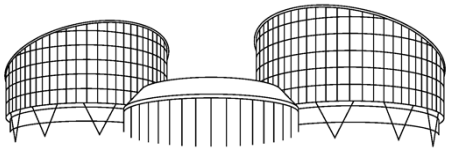

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DIMAKSYAN v. ARMENIA

(Application no. 29906/14)

JUDGMENT

Art 2 (substantive and procedural) • Life • Positive obligations • Death of applicant's son during compulsory military service following accidental shooting by a fellow serviceman • Domestic authorities' failure to ensure effective implementation of the relevant and adequate safety regulations on the handling of weapons • Failure to give effect to existing regulatory framework governing the organisation of emergency medical assistance to military servicemen in respect of medical care provided to applicant's son • Failure to avert effectively known risks inherent in military service which have potential for life-endangering incidents especially in ongoing hostilities context • Ineffective investigation
Art 13 (+ Art 2) • Lack of an effective remedy • Legal impossibility of claiming compensation for non-pecuniary damage suffered as a result of the loss of life of one's child

STRASBOURG

17 October 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 Dimaksyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu*, judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 29906/14) 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 Aleksandr Dimaksyan ("the applicant"), on 28 March 2014;

the decision to give notice to the Armenian Government ("the Government") of the applicant's complaints concerning the death of his son, the alleged inadequacy of the investigation and the impossibility of claiming compensation for non-pecuniary damage from the State and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 26 September 2023,

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

INTRODUCTION

1. The case concerns the death of the applicant's son during his compulsory military service, allegedly as a result of having been accidentally shot by a fellow serviceman. It raises issues under Articles 2 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1965 and lives in the village of Vahagni. He was granted legal aid and was represented by Mr A. Zalyan, a lawyer practising in Vanadzor.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, the 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. The applicant is the father of M. Dimaksyan, who died at the age of 18.

6. In November 2010 M. Dimaksyan was drafted into the Armenian army. He was assigned to military unit no. 38401 of the Nagorno-Karabakh armed forces ("the military unit", situated in the "Republic of Nagorno-Karabakh" (the "NKR")) near the town of Hadrut.

7. On 5 February 2012 M. Dimaksyan was shot by his fellow serviceman G.A., with whom he was on watch duty that day at base no. 121 ("the base") of the military unit. He died on the same day.

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

8. On 5 February 2012 the Second Garrison Investigation Department of the Investigative Service of the Ministry of Defence of the Republic of Armenia (Hadrut, Nagorno-Karabakh) instituted criminal proceedings.

9. On the same date a forensic medical examination was ordered to determine, among other things, the cause of M. Dimaksyan's death and the existence of any injuries on his body.

10. A number of investigative measures were undertaken, including an inspection of the scene of the incident and forensic ballistic and trace evidence examinations. In addition, a number of witnesses were questioned, including the senior command officers of the military unit and M. Dimaksyan's fellow servicemen, all of whom confirmed that he had never had any issues with G.A. and expressed the opinion that the incident had been the result of an accident.

11. On 9 February 2012 G.A. was charged under Article 373 § 3 of the Criminal Code of Armenia (see paragraph 27 below) with breaching the rules on handling assault rifles, as a result of which he had unintentionally caused M. Dimaksyan's death.

12. On 7 March 2012 the applicant was recognised as the victim's legal successor in the proceedings.

13. On 19 March 2012 the forensic medical examination (see paragraph 9 above) was completed. According to the ensuing report, M. Dimaksyan had died as a result of severe blood loss from a perforation caused by ballistic trauma to the right side of the shoulder girdle and chest. The expert concluded that the bullet had entered from the right side of the shoulder girdle and exited the left side of the chest. The report also stated that the following injuries had been discovered on the body: a bruise in the occiput area; abrasions on the upper brow, left side of the shoulder girdle and right wrist; ecchymoses on the tip of the nose, the left side of the forehead and the right foot; and bruising to the skull under the skin on the right side of the forehead and occiput, which had been inflicted with blunt objects while M. Dimaksyan was still alive, not

long before his death or while he was dying, and were not linked to the cause of the death.

14. Eventually the following, as reflected in the bill of indictment, was found to have been established during the investigation. The applicant did not contest these findings.

15. On 5 February 2012, at around 7.10 p.m., G.A. and M. Dimaksyan heard a noise and a dog barking while on duty at the base. They went together in the direction of the noise, walking about five metres. G.A. was frightened, and in order to feel more secure he loaded the assault rifle that had been assigned to him. M. Dimaksyan followed him, keeping a four-metre distance. Having ascertained that there was no longer any noise, they returned to their positions. On their way back, M. Dimaksyan reminded G.A. that his assault rifle was still loaded but G.A., in breach of the rules for handling assault rifles, ignored him, thinking that he had closed the trigger guard and the assault rifle was safe. After their return to the base at around 7.30 p.m. G.A. had the assault rifle hanging from his neck with the muzzle pointing to the left while he was standing three to four metres away from M. Dimaksyan.

They then heard a noise again and decided to inspect the area once more. G.A. decided to go to the right, while M. Dimaksyan went to the left. Before turning to the right, G.A. took his hands out of his pockets and held the hand grip of the assault rifle with his right hand, and his index finger happened to touch the trigger. At that moment the assault rifle went off and the bullet hit M. Dimaksyan in the right side of the shoulder girdle, causing him a perforating gunshot injury. As a result of the shot M. Dimaksyan fell to the ground, whereupon G.A. removed his clothes to find the injury and cried out for help.

Other servicemen came to help and took M. Dimaksyan to the dugout on a stretcher, waiting for a vehicle to transfer him to the military hospital. The servicemen then put M. Dimaksyan in a truck in which Major V.S., the chief of staff of the battalion, drove him to the military hospital.

The road was bumpy and impassable, and the stretcher kept moving from one side to the other in the truck and the servicemen had difficulty holding it. It took them about fifteen minutes to cover 400 metres, after which they met a medical vehicle in which A.G., a military paramedic, was travelling towards them from another base and transferred M. Dimaksyan to that vehicle. At that time M. Dimaksyan was still alive, and A.G. and the servicemen headed in the direction of the military hospital in Martuni (a distance of approximately 50 kilometres from Hadrut (see paragraph 6 above)).

Having travelled about 6 kilometres, the medical vehicle became overheated. They stopped the vehicle to add water to the radiator and continued. However, shortly afterwards the vehicle again overheated. At that moment another truck happened to be approaching them and they then transferred M. Dimaksyan to it to continue along the road.

On the way they met the military hospital ambulance coming towards them. The ambulance stopped, and the doctors tried to provide emergency medical assistance to M. Dimaksyan on the spot, but he was already dead.

16. On 7 August 2012 the case was transferred to the Syunik Regional Court for examination on the merits.

III. INTERNAL INVESTIGATION INTO THE CIRCUMSTANCES OF THE APPLICANT'S SON'S DEATH

17. On an unspecified date the Commander of the Nagorno-Karabakh Defence Army ordered an internal investigation into M. Dimaksyan's death. A special commission ("the internal commission") was formed for this purpose.

18. In February 2012 the internal commission filed a report with the Commander of the Nagorno-Karabakh Defence Army, based on the results of that investigation. The relevant parts of the report read as follows:

> "The following shortcomings have been discovered:
>
> ...
>
> - Some of [G.A.'s] signatures on the notice of safety rules ... are forged;
>
> - The entries in [G.A.'s] individual file are of a standard nature and the relevant descriptions are absent (with one entry every six months);
>
> - ... failure of the senior staff member at the base to fulfil his official duties properly;
>
> - As a result of technical problems with the military unit's medical vehicle, the transfer of the injured person was carried out from halfway along the route by another vehicle;
>
> ...
>
> According to the initial information, the lethal gunshot injury was inflicted on Private [M. Dimaksyan] by Private [G.A.] as a result of a shot fired unexpectedly as a consequence of poor supervision by the administration of the battalion and the senior staff member at the base ..."

19. The Government affirmed before the Court that, on the basis of the findings of the internal commission as reflected in its report, disciplinary penalties were imposed on six commanding officers of the military unit, including its commander, for lack of appropriate efforts to ensure the safety and proper supervision of military service. They did not submit any documents in that respect.

IV. TRIAL

20. On 14 August 2012 the trial of G.A. commenced at the Syunik Regional Court sitting in Stepanakert, Nagorno-Karabakh ("the Regional Court").

21. During the trial G.A. refused to give evidence and pleaded guilty to the charges (see paragraph 11 above).

22. On 25 April 2013 the Regional Court found G.A. guilty as charged (see paragraphs 11 and 15 above) and sentenced him to imprisonment for four years and six months. In doing so, the Regional Court found that G.A., having breached the rules for handling assault rifles, had failed to close the trigger guard of his assault rifle which had then gone off unintentionally, causing M. Dimaksyan's death. In its judgment the Regional Court only addressed the issues concerning the legal assessment of the offence imputed to G.A. and the determination of the type of the sentence.

23. The applicant lodged an appeal, arguing that he and his representatives had encountered serious difficulties in participating fully in the proceedings since the trial had taken place in Stepanakert. Referring to the report of the internal commission (see paragraph 18 above), the applicant further complained that the Regional Court had not in any way addressed the issue of the responsibility of the administration of the military unit for his son's death. Furthermore, the investigation had failed to clarify the circumstances in which M. Dimaksyan had sustained the non-ballistic injuries described in the autopsy report (see paragraph 13 above), the duration of time between the infliction of the injury and M. Dimaksyan's death and whether it would have been possible to save his life had the vehicle transporting him not broken down on the road.

24. On 29 July 2013 the Criminal Court of Appeal upheld the Regional Court's judgment in full. In doing so, it stated the following with regard to the applicant's appeal:

> "As for the arguments raised in the appeal submitted by the victim's legal successor, the Court of Appeal finds that they have already been fully and objectively assessed by the first-instance court; the submissions of the representative of the victim's legal successor are therefore not sufficient grounds to allow the appeal."

25. The applicant lodged an appeal on points of law, raising similar arguments to those submitted in his previous appeal (see paragraph 23 above).

26. On 30 September 2013 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL CODE

27. Article 373 § 3 of the former Criminal Code (in force from 1 August 2003 until 1 July 2022) stated that a breach of the rules for handling weapons, ammunition, radioactive substances, explosives or devices dangerous to the environment that had led to the death of a person caused by negligence was punishable by four to eight years' imprisonment.

II. LAW ESTABLISHING THE INTERNAL SERVICE REGULATIONS OF THE ARMED FORCES OF THE REPUBLIC OF ARMENIA (*«ՀՀ ԶԻՆՎԱԾ ՈՒԺԵՐԻ ՆԵՐՔԻՆ ԾԱՌԱՅՈՒԹՅԱՆ ԿԱՆՈՆԱԳԻՐՔԸ ՀԱՍՏԱՏԵԼՈՒ ՄԱՍԻՆ» ՀՀ ՕՐԵՆՔ*)

28. The Law establishing the Internal Service Regulations of the Armed Forces of the Republic of Armenia ("the Internal Service Regulations"), which was enacted on 3 December 1996, is the principal legal instrument regulating military service in the armed forces of Armenia.

29. Section 6 of the Internal Service Regulations provides that service personnel are under the protection of the State. Their life, health, honour and dignity are protected by law. Discrediting, threatening, using violence against or encroaching on the life, health and property of service personnel and other actions hindering the performance of their duties and breaching their rights give rise to liability as prescribed by law.

30. Section 11 provides that during the performance of military service, and, if necessary, also outside that service, servicemen have the right to keep, carry, deploy and use weapons. The rules for keeping, carrying, deploying and using weapons are set out in the Internal Service Regulations. Section 11 goes on to list the specific cases when servicemen, as a matter of last resort, have the right to use weapons, including to protect the life and limb of other servicemen and civilians from an attack.

31. Section 12 states, among other things, that weapons should be deployed with prior warning, except in specific cases (set out in the same section). When deploying and using weapons, a serviceman must take all the necessary measures to ensure the safety of any civilians in the surrounding area and, if required, provide emergency medical assistance to anyone who is injured.

32. Under section 73, the commander is a sole leader who, in both wartime and peacetime, is responsible for, among other things, combat training, military discipline and general safety in the military service.

33. Section 78 states, among other things, that the commander (or chief) must take measures to prevent death or injury to staff, set the necessary requirements for ensuring safety, make his subordinates aware of those safety requirements beforehand and require their strict observance when working with armoury and military equipment during combat duty (or combat service) and other types of special military activities listed in the same section.

Prior to starting a military activity the commander must personally make sure that conditions are safe for that activity and that subordinates have understood the safety requirements and have the necessary practical skills to implement them.

34. Section 94.2 provides that the deputy commander in charge of military duties must, among other things, supervise the implementation of safety measures while military duties are carried out and the correct use of weapons

and military equipment involved in carrying out military duties, as well as regularly train the staff on the guidelines concerning the organisation and carrying out of military duties.

35. Section 316 provides that the doctor (or paramedic) on duty is responsible for internal discipline in the military medical unit. The shift doctor is responsible for providing emergency medical assistance, while the paramedic provides first aid.

36. Section 317 lists the obligations of the doctor (or paramedic) on duty in the military medical unit, including, when called by the serviceman in charge, attending to a patient immediately in order to provide medical care and, in cases requiring emergency medical assistance, transferring the patient to the military medical unit immediately and reporting to the doctor.

37. Chapter 8 of the Internal Service Regulations (sections 329-361), which is entitled "Protecting and strengthening the health of servicemen", contains the relevant provisions concerning, among other things, the physical exercise and endurance training to be undertaken by servicemen, the material conditions of their military service, sanitary measures, the prevention and control of infection, medical supervision and periodic medical examinations of servicemen, the treatment of ill servicemen in the military medical unit or in hospitals, excusing servicemen from training or other activities for health reasons, and medical record-keeping.

Section 351 deals with emergency medical treatment and provides that servicemen who have suddenly fallen ill or have been injured are to be sent to the military medical unit immediately whatever the hour of the day. Section 356 states, among other things, that servicemen are sent to receive treatment outside the military unit by the commander of the military unit on the recommendation of the doctor or, in case of emergency and in the doctor's absence, of the paramedic on duty, who must at the same time make a report to the chief of the medical service of the military unit and the officer in charge. Patients are transported to a medical facility by the "medical vehicle" (*սանիտարական տրանսպորտ*)[1] of the military unit on duty and are accompanied by the doctor (or paramedic).

38. Section 451 provides, among other things, that the commander of the military unit is responsible for the organisation of measures aimed at ensuring the consistent safety of military service. In addition to the responsibilities set out in, among other provisions, sections 73 and 78 (see paragraphs 32 and 33 above), the commander of the military unit must constantly oversee the implementation of the safety requirements of military service by the subordinate units (services) during daily activity.

39. In accordance with section 452, commanders of military units, their deputies, divisional chiefs, commanders of sub-divisions and their deputies,

[1] A vehicle used to transport ill or injured military servicemen, which is apparently not equipped with life-support equipment.

and other military officials of military units (sub-divisions) are responsible for the observance of the safety requirements of military service by their subordinates.

III. RIGHT TO COMPENSATION

40. The relevant provisions of domestic law concerning compensation for damage, as in force at the material time, are set out in *Mirzoyan v. Armenia* (no. 57129/10, §§ 46-50, 23 May 2019).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

41. The applicant complained about the death of his son during compulsory military service, and asserted that the authorities had failed to carry out an effective investigation into the matter. He relied on Article 2 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. Jurisdiction

42. The Government did not contest its jurisdiction over the events in question, which took place in the "NKR" (see paragraph 6 above). Nonetheless, the Court finds it appropriate to address the matter of its own motion (see *Muradyan v. Armenia*, no. 11275/07, § 123, 24 November 2016).

43. In that connection, the Court notes that it has already examined the issue of Armenia's jurisdiction in other cases concerning fatalities during military service in Nagorno-Karabakh and found that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the persons who had died while performing military service in the territory in question (see *Muradyan*, cited above, §§ 123-27, and *Nana Muradyan v. Armenia*, no. 69517/11, §§ 86-92, 5 April 2022, concerning the deaths of conscripts during compulsory military service in Nagorno-Karabakh; and compare *Mirzoyan v. Armenia* no. 57129/10, §§ 54-56, 23 May 2019, concerning the murder of a conscript during compulsory military service in Nagorno-Karabakh).

44. The incident which resulted in the death of the applicant's son took place on 5 February 2012 in a military unit situated in the "NKR" (see paragraphs 6 and 7 above). The Court finds no particular circumstances in the present case, which also took place prior to the end of the Nagorno-Karabakh war on 10 November 2020 (see *Nana Muradyan*, cited above, § 91), that would require it to depart from its findings in *Nana Muradyan* and therefore

considers that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicant's deceased son.

2. Other grounds for inadmissibility

45. 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.

B. Merits

1. The parties' submissions

(a) The applicant

46. The applicant complained that the State had failed to comply with its positive obligation to protect the right to life. He argued that his son had lost his life as a result of the State's failure to ensure safe conditions for him during his military service, and had also failed to ensure proper emergency medical assistance.

47. In particular, the military authorities in charge of the military unit and specifically of organising watch duty on the day of the incident had failed to ensure that the servicemen assigned to that duty were well prepared and properly trained and had also failed to supervise the correct use of weapons and equipment, contrary to the requirements of the Internal Service Regulations (see paragraph 34 above). Furthermore, the State had failed to ensure the availability of emergency medical assistance. First M. Dimaksyan had been put in a military truck, after which he had been transported to the medical vehicle, which not only had not been running properly but also had lacked appropriate emergency assistance equipment and appliances (see paragraph 15 above) which could have contributed to a positive outcome for him.

48. The applicant submitted that, given the number of accidents and the persistent violations of the ceasefire at the material time, resulting in a number of casualties each year, the authorities were aware or should have been aware of the real and imminent threat to the life of young conscripts when calling them up to the army. However, the authorities had failed to take the necessary measures, including ensuring the availability of emergency medical assistance, to prevent that risk from materialising.

49. As regards the investigation, the applicant submitted that it had failed to identify all those responsible for the death of his son. In particular, only G.A., who had shot his son by accident, had been held criminally liable whereas, according to the forensic medical evidence, his son had died because of severe blood loss (see paragraph 13 above).

(b) The Government

50. The Government relied on provisions of domestic criminal law and also on sections 6 and 11 of the Internal Service Regulations (see paragraphs 29 and 30 above), arguing that the domestic legislation and regulations provided for the necessary protective mechanisms for persons performing military service.

51. Furthermore, G.A., who had caused the death of the applicant's son by having breached the rules for handling weapons, had been convicted and received an adequate punishment (see paragraph 22 above), which in the Government's submission showed the capacity of the legal system to enforce the applicable law against the person who had been responsible for the incident.

52. The Government maintained that the authorities had not known and could not have known about the risk to M. Dimaksyan's life. The fatal shot had been the result of G.A.'s individual actions which should not be attributed to the authorities; to do so would impose a disproportionate burden on them.

53. As regards the issue of emergency medical assistance, the Government asserted that M. Dimaksyan's transfer to hospital after receiving the injury had been organised properly and as quickly as possible. In order to save time, Major V.S. had driven M. Dimaksyan towards the military hospital with the help of other servicemen, after which they had transferred him to the military unit's medical vehicle. The overheating of the medical vehicle could not be considered significant because the patient had been immediately transferred to another car (see paragraph 15 above).

54. In so far as the results of the investigation carried out by the internal commission were concerned (see paragraph 18 above), the Government submitted that those were only preliminary findings and were included in the case file of the criminal proceedings. The shortcomings identified in the relevant report were of a disciplinary nature. In any event, there was no causal link between those shortcomings and M. Dimaksyan's death, given that the accident had taken place because of G.A.'s personal error of judgment.

55. Lastly, the Government submitted that, even if the actions of the administration of the military unit had been flawless, the same accident could still have happened given the unpredictability of human conduct.

56. As regards the investigation, the Government submitted that the authorities had launched it on the day of the incident (see paragraph 8 above) and had carried out a number of investigative measures, including various forensic examinations and witness interviews. The investigation had eventually resulted in G.A.'s conviction. It had been completed within a reasonable time and had been accessible to the victim party, namely the applicant. In particular, the applicant had been granted the procedural status of a victim's legal successor in the proceedings (see paragraph 12 above), had been properly informed about the decisions to appoint forensic experts to conduct examinations and had been given access to the ensuing expert reports

and an opportunity to study the material in the case file after the completion of the investigation.

57. On the basis of the results of the internal investigation (see paragraph 18 above), which had shown failures in ensuring proper supervision and safety and in organising transport for injured personnel by the command of the military unit, six officers, including the unit commander, had been subjected to disciplinary penalties (see paragraph 19 above).

2. The Court's assessment

(a) General principles

(i) Substantive limb

58. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

59. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

60. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are under the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009; *Mosendz v. Ukraine*, no. 52013/08, § 92, 17 January 2013; and *Malik Babayev v. Azerbaijan*, no. 30500/11, § 66, 1 June 2017).

61. In the same context, the Court has further held that the primary duty of a State is to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Kılınç and Others v. Turkey*, no. 40145/98, § 41, 7 June 2005, and *Mosendz*, cited above, § 91). In the same vein, the military healthcare facilities must have in place an

appropriate regulatory framework to ensure the protection of conscripts considering that the acts and omissions of the military medical personnel in the field of health care policy may in certain circumstances engage their responsibility under the substantive limb of Article 2 of the Convention (see *Kılınç and Others*, cited above, § 42).

62. In so far as the question of emergency medical treatment in general is concerned, the Court has previously considered that an issue may arise under Article 2 of the Convention where it is shown that the authorities of a Contracting State put an individual's life at risk through denial of healthcare they have undertaken to make available to the population in general (see *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, § 88, ECHR 2013, with further references).

63. The Court has also considered that the State's duty to safeguard the right to life extends to the provision of emergency services where it has been brought to the notice of the authorities that the life or health of an individual is at risk on account of injuries sustained as a result of an accident. Depending on the circumstances, this duty may go beyond the provision of essential emergency services such as fire brigades and ambulances and include the provision of air rescue facilities to assist those in distress. The State's duty in this context also involves the setting up of an appropriate regulatory framework for rescuing persons in distress and ensuring the effective functioning of such a framework (see *Furdik v. Slovakia* (dec.), no. 42994/05, 2 December 2008).

64. However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind in particular the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III). Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising. A positive obligation will arise, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Malik Babayev*, cited above, §§ 66-67, with further references).

(ii) Procedural limb

65. 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 (see

Mustafa Tunç and Fecire Tunç v. Turkey [GC], no. 24014/05, § 171, 14 April 2015, with further references).

66. The investigation must be effective in the sense of being capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (ibid., § 172). It should also be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 325, ECHR 2014, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012).

67. The obligation to conduct an effective investigation is an obligation not of results but of means: the authorities must take all reasonable measures available to them to secure evidence concerning the incident at issue, including, among other things, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of any injuries and an objective analysis of the 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 a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the capacity of the investigation 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 *Muradyan*, § 135, with further references, and *Nana Muradyan*, § 126, both cited above).

68. In addition, the investigation must be accessible to the victim's next-of-kin to the extent necessary to safeguard his or her legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001).

69. 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, among other authorities, *Muradyan*, § 136, with further references, and *Nana Muradyan*, § 127, both cited above).

(b) Application of those principles to the present case

(i) Substantive limb

70. The applicant's son, M. Dimaksyan, was a conscript carrying out his compulsory military service under the care and responsibility of the authorities when he died following an accidental shooting by a fellow serviceman.

71. The Court notes at the outset that the applicant did not question the official finding of the domestic authorities – in both the criminal proceedings and the internal investigation – that his son had been shot as a result of an accident because of his fellow serviceman G.A.'s failure to observe the safety rules on the use of weapons (see paragraphs 14, 15, 18 and 23 above).

72. The Government seemed to question the reliability of the internal investigation's findings, labelling them as being only "preliminary" (see paragraph 54 above). Nevertheless, in their later submissions the Government themselves relied on the fact that six officers had been subjected to disciplinary penalties for the failures of the command of the military unit that had been identified during the internal investigation (see paragraph 57 above).

73. The Court notes in this connection that it has previously held in other cases concerning fatalities during military service that the conclusions of an internal investigation of this kind cannot be considered a "final decision" for the purposes of Article 2 of the Convention in so far as they are of a purely internal nature and do not involve the relatives of the deceased servicemen (see *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, §§ 97-99, 8 November 2022, and *Ashot Malkhasyan v. Armenia*, no. 35814/14, §§ 70 and 71, 11 October 2022). At the same time, there is nothing to suggest that in the present case the Court should not rely in its assessment on the factual findings of such an internal investigation, as it has done in previous cases (see, for example, *Mirzoyan*, § 72; *Hovhannisyan and Nazaryan*, §§ 147 and 149; and *Ashot Malkhasyan*, § 96, all cited above).

(α) Rules and regulations on the use of weapons

74. As stated in paragraph 71 above, it was unequivocally established in the domestic proceedings that the applicant's son had been shot as a result of an accident which occurred because his fellow serviceman G.A. had failed to observe the safety rules on the use of weapons.

75. The Court reiterates in this connection that the domestic authorities are required to put in place rules and to adopt practical measures aimed at effectively protecting conscripts against the dangers inherent in military life and to ensure appropriate procedures for identifying the shortcomings and errors likely to be committed in that regard by those in charge at different levels (see the case-law principles summarised in paragraph 61 above).

76. The Court further reiterates that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant or the deceased gave rise to a violation of the Convention (see *Boychenko v. Russia*, no. 8663/08, § 85, 12 October 2021). Therefore, the mere fact that the regulatory framework may be deficient in some respects is not sufficient in itself to raise an issue under Article 2 of the Convention. It must be shown to have operated to the person's detriment (see, *mutatis mutandis*, *Hovhannisyan and Nazaryan*, cited above, § 144).

77. The Court notes in this connection that the principal piece of legislation concerning the organisation of military service in the armed forces of Armenia is the Law establishing the Internal Service Regulations of the Armed Forces ("the Internal Service Regulations"; see paragraph 28 above), which was also referred to by the Government (see paragraph 50 above). The Internal Service Regulations contain detailed rules and regulations concerning various aspects of military service, including safety, requiring the observance of safety rules and their implementation both by commanding officers and by their subordinates (see, in particular, sections 73, 78, 94.2, 451 and 452 of the Internal Service Regulations set out in paragraphs 32-34, 38 and 39 above).

78. As regards gun safety in particular, section 78 places an obligation on commanders to properly inform their subordinates of the safety requirements, to require their strict observance when dealing with firearms and to make sure that, among other things, their subordinates have in fact understood the safety requirements and have the necessary practical skills to implement them (see paragraph 33 above). In addition, section 94.2 requires the deputy commander in charge of military duty to supervise the correct use of weapons and military equipment while military duties are being carried out (see paragraph 34 above).

79. The Court finds no reason for doubting the adequacy of the above-mentioned regulations as a whole (contrast, *mutatis mutandis*, *Hovhannisyan and Nazaryan*, cited above, § 140). It therefore considers that the regulatory framework in place in Armenia provided for appropriate preventive measures geared to the effective protection of conscripts against the dangers inherent in handling weapons, and was thus consistent with the requirements of Article 2 of the Convention.

80. The Court notes at this juncture that neither before the domestic courts nor during the proceedings before the Court has the applicant contested the adequacy of the regulatory framework provided by the aforementioned domestic provisions to ensure safety of military service, including as regards the use of firearms. He has, however, alleged that the military authorities failed to enforce the relevant safety measures by not ensuring that the servicemen assigned to duty had been properly trained in the relevant safety

rules, and also failed to supervise the correct use of weapons and equipment (see paragraph 47 above).

81. The Court reiterates in this connection that the States' obligation to regulate must be understood in a broader sense which includes the duty to ensure the effective functioning of the regulatory framework. The regulatory duties thus encompass whatever measures are necessary to ensure implementation, including supervision and enforcement (see, in the context of death as a result of alleged medical negligence, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 189, 19 December 2017). In the Court's opinion, this holds true also in the context of military service, which is inherently dangerous not least because it involves dealing with firearms on a daily basis.

82. According to the report summarising the findings of the internal investigation into the incident, some of G.A.'s signatures on the notice of safety rules had been forged, which suggested that he had not been properly trained in those rules, while at the same time the senior staff member at the base had failed in his official duties (see paragraph 18 above). The same report went on to suggest that the accidental shooting had been the consequence of poor supervision by the administration of the battalion and the senior staff member at the base (ibid.). It therefore follows that the command of the military unit failed to ensure the effective implementation of the relevant safety regulations, of which they had the necessary mechanisms at their disposal (see paragraph 78 above). Against this background, the Government's argument that the accident could not have been foreseen given the unpredictability of human conduct (see paragraph 55 above) cannot be accepted. The Court reiterates in this connection that its task is not to establish individual liability but rather to determine whether the State has fulfilled its obligation to protect the right to life through the adoption and effective implementation of an adequate regulatory framework (see paragraph 81 above).

83. While the Court cannot speculate as to whether matters would have turned out differently if those in charge had acted otherwise and ensured that the relevant regulatory framework was effectively implemented in practice, the relevant test under Article 2 cannot require it to be shown that "but for" the failing or omission of the authorities the death would not have occurred (see, *mutatis mutandis*, *Bljakaj and Others v. Croatia*, no. 74448/12, § 124, 18 September 2014). Rather, what is important, and sufficient to engage the responsibility of the State under Article 2, is to show that the deficiencies in the operation of the relevant regulatory framework worked to an individual's detriment (see the case-law quoted in paragraph 76 above), which, in the Court's opinion, occurred in the present case.

84. Accordingly, the Court finds that the authorities in the present case failed to fulfil their obligation to ensure the effective implementation of the relevant safety regulations on the handling of weapons, including their

supervision and enforcement, thus engaging the State's accountability from the standpoint of its positive obligation under Article 2 of the Convention (see the case-law quoted in paragraphs 59 and 60 above; see also, *mutatis mutandis*, and in the context of implementation of road safety regulations, *Smiljanić v. Croatia*, no. 35983/14, § 85, 25 March 2021).

85. This conclusion is sufficient for the Court to find a violation of the substantive limb of Article 2 of the Convention. However, in the circumstances of the present case, the Court will examine whether that limb has also been violated by the way in which the emergency medical treatment was administered to the applicant's son after the incident.

(β) Emergency medical treatment

86. The applicant complained that the authorities had failed to properly organise M. Dimaksyan's emergency medical treatment after he had been injured, among other things because he had been transported in a military truck and then in a medical vehicle, which was not equipped with the requisite emergency medical equipment and which moreover had broken down on the road twice (see paragraph 47 *in fine* above).

87. The Court notes that the facts complained about by the applicant differ considerably from those in cases concerning the denial of life-saving emergency treatment in the context of allegations of medical negligence either by knowingly putting an individual patient's life in danger (see, for example, *Mehmet Şentürk and Bekir Şentürk*, cited above, concerning the death of a pregnant woman following the doctors' refusal to perform urgent surgery because of her inability to pay medical fees) or as a result of a systemic or structural dysfunction in hospital services resulting in a patient being deprived of access to life-saving emergency treatment where the authorities knew about or ought to have known about that risk and had failed to undertake the necessary measures to prevent that risk from materialising (see, for instance, *Asiye Genç v. Turkey*, no. 24109/07, 27 January 2015, concerning the death of the applicant's newborn baby in an ambulance after she had been refused admission to a number of public hospitals owing to a lack of space or adequate medical equipment in their neonatal units, and *Aydoğdu v. Turkey*, no. 40448/06, 30 August 2016, concerning the death of a premature baby due to a combination of circumstances, notably a dysfunction in the health system in a particular region).

88. Accordingly, the Court considers that the criteria and principles developed in the above-mentioned case-law (see also *Lopes de Sousa Fernandes*, cited above, §§ 190-96), drawn up as they were in a substantially different context, namely that of medical negligence, cannot be transposed directly to the present case, but should nevertheless guide it in assessing the circumstances of the case in so far as the issue of emergency medical assistance is concerned.

89. The Court refers to the case-law principles mentioned in paragraph 61 above, according to which, when ordinary citizens are being called up to perform military service, it is the primary duty of the State to put in place rules geared to the level of risk to life or limb of those citizens.

90. The Court is aware that sections 351 and 356 of the Internal Service Regulations provide that injured servicemen are to be sent to the medical unit immediately and, in the event of an emergency, are to be sent to receive medical treatment outside the military unit, in which case they are transported to the relevant medical facility by the medical vehicle of the military unit while being accompanied by the military doctor or paramedic (see paragraph 37 *in fine* above).

91. Thus, according to the regulations that are in place (see paragraphs 35-37 above) military units are required to have a doctor (or paramedic) available to provide emergency medical assistance. At the same time, in case of an emergency injured servicemen are to be sent to a hospital by a medical vehicle which apparently does not have to be equipped with basic life-support equipment (see section 356 of the Internal Service Regulations, summarised in paragraph 37 *in fine* above, as well as the applicant's argument in paragraph 47 above with regard to the lack of emergency medical equipment on board of the given vehicle, which was not contested by the Government at any point in the proceedings before the Court).

92. Considering the inherent level of risk to life and limb of military servicemen (see paragraphs 61 and 81 above), especially when assigned to active military duty in a remote place as in the present case when the applicant's son was severely injured (see paragraph 7 above), it can hardly be argued that the existing regulatory framework (see paragraph 91 above) was in practice implemented in a manner that would have ensured the availability of emergency medical care geared to such level of risk. Indeed, the facts of the present case, as established during both the criminal and internal investigations (see paragraphs 15 and 18 above), demonstrate the contrary.

93. Thus, contrary to the relevant regulations (see paragraph 35 above), there was no doctor (or a paramedic) available at the military unit when M. Dimaksyan was shot. He was moved to the dugout on an ordinary stretcher by fellow servicemen, still without any medical personnel available. The servicemen then put M. Dimaksyan into a military truck, and they had difficulty keeping the stretcher steady because the road was so bumpy that it took them fifteen minutes to drive 400 metres. Thereafter, M. Dimaksyan was moved again in order to be transferred to the medical vehicle, which, as already noted in paragraph 91 above (see also paragraph 37 *in fine* above), was not an ambulance or any other type of hospital vehicle equipped with life-support equipment (see, *mutatis mutandis* and within the context of Article 3 of the Convention, *Tarariyeva v. Russia*, no. 4353/03, §§ 112-17, ECHR 2006-XV (extracts)), to continue the journey to the military hospital,

which was about fifty kilometres away. However, the medical car stopped twice during the journey because it kept overheating. As a result, M. Dimaksyan had to be moved yet again, this time to be transferred to a truck that the servicemen happened to encounter on the road, until they were met by the hospital ambulance, but it was too late (see paragraph 15 above).

94. The Court observes at this juncture that the investigation failed to establish how long exactly M. Dimaksyan was on the road while still alive (see paragraph 102 below). In any event, however, the conditions in which he was transported, as described in the preceding paragraph, including the fact that despite having sustained a gunshot injury, he was moved at least three times to different vehicles, none of which was equipped with basic life-support equipment, were clearly not such as to have raised the chances of a positive outcome.

95. The Court cannot speculate as to whether M. Dimaksyan's life would have been saved had he been transported to hospital earlier or, more importantly, had he been transported in an adequately equipped ambulance or other hospital vehicle. The Court's task is rather to determine whether the authorities did what could reasonably be expected of them, and in particular whether they fulfilled their obligation to protect the right to life (see, *mutatis mutandis, Mehmet Şentürk and Bekir Şentürk*, cited above, § 89), especially through the adoption of sufficient preventive measures and effective implementation of the relevant regulatory framework in practice to ensure timely and appropriate emergency medical care. Furthermore, its task is not normally to review the relevant law and practice *in abstracto* but to determine whether the manner in which they were applied to, or affected, the applicant or the deceased gave rise to a violation of the Convention (see the case-law quoted in paragraph 76 above). In doing so in the present case, the Court attaches weight to the sequence of events which led to M. Dimaksyan's tragic death as set out in the case file (see paragraph 93 above; see also *Mehmet Şentürk and Bekir Şentürk*, cited above, § 89).

96. The Court considers that, given the known risks inherent in military service, which have the potential for life-endangering incidents especially in the context of ongoing hostilities (see in this respect the applicant's submissions in paragraph 48 above), the respondent State has a particularly compelling responsibility towards military servicemen, who have to encounter the very real dangers posed by serving in the military on a daily basis (see, *mutatis mutandis*, *Cevrioğlu v. Turkey,* no. 69546/12, § 67, 4 October 2016). The Court notes in this connection that the Government have not explained why it would have been an impossible or disproportionate burden on the State authorities to take the steps that could have been expected of them to avert those risks, including the availability of a properly equipped ambulance, including, if necessary, an air ambulance, to transfer injured servicemen when emergency assistance could not be organised on the spot, bearing in mind the operational choices that needed to be made in terms of

priorities and resources (see the case-law quoted in paragraphs 63 and 64 above).

97. In the light of the foregoing, the Court finds that the authorities failed to give effect to the existing regulatory framework governing the organisation of emergency medical assistance to military servicemen thereby failing to avert effectively the risks to life emanating from military service.

(γ) Conclusion

98. Having regard to its findings set out in paragraphs 84 and 97 above, the Court concludes that the authorities in the present case failed to comply with their positive obligation to protect M. Dimaksyan's right to life while he was under their control.

99. There has accordingly been a violation of Article 2 of the Convention under its substantive limb.

(ii) Procedural limb

100. The Court notes at the outset that the Investigative Service of the Ministry of Defence opened an investigation of its own motion on the day of the incident, that is, on 5 February 2012 (see paragraphs 7 and 8 above). Furthermore, the criminal investigation, which led to the prosecution and conviction of M. Dimaksyan's fellow serviceman G.A., was completed very swiftly, within half a year from the date of the incident, that is, around August 2012 (see paragraphs 8 and 16 above), and the trial ended in April 2013 (see paragraph 22 above), that is, within less than a year after the pre-trial stage. The Court therefore finds that the investigation was conducted with the requisite diligence and that there was no unjustified delay in the investigation.

101. That being said, the Court reiterates that the investigation should be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see the case-law quoted in paragraph 66 above).

102. The Court observes that, despite all the investigative measures that were undertaken (see, in particular, paragraph 10 above), the investigation failed to elucidate some important circumstances surrounding M. Dimaksyan's death, such as the overall time taken to transfer him to hospital after the infliction of the injury (see paragraph 15 *in fine* above) and the nature and origin of a number of non-ballistic injuries that had been detected during the autopsy, including bruises and ecchymoses on various parts of his face and head, as well as on his right wrist, right foot and the left side of the shoulder girdle. According to the autopsy report, these injuries had been inflicted with blunt objects while M. Dimaksyan was still alive, not long before his death or while he was dying, and were not linked to the cause of the death (see paragraph 13 above).

103. In addition, although it appears that the report of the internal investigation, which contained a number of important factual findings in relation to the circumstances surrounding M. Dimaksyan's death, including poor supervision of safety at the military base and problems with his transfer to hospital (see paragraph 18 above), was included in the file concerning the criminal case, the version of the events established by the investigating authorities did not adequately reflect those findings (see paragraph 15 above), let alone make a proper legal assessment of them. The criminal investigation and the trial failed to ascertain whether those in command of the military unit and responsible for organising and providing emergency medical aid bore any responsibility in the applicant's son's death.

104. The Court reiterates in this connection that 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 a thorough, objective and impartial analysis of all relevant elements (see the case-law quoted in paragraph 67 above), which, as has been shown in paragraphs 102 and 103 above, was not the case as regards the investigation into the circumstances of M. Dimaksyan's death.

105. Against this background, the Court has serious doubts as regards the adequacy of the domestic criminal investigation. It finds that the investigation conducted in this case was not sufficiently thorough, resulting in a failure to shed full light on the circumstances surrounding the accidental shooting and the subsequent events leading up to M. Dimaksyan's death.

106. In view of its finding above that the investigation into the circumstances of M. Dimaksyan's death was not sufficiently thorough, the Court concludes that the domestic authorities in the present case failed to conduct an effective investigation.

107. There has accordingly been a violation of Article 2 of the Convention in its procedural limb.

108. This finding makes it unnecessary to examine the remaining aspects of the investigation (see, *mutatis mutandis*, *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 272, 27 August 2019, and *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 101, 7 May 2020), including its independence and the level of public scrutiny.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

109. The applicant complained that the domestic authorities had failed to conduct an effective investigation into his son's death and that there had been no possibility under domestic law of claiming compensation from the State for the non-pecuniary damage suffered as a result of his loss. He relied on Article 13 of the Convention, which reads as follows:

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

110. The Government submitted that no issue of compensation for non-pecuniary damage arose in the present case as no violation of Article 2 of the Convention had taken place, given that the investigation had been thorough and effective and had led to the establishment of all the relevant circumstances and to the punishment of those responsible.

A. Admissibility

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

B. Merits

112. Having regard to its findings in relation to the procedural aspect of Article 2 of the Convention (see paragraph 105 above), the Court considers that it is not necessary in this case to examine whether there has also been a violation of Article 13 of the Convention on account of the alleged ineffectiveness of the investigation into the death of the applicant's son (see, *mutatis mutandis*, *Muradyan*, § 161, and *Anahit Mkrtchyan*, § 105, both cited above).

113. As regards the applicant's complaint that Armenian law provided no means of claiming compensation for the non-pecuniary damage suffered as a result of the death of his son (see the relevant domestic regulations in force at the material time, referred to in paragraph 40 above), the Court notes that it has already found that the lack of legal provisions making it possible to apply at the material time for compensation for the non-pecuniary damage suffered as a result of the loss of life of one's child was in breach of the requirements of Article 13 of the Convention (see *Mirzoyan*, cited above, §§ 79-83). The Court sees no reasons to reach a different finding in the present case.

114. There has accordingly been a violation of Article 13 of the Convention on account of the lack of a legal possibility of claiming compensation for non-pecuniary damage.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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

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

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

118. Making its assessment on an equitable basis, and in view of the specific circumstances of the case, the Court awards the applicant EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

119. The applicant was granted legal aid (see paragraph 2 above) and did not seek to be reimbursed for any additional costs or expenses. Consequently, the Court is not called upon to make any award under this head.

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 under its substantive limb;

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

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of a legal possibility of claiming compensation for non-pecuniary damage;

5. *Holds* that there is no need to examine whether there has been a violation of Article 13 of the Convention on account of the alleged ineffectiveness of the investigation into the death of the applicant's son;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President