention (see paragraph 93 *in fine* above), the Court will examine the investigation which took place after that decision was taken on 17 October 2018 (see, in the context of Article 3 of the Convention, *Baranin and Vukčević v. Montenegro*, nos. 24655/18 and 24656/18, § 141, 11 March 2021).

150. On the basis of the material that has been provided in relation to the investigative steps undertaken since the resumption of the investigation on 27 December 2018 (see paragraph 95 above), the Court notes the following.

151. There is nothing to suggest that any investigative measures have been undertaken to clarify a number of crucial circumstances surrounding the events in question, including: the reasons for T. Ohanjanyan leaving the military unit at a late hour after the evening roll-call; the inconsistent statements about whether he had been at all present during the evening roll-call (see paragraph 6 above, as well as the witness statements summarised in paragraphs 17, 19, 21, 29, 42 and 43 above); the identity of those responsible for dismantling the radio relay station in question despite the explicit instruction from the prosecution to refrain from changing anything at the scene of the incident and, most importantly, the reasons for doing so (see paragraph 23 above); and the reasons for S.S., who had been the commander of the military unit for about five years prior to the incident, being transferred to another military unit to continue service at a lower position (see paragraph 36 above). In relation to the last point, the Court notes that, according to the material before it, there had been an internal investigation by the Ministry of Defence in relation to T. Ohanjanyan's death (see paragraph 18 above). However, despite the Court's specific request in that regard when the present application was notified to the Government, the latter failed to provide a copy of the relevant report and material.

152. In addition, there appear to have been no attempts to explore other possible lines of inquiry, including that of a criminal act (compare *Mustafa Tunç and Fecire Tunç*, cited above, §§ 206 and 239), despite the existence of evidence showing signs of possible ill-treatment, including T. Ohanjanyan's damaged clothing (see paragraph 14 above) and a number of injuries on his body (see paragraphs 11, 12 and 31 above). The Court notes in relation to the injuries that in the course of the investigation the applicant had submitted photographs of the body showing several other injuries, including missing teeth, which had remained unrecorded during the inspection of the body and the autopsy, and that the authenticity of those photographs had, moreover, been confirmed by forensic evidence (see paragraphs 50 and 69 above, as well as the Arabkir and Kanaker-Zeytun District Court's decision of

18 March 2016, which discussed the matter, as summarised in paragraph 76 above).

153. Furthermore, none of the key witnesses was questioned further, not even A.G. who, according to the official version, had discovered the body (see paragraphs 6 and 15 above) and had also received an electric shock which had apparently not harmed him (see paragraphs 16 and 20 above). Analogous considerations apply to T. Ohanjanyan's friends who had been in contact with him on the day of the incident, including D.H., who at some point testified against S.S. for having assaulted T. Ohanjanyan (see paragraphs 17, 19, 21 and 42 above), and to N.M., the senior officer in charge of the military unit that day, who had given conflicting accounts of the events preceding T. Ohanjanyan's death (see paragraphs 29 and 43 above).

154. Instead, the main focus of the resumed investigation appears to have been locating the radio relay station in question which had been dismantled years previously (see paragraph 23 above) in unknown circumstances and for reasons which were never clarified during the investigation, by sending enquiries to various bodies and questioning witnesses (see, in particular, paragraph 98 above). Moreover, despite the Criminal Court of Appeal's indication in its decision of 17 October 2018 that the hypothesis of electrocution could not possibly be based on the results of a forensic examination of another (similar) radio relay station (see paragraph 93 above), the authorities conducting the investigation continued to commission forensic expert reports of a different radio relay station of the same model (see paragraphs 96 and 97 above).

155. The Court acknowledges the practical difficulties of investigation work in the present case after such a long period of time has elapsed since the events in question. However, that delay and the lack of diligence in carrying out a number of important investigative activities in a timely manner (see, for example, paragraphs 33 and 49 above) are equally attributable to the authorities and, as already noted, the Government have failed to provide an explanation for such a delay (see paragraph 142 above).

156. In view of the above, the Court considers that the investigation in the present case was not sufficiently thorough and was not conducted with reasonable expedition. It had deficiencies, as indicated above, which undermined its ability to establish the facts surrounding T. Ohanjanyan's death (see, *mutatis mutandis*, *Beker*, cited above, § 53), and insufficient efforts were made, following the relevant domestic courts' decisions (see, in particular, paragraphs 57, 76 and 93 above), to remedy those deficiencies (see, *mutatis mutandis*, *Baranin and Vukčević*, cited above, § 149). In sum, the authorities failed to carry out an effective investigation into the circumstances of T. Ohanjanyan's death.

157. The Court therefore concludes that there has been a procedural violation of Article 2 of the Convention. It accordingly dismisses the

Government's objection that the applicant's complaints under Article 2 were premature (see paragraph 120 above).

(ii) Substantive limb

158. T. Ohanjanyan was performing compulsory military service in the armed forces of Armenia when he was found dead with a number of injuries, including missing teeth, burn marks on his feet and injuries on the head, ear and jaw and under his eye which, albeit unrecorded by the autopsy report and other documents (see paragraphs 11, 12 and 31 above), were visible in the photographs submitted by the applicant to the domestic authorities (see paragraphs 50 and 69 above). Those photographs have also been produced by the applicant in the proceedings before the Court. As already noted, the lengthy investigation into T. Ohanjanyan's death eventually failed to establish the facts surrounding his death (see paragraphs 143 and 145 above).

159. In view of the apparent carelessness with which the investigation was conducted and the lack of satisfactory explanation for a number of serious discrepancies with regard to its findings, to the point that the domestic courts refused to endorse the version of the events established by the investigation (see, in particular, paragraphs 57 and 93 above), the applicant could be forgiven for seriously questioning the official version and thinking that the investigation might be covering up a more sinister explanation, such as murder (see, *mutatis mutandis*, *Beker*, § 52, and *Hovhannisyan and Nazaryan*, § 134, both cited above).

160. Hence, having concluded that the investigation carried out by the authorities was seriously deficient (see paragraph 156 above), the Court cannot consider the conclusions of that investigation to be reliable or the explanation for T. Ohanjanyan's death to be convincing and satisfactory. It follows that the authorities cannot be regarded as having discharged their obligation to provide a plausible explanation for the death of the applicant's son, which occurred while he was in their care (see, *mutatis mutandis*, *Beker*, § 53, and *Muradyan*, § 155, both cited above).

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

163. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

164. The Government considered the applicant's claim to be excessive.

165. In view of the nature of the violations found, the Court awards the applicant EUR 50,000 in respect of non-pecuniary damage (see, *mutatis mutandis*, *Muradyan*, cited above, § 167), plus any tax that may be chargeable, to be paid to the applicant's widow.

B. Costs and expenses

166. The applicant also claimed EUR 44 for the postal expenses incurred before the Court.

167. The Government made no submissions in that regard.

168. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the sum of EUR 44 covering postal costs in the proceedings before the Court, plus any tax that may be chargeable, to be paid to the applicant's widow.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's widow, Ms Gohar Sargsyan, has standing to continue the present proceedings in the applicant's stead;

2. *Rejects* the Government's request to strike the application out of the Court's list of cases;

3. *Decides* to join the Government's objection as to the premature nature of the applicant's complaints to the merits of his complaint under the procedural limb of Article 2 of the Convention, and *dismisses* it;

4. *Declares* the application admissible;

5. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

6. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

7. *Holds*

(a) that the respondent State is to pay the applicant's widow, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 44 (forty-four euros), plus any tax that may be chargeable to the applicant's widow, 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;

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

Done in English, and notified in writing on 25 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President