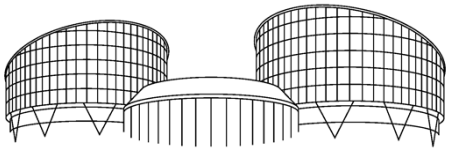

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GHAZARYAN AND BAYRAMYAN v. AZERBAIJAN

(Application no. 33050/18)

JUDGMENT

Art 34 • *Locus standi* • Existence of exceptional circumstances allowing applicants to lodge the application in the name and on behalf of their son without written authority • Cumulative effect of their son's serious mental health issues and his detention and confinement entailed a vulnerability rendering him unable to lodge a complaint with the Court • Risk of deprivation of effective protection of his rights if applicants not allowed to lodge application in his stead

Art 3 (substantive) • Inhuman and degrading treatment • Prolonged solitary confinement of applicants' son, without objective assessment of its necessity and procedural safeguards guaranteeing the measure's proportionality and his welfare • Suffering of applicants in case-circumstances not of a dimension and character distinct from emotional distress inevitably caused to relatives

Art 5 § 1 • Unlawful pre-trial detention

Art 5 § 3 • Failure to bring applicants' son promptly before a judge or another officer authorised by law to exercise judicial power after arrest

Art 5 § 4 • Review of lawfulness of detention • Insufficient information for Court to draw conclusions about practical possibility of applicants' son appealing initial detention decision • No indication appeal not a remedy satisfying Art 5 § 4 requirements

STRASBOURG

5 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 Ghazaryan and Bayramyan v. Azerbaijan,

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

Marko Bošnjak,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 33050/18) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Armenian nationals, Mr Armen Ghazaryan and Ms Astghik Bayramyan ("the applicants"), on 17 July 2018, acting also on behalf of their son, Mr Karen Ghazaryan;

the decision to apply Rule 39 of the Rules of Court and, subsequently to the discontinuation of its application;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 2, 3, 5, 6, 8, 13, 14 and 34 of the Convention;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Armenian Government, who had exercised their right to intervene under Article 36 § 1 of the Convention;

Having deliberated in private on 17 January, 14 March and 12 September 2023,

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

INTRODUCTION

1. The application contains complaints under Articles 2, 3, 5, 6, 8, 13, 14 and 34 of the Convention relating to the detention and trial of the applicant's son.

THE FACTS

2. The first applicant, Mr Armen Ghazaryan, and the second applicant, Ms Astghik Bayramyan, were born in 1959 and 1958, respectively, and live in the village of Berdavan. They are represented before the Court by Mr Ara

Ghazaryan, Mr Artur Ghazaryan and Ms Meri Baghdasaryan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The application concerns Mr Karen Ghazaryan, the applicants' son, an Armenian national born in 1984 who was apprehended in Azerbaijan on 15 July 2018. He was returned to Armenia on 15 December 2020 as part of an exchange of prisoners. Upon his apprehension in Azerbaijan he was throughout his time there deprived of his liberty, and he was convicted of conspiracy to carry out sabotage and terrorism attacks on the territory of Azerbaijan and sentenced to twenty years' imprisonment on 27 February 2019. The facts are disputed, and the parties' respective accounts of them are as follows.

A. The applicants' account

5. According to the applicants, their son, Mr Karen Ghazaryan, has a history of mental and behavioural disorders. They submitted medical records showing that in 2013 he had been diagnosed with a disorder that had been brought on by excessive consumption of alcohol. According to the applicants, his disorder is characterised by hallucinations, perceptual distortions, delusions, psychomotor disturbance, and "abnormal affect" (a term that encompasses disorders related to moods and emotions). He had been admitted to a mental health unit for nine days in July 2013 and for another eight days in June/July 2014. When not in institutional care, he had taken prescribed medicine to stabilise his condition. Often the medicine had been administered by the applicants, who had mixed it with his food.

6. The applicants submitted that during the night of 15 July 2018 Mr Karen Ghazaryan had left the home where he lived with them.

7. The home, a two-story house, is located in the village of Berdavan, which is situated some 2.7 kilometres from Armenia's border with Azerbaijan. The house is on the edge of the village that lies closest to the border. (At that closest point of the border, the line dividing Armenia and Azerbaijan is not clearly marked.) The applicants stated that they had last seen their son at around 2.30 a.m. as he had been going down to the kitchen for a drink of water. In the morning he had not been in his room. Left behind in the room had been his mobile phone, wallet and cigarettes – items without which, according to the applicants, he would normally have never left home. The weather had been bad throughout the night, with strong winds and heavy rain, and there had been a power outage in the village. The applicants had thought that their son might have gone to check the power generator.

8. On the morning of 15 July 2018 the Ministry of Defence of Azerbaijan announced that an armed "diversionist" group had attempted to enter the territory of Azerbaijan and that an Armenian spy, Mr Karen Ghazaryan, had been arrested. A photograph of Mr Karen Ghazaryan, dressed in a black

military uniform and a black cap and with black face paint, was disseminated by Azerbaijani media. The applicants submitted that he had not been dressed in such clothing when he had left home.

9. Later in the day of 15 July 2018 spokespersons for, respectively, the Armenian police and the Ministry of Defence of Armenia made statements to the effect that Mr Karen Ghazaryan had never served in Armenia's armed forces. The latter's statement also mentioned that the Minister of Defence, in his capacity as chairman of the Commission on Prisoners of War, Hostages and Missing Persons, had requested the Yerevan office of the International Committee of the Red Cross (ICRC) to make efforts to bring about the return of Mr Karen Ghazaryan.

10. On 16 July 2018 a spokesperson for the Ministry for Foreign Affairs of Armenia reiterated that Mr Karen Ghazaryan had no connection with the Armenian army and stated that owing to his mental health problems he had never been conscripted. On the same day the head of the village of Berdavan stated that there was an old road leading to the border and that Mr Karen Ghazaryan, whose mental state was known to everyone in the village, had probably walked down that road and accidentally crossed the border.

11. On 30 and 31 July 2018 the Armenian Security Service interviewed several people about the disappearance of Mr Karen Ghazaryan, including his parents (the applicants), his cousins, his childhood friends, a nurse and two neighbours.

12. The applicants further submitted that on an unspecified date, some days after Mr Karen Ghazaryan's disappearance, representatives of the ICRC had visited them. The ICRC's representatives had informed the applicants that their son was in detention in Azerbaijan; they had offered to deliver a letter from them to him. The applicants had written a letter and had given it to the representatives of the ICRC, who had promised to deliver it.

13. On 3 August 2018 PanArmenian.net, an Internet news portal, published an article which stated that representatives from the Baku office of the ICRC had visited Mr Karen Ghazaryan in captivity. The applicants submitted that during another meeting between themselves and representatives of the ICRC's Yerevan office, the ICRC representatives had told the applicants that they had handed over to Mr Karen Ghazaryan the letter from them to him (see paragraph 12 above), but that he had not wanted to write a reply. The applicants stated that they had become deeply confused and concerned by this, as they had been certain that their son would have wished to inform them of his wellbeing.

14. On 13 August 2018 the Investigations Department of the Armenian Security Service opened a criminal investigation into the suspected illegal crossing of the border and kidnapping of Mr Karen Ghazaryan.

15. On 16 August 2018 the applicants again met representatives of the ICRC and informed them that Mr Karen Ghazaryan had a mental illness, that he had been under the supervision of a doctor for the past five years and was

taking medicines regularly. The applicants stated that the ICRC representatives had promised to relay this information to their representatives in Baku.

16. In another meeting with the ICRC, the applicants were given the opportunity to talk with the ICRC doctor in Baku, via video link. According to the applicants, the ICRC doctor expressed strong doubts that Mr Karen Ghazaryan suffered from any mental illness, stating that he was completely healthy and did not need any medication. The applicants responded that their son had to fake or conceal his illness and asked that he be examined by a psychologist.

17. On 11 September 2018 the second applicant wrote a letter to the Prosecutor General of Azerbaijan, requesting an opportunity to communicate with her son and visit him. Alternatively, she requested to speak with her son's defence lawyer. Because of the lack of diplomatic and postal links between Armenia and Azerbaijan, the letter was sent via the applicants' son-in-law in the United States. No answer to the letter was received.

18. On 1 November 2018 the Interfax.az news portal published an article citing an unnamed source stating that Azerbaijan had suggested exchanging three Armenian "divergents" for three Azerbaijani captives. According to the article, the Armenian side did not respond. The applicants asked the Armenian government authorities whether any official process of exchange of prisoners was to take place, to which the authorities responded that they were not aware that any such official process was underway.

19. On 6 November 2018 the Report.az news portal published an article stating that the trial of Mr Karen Ghazaryan on criminal charges had started.

20. During November 2018 the applicants, along with fellow villagers, staged several public protests against the Armenian authorities by, *inter alia*, blocking a highway and demanding that those authorities start negotiations with the government of Azerbaijan.

21. On 19 November 2018 the Minister of Justice of Armenia held a meeting with representatives of the ICRC. The head of the delegation explained that an ICRC representative periodically visited Mr Karen Ghazaryan in Azerbaijan and would visit him again soon. She also stated that the ICRC was not entitled to intervene in any negotiations on the exchange of prisoners.

22. On the same date, 19 November 2018, the Investigations Department of the Armenian Security Service, within the framework of the criminal case that had been instituted on 13 August 2018 (see paragraph 14 above), lodged an official request with the Azerbaijani investigative body for cooperation and legal assistance in respect of the case of Mr Karen Ghazaryan within the framework of the 1993 Minsk Convention on the Legal Assistance and Relations in Civil, Family and Criminal Cases.

23. On 20 November 2018, at a press conference, Armenia's acting prime minister stated that he was willing to meet the applicants, but denied the

government's involvement in any negotiations involving Mr Karen Ghazaryan's return. He stated that it was not possible to take effective measures to return Mr Karen Ghazaryan to Armenia and that a proposed exchange of him for two citizens of Azerbaijan was unacceptable.

24. On the same day, the news portal Report.az published photographs and video footage of the trial of Mr Karen Ghazaryan. According to the applicants, their son had in the video been shown being held (together with two security guards) during the trial in a cage; his lawyer had not been visible either in the video or in the photographs. To the applicants, their son had been almost unrecognisable; he had lost a lot of weight and had been pale.

25. The applicants maintained that in another meeting that they had had with the ICRC representatives (see paragraphs 12, 13, 15 and 16 above), the latter had stated that their son had requested warm clothing and sweets. However, the ICRC representatives had not taken any clothing from the applicants to give to him as they had said that they themselves would provide it. Moreover, the representatives had not on this occasion handed over any letter or any other message from Mr Karen Ghazaryan to his parents.

26. The applicants submitted that towards the end of November 2018, some time after the footage from the trial had been broadcast (see paragraph 24 above), they had asked the ICRC to arrange an independent psychological examination of Mr Karen Ghazaryan; they had asked that the examination should also check the level of psychotropic substances in his blood, as he had been taking such medicines for the past five years. After several days, the ICRC had replied, stating that an the ICRC doctor was in contact with the doctor at the prison at which Mr Karen Ghazaryan was being held and had passed along suggestions and advice from the ICRC, but that it was not in the ICRC's mandate to suggest such an examination.

27. On 17 December 2018 the applicants submitted a letter to the ICRC again requesting an examination of Mr Karen Ghazaryan (see paragraph 26 above). They emphasised that their son required an immediate medical intervention and they requested that a blood test (or another type of test) be conducted to establish the level of psychotropic substances within his organism. In response to the letter, ICRC reiterated that the action requested fell outside its mandate.

28. The applicants further submitted that on 11 January 2019 they had had a Skype call with an ICRC doctor who had expressed concerns about Mr Karen Ghazaryan's mental state, reporting that he had not eaten for several days, had refused to take delivery of a parcel sent by the applicants and had refused to open the letters sent to him by the applicants. The doctor had stated that in the light of the current situation, he had requested an examination by an ICRC doctor (attended by an Azerbaijani doctor).

29. Moreover, the applicants submitted that on 1 February 2019 the ICRC doctor had told them that their son was not eating properly (consuming only small portions of food), "selectively" refusing to go outdoors and not wanting

to listen to talk about his returning to Armenia (instead speaking only about going on a pilgrimage to Jerusalem). According to the applicants their son had displayed the same symptoms during previous such episodes, when his health condition had worsened and he had experienced fear and doubts.

30. On 27 February 2019 Mr Karen Ghazaryan was convicted and sentenced to twenty years' imprisonment (see paragraph 4 above).

31. On 11 March 2019 the Azerbaijani Prosecutor General's Office had replied to the Armenian Security Service's above-mentioned request of 19 November 2018 for assistance (see paragraph 22 above) by stating that the Republic of Azerbaijan was ready to cooperate with Armenia and to restore diplomatic relations if the Armenian side ceased its occupation of a number of territories. The applicants had learned of that reply in May 2019, when it had been sent to their lawyer.

32. In the meantime, on 8 May 2019, an ICRC doctor (according to the applicants) had told them that their son's mental state was still a cause for concern. The doctor had stated that even though Mr Karen Ghazaryan remained under the supervision of Azerbaijani doctors, his treatment was not being documented. Accordingly, the doctor had lodged a request with the Azerbaijani Ministry of Health for a fresh examination to be carried out.

33. On 15 May 2019 the applicants' representative had met with the ICRC officials, who had again confirmed that Mr Karen Ghazaryan's state of health remained the same.

34. On an unspecified date in June 2019, the ICRC representative had handed over to the applicants a note containing the address of the prison in which Mr Karen Ghazaryan was being held and the telephone numbers on which the applicants had been told that they could supposedly contact Mr Karen Ghazaryan. The applicants' son-in-law called the numbers on 27 June 2019 and was then told to send a written request for permission to contact Mr Karen Ghazaryan to the email address of the prison. On 17 July 2019 the applicants' lawyers duly sent a written request by email, but no response was received.

35. On 10 January 2020 the applicants had their last meeting with ICRC representatives and were then told that Mr Karen Ghazaryan's health was assumed to be satisfactory and that he was not taking any medication.

36. Upon his return to Armenia on 15 December 2020 (see paragraph 4 above), Mr Karen Ghazaryan was transferred to a mental-health facility, the Avan Mental Health Center ("the Avan facility") for a medical check-up and treatment, as his behaviour was not satisfactory – namely, he was unable to control his behaviour or to coordinate his movement and speech. A medical report from the Avan facility, dated 16 December 2020, includes the following:

> "He is lying in bed in a free [that is, unrestrained] position, his face is tense, hypomanic; his gaze is fixed towards the front. [Interaction with him] is almost [impossible]; he only says 'Israel' when referring to himself by name. He does not

> answer questions, does not follow simple instructions. According to the treating doctor, he ate only the previous evening; he also said briefly: 'there is no Armenia, there is no Armenian …, there is no doctor …'. Judging by his behaviour, the existence of psycho-productive disorders is assumed. … It is noteworthy from the [report] that he is doubly ill …. On the night of 15.12.2020, he was admitted to the military hospital of the Ministry of Defence, where he displayed ... restless behaviour; [all attempts at interaction were] unproductive, [with him] monotonously repeating 'Israel'. In view of the above, K. Ghazaryan's mental health is a danger to his own health and life, and his treatment can be carried out only in hospital conditions".

The applicants also maintained that their lawyer before the Court, Mr. A. Ghazaryan, had visited Mr Karen Ghazaryan in the Avan facility and had noticed bruises and injection marks on his arms, and abnormal swellings in his legs.

37. On 19 January 2021 an investigator of the Armenian Security Service attempted to question Mr Karen Ghazaryan as a victim (injured party) within the framework of the instituted criminal investigation (see paragraph 14 above). However, as it appears from the record of the questioning, the interview had been unproductive, as he had been in a "mentally unbalanced state". According to the same record, a doctor, M. Nersisyan, who had been present in the questioning, had stated that the applicants' son was in an "acute psychotic state", "disoriented in time and space" and "commented on events going on around him in a deluded manner". According to the record, Mr Karen Ghazaryan had refused to sign it or to make any annotations to it.

38. On 2 February 2021 the investigator decided to resume the investigation. Further to this decision, the investigator ordered a forensic psychological and psychiatric examination in order to establish the mental state of Mr Karen Ghazaryan – specifically, whether he was mentally fit to take part in the criminal investigation into his case.

39. On 8 February 2021 Mr Karen Ghazaryan was released from the Avan facility to continue his treatment at home on an out-patient basis under the supervision of his parents (the applicants). The Avan facility issued diagnoses upon his release according to which Mr Karen Ghazaryan was suffering from paranoid schizophrenia; the report also stated, *inter alia*, that there were keloid scars on his wrists (in respect of which a report was submitted to the police).

40. On 21 February 2021, in connection with his discharge from the Avan facility, a medical report with the following information was issued:

> "He answered to questions only by saying that he was not Karen, but that he was the [State of] Israel. He stared at one single point, smiled inadequately, and whispered. He [removed the bedclothes and] lay on the mattress without a blanket, saying 'It's so good', or he just stood motionless for a long period. He was restless, tense, [wearing an expression] of passive negativity. He received medical treatment. After receiving treatment, interaction with him became possible; he said that he 'heard voices from above', that he was 'directed by God' and that he was 'the Christ.'
>
> As regards lodging [an application] with the [Strasbourg] Court, he mentioned the following: 'I will whisper a word and the trial will end; what trial? In my opinion, there

is no Armenia, there is no doctor; there is only Israel'. His thoughts were incoherent, illogical. The emotional sphere is somewhat subdued. Gradually he started attending to [his own] personal hygiene and taking showers. Initially, he avoided answering questions, bypassing them in every way possible. He also did not want to talk about being in Azerbaijan; he only mentioned that he did not have any ... opportunity to wash himself when he wanted. He ate poorly [while in Azerbaijan], he remembers, as if his mother and sister had visited him there and brought him grapes from their yard. He mentioned that he had not received any medicine [while he had been] there.

...

CONCLUSION / DIAGNOSIS: Paranoid schizophrenia"

B. The Government's account

41. The Government submitted that Mr Karen Ghazaryan had been apprehended on 15 July 2018 in the village of Kamarli, in Gazakh District of the Republic of Azerbaijan – that is to say about six kilometres inside the territory of Azerbaijan. Witness statements had indicated that at around 5 a.m. local shepherds had noticed a person moving from the border in the direction of the town of Gazakh and had informed military servicemen, who had apprehended Mr Karen Ghazaryan in the area of Kamarli. On the same date he had been placed under disciplinary arrest for a period of five days by order of the deputy commander of the relevant military unit.

42. On 19 July 2018 the Military Prosecutor's Office of the Republic of Azerbaijan had initiated a criminal investigation into Mr Karen Ghazaryan's illegal crossing of the State border of Azerbaijan and his attempts to commit acts of terrorism, sabotage and deliberate murder and had arrested him as a suspected person. A defence lawyer and an interpreter had been appointed for him.

43. On 21 July 2018 the Gazakh District Court had ordered that Mr Karen Ghazaryan be held in pre-trial detention for a period of four months. The Government maintained that he had later been held in the temporary detention facility of the State Security Service of the Republic of Azerbaijan in Baku with necessary security measures taken in his respect.

44. The Government stated that Mr Karen Ghazaryan had not been subjected to any physical or psychological pressure while he had been held in the temporary detention facility, and that he had been detained in a manner that respected his human dignity. He had undergone a medical examination, which had uncovered no signs of any torture, physical violence or injury, and his psycho-neurological status had been assessed as stable. An interpreter and a defence lawyer had been appointed for him.

45. The Government submitted that in the decisions on the initiation of criminal proceedings and on the placing of Mr Karen Ghazaryan in pre-trial detention, conclusions had been drawn to the effect that Mr Karen Ghazaryan had been secretly recruited in December 2016 by a named official of the Armenian Security Service and had received training in firearms, explosives

and ammunition at the end of 2017 in the Noyemberyan area (south of Berdavan). On the evening of 14 July 2018 he had been given instructions to set off explosions in Gazakh. The purpose had been to undermine public security, to spread panic among the population, to commit mass killings and cause other damage to the health of the population, to weaken the military and economic security of Azerbaijan and to destroy enterprises and infrastructure – all in the name of national and religious hatred and hostility. He had been equipped with a pistol, several explosive devices, other military equipment and ammunition and a set of black clothes, and had been accompanied by two other persons, who had not been identified. They had crossed the mined border area at about 1 a.m. on 15 July. Before being apprehended, Mr Karen Ghazaryan had hidden the military equipment that he had been carrying under a bush near the village of Kamarli. At the hearing concerning his pre-trial detention he had been questioned; during his questioning he had reportedly confirmed that he had received instructions from Armenian Security Service officials and had been given the equipment mentioned, which he had hidden after crossing the border when he had noticed that he had been spotted by civilians. According to the record of his statement, the aim of the operation had been to set off an explosion at the central marketplace in Gazakh.

46. On 27 February 2019 the Ganja City Serious Crimes Court had convicted Mr Karen Ghazaryan in a public hearing of conspiracy to carry out sabotage and terrorist attacks on the territory of Azerbaijan under Articles 29, 120.2.1; 29, 120.2.5; 29, 120.2.7; 29, 120.2.11; 29,120.2.12; 206.3.2; 214.2.1; 214.3.1; 228.1; 276; 29, 282.1; 318.2 and 66.3 of the Criminal Code of the Republic of Azerbaijan. He had been sentenced to twenty years' imprisonment, with the starting date calculated as 15 July 2018.

47. The Government maintained that after 27 March 2019, following his transfer from the pre-trial detention centre to the prison where he was to begin serving his sentence, Mr Karen Ghazaryan had been regularly examined by doctors (including professional psychiatrists). However, he had started to have conflicts with other inmates.

48. On 24 May 2019, on the basis of recommendations made by the ICRC, Mr Karen Ghazaryan had (according to the Government) been transferred to the prison medical centre. He had been treated at the medical centre and had served his sentence there until his release on 14 December 2020. Upon his admission there, his rights and responsibilities had been explained to him and he had been afforded with all necessities for living.

49. The Government also submitted that, for safety reasons, Mr Karen Ghazaryan had been placed in solitary confinement in an area of nine square metres, where he had been supervised by prison doctors at least once a day, as well as by a special doctor assigned to him who had monitored his health and had provided the first response to any problems that he had had. At least

once a day, he had been allowed to go for a walk at any time of the day lasting for at least one hour, with safety measures in place.

50. The Government submitted that Mr Karen Ghazaryan had not been subjected to any moral or physical pressure from prisoners or prison management, doctors or employees, and he had not been subjected to torture, inhuman or degrading treatment.

51. The Government maintained that the ICRC had facilitated contact between Mr Karen Ghazaryan and his family members and close relatives – as well as the delivery of food parcels and clothing sent by his relatives. Conditions had been created enabling him to hold private meetings with the representatives of the ICRC, and there had been no obstacles to his holding those meetings within a confidential setting. They stated that such meetings had been held as follows:

– Five times in the pre-trial detention centre (the Government mentioned the following dates: 6 June and 26 November 2018, and 9 September, 25 January and 7 February 2019);

– three times while Mr Karen Ghazaryan had been serving his sentence at the prison (although the Government mentioned only two dates – 10 April and 7 May 2019); and

– eighteen times during Mr Karen Ghazaryan's detention in the medical centre (11 April, 19 June, 20 June, 3 July, 19 July, 15 August, 10 September, 11 October, 8 November and 21 November 2019, and 6 February, 10 March, 14 April, 20 May, 1 July, 12 August, 16 September and 28 October 2020).

The Government submitted that there had been no restrictions on Mr Karen Ghazaryan's right to contact the ICRC or on his right to send and receive correspondence. No other international organisations or local representatives had sought to hold any meetings with him.

52. Moreover, according to the Government, all of Mr Karen Ghazaryan's rights relating to applying to the relevant organisations and bodies had been explained to him and no obstacles to the effective implementation of those rights had been raised. However, he had not expressed any wish to avail himself of those rights.

53. The Government submitted to the Court a document produced in consultation with a professor of psychiatry, T. Gafarov, on 29 October 2020, in which the following was stated:

> "According to the information in the Department, the examined prisoner, K. Ghazaryan, [has exhibited] peculiar behaviour since the first day. For the whole time, except for a few [instances of] selective, aggressive behaviour against others, he has not tried to injure himself. In general his behaviour [reflects] the situation [at any given moment]. For the whole period of his stay [so far], he has complied with the personal sanitary-hygienic rules. Such selective behaviour is observed also in his [i] taking of medicine (he takes therapeutic drugs without resistance, but flatly refuses to take drugs regulating mood and sleep, and other regulatory drugs), [ii] [consumption] of food and cigarettes and [iii] his [social interact] within the Department.

During the whole period [during which Mr Karen Ghazaryan was] under supervision, no pathology was found in the clinical laboratory tests, ECG, ultrasound test, X rays, and EEG examination. Moreover, no pathology was found during the examinations [conducted] by neurology specialists. According to the results of the pathopsychological examination carried out on 22 October 2020, the test [questions were] not answered sincerely; Mr [Ghazaryan maintained his] awareness of [his] environment. [Mr Karen Ghazaryan] replied to the [questions] in a thoughtful manner; sometimes, despite understanding the [questions], [he] acted as if he hadn't understood them (see [the account of] the whole examination contained in the clinical opinion). And the final outcome is that, at present, a serious psychological and personality disorder is not observed in the person in question. The clinical pathopsychological examination carried out by us [did not find] any psychopathological disorder ... . The characteristics [that he displays] in the Department – selective behaviour and communication – were also clearly revealed during the examination. Presenting himself as "Israel" during the first session (at the same denying being a Jew), answering to his name adequately after the examinations [and] denying that he is ill evidences his selective ... behaviour, [which he manifests] according to the situation [in hand]. He is stable emotionally. He has a sufficient degree of control over himself. He doesn't complain about his health, [the staff's] attitude towards him or about the place in which he finds himself. Taking into account above-mentioned, his situation can be described as conscious simulation of psychological disorders.

Diagnosis: Conscious simulation of psychological disorders."

54. A medical report dated 3 November 2020 was also submitted to the Court. This report contained the following:

"On 24 May 2019, the prisoner Ghazaryan Karen Armenovich was transferred to the Department of Mental Illnesses of the prison medical centre and was supervised by the doctors in [the Department's] solitary confinement room owing to security reasons. During his stay in the Department [of Mental Illnesses], general blood and urine tests, biochemical blood tests, an echocardiogram, an electrocardiogram [and an] ultrasound test have been administered numerous times. An X-ray revealed no pathology. He has on numerous occasions been examined by [doctors specialising in] therapy, ... infectious diseases, ... and ophthalmology. Moreover, he has been regularly examined by Professor Fuad Ismayilov, Ph.D., the director of the Ministry of Health's Psychological Health Centre. In the interests [of carrying out a comprehensive review], neurological examinations were performed: an EEG, an examination carried out by a neurologist and a neurosurgeon, and pathopsychological tests conducted by a clinical psychologist. As a result of all these examinations, no pathology was found, but owing to the haemoglobin level being 10.8 g/dl, [drugs were] prescribed by the therapist. He took these drugs without resistance, but flatly refused to take drugs offered to regulate mood and sleep. During his stay at the Department, he took the following drugs: Verospiron tablets, Furosemide solution, Megafer solution, Vitamin C, Begamma solution.

On 25 September 2019, a special medical expert meeting was convened, and it was decided that there was no need for the application of compulsory medical measures in connection with [Mr Karen Ghazaryan's] psychological status. He was examined by Teymur Gafarov, the Chief Psychiatrist at the Ministry of Health.

During his stay at the Department, no behavioural disorders or psychopathological symptoms were observed. Strong purposeful behaviour on the part of the prisoner was noted. He stood out owing to his peculiar behaviour; he sometimes tried to mimic psychopathological symptoms, [but he] never tried to injure himself or the people

around him, [and] complied with personal sanitary-hygienic rules. His selective behaviour was observed in all aspects [of his behaviour]: in taking food and prescribed drugs, in communicating within the Department, during examinations by doctors.

The prisoner is to be transferred to his prison.

Diagnosis: Currently, no psychological disorder is observed. Conscious simulation of psychological disorders."

55. The Government explained that, following the commitments arising from a trilateral agreement concluded on 10 November 2020 to end the hostilities between Azerbaijan and Armenia, and the negotiations conducted with the participation of international organisations and Russian peacekeeping forces – as well in the interests of acting humanely – an agreement had been reached with Armenia on an exchange of prisoners of war and other captives.

56. The Government noted that on 14 December 2020 Mr Karen Ghazaryan's sentence had been suspended following the reaching of the above-mentioned trilateral agreement, and that he had been transferred to Armenia together with other Armenian captives.

C. Proceedings before the Court

57. On 17 July 2018 the applicants requested the Court to apply Rule 39 of the Rules of Court and to indicate to the Government of Azerbaijan interim measures aimed at protecting their son's health and to arrange for his return to Armenia. On the same day the duty judge decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Government of Azerbaijan that they should take all necessary measures to protect the life and physical integrity of Mr Karen Ghazaryan. The duty judge further decided to request the Government, under Rule 54 § 2 (a), to submit information about the place and the conditions in which Mr Karen Ghazaryan was being held and whether any criminal proceedings had been instituted against him. If any such proceedings had been instituted, they were requested to provide all the relevant details and documents. The applicants were asked to submit a complete application form by 14 August 2018, which they did.

58. On 29 November 2018 the applicants lodged another request for Rule 39 of the Rules of Court to be applied. This time they requested that the Court indicate to the Government that they ensure that the applicants be allowed to enter Azerbaijan, to visit their son in prison and to attend his trial, and to allow them to communicate directly with him in written form, by telephone or via any other form of electronic communication and without interference on the part of any public bodies. In response, the applicants were informed that the request fell outside the scope of Rule 39.

59. On 4 and 14 June 2019 the applicants again requested the Court to indicate interim measures under Rule 39 of the Rules of Court, in response to which they were informed that the request was incomplete.

60. On 26 July 2019 the applicants submitted further information and lodged further complaints via the Court's application forms.

61. On 1 July 2020 the President of the Section to which the case had been allocated decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Azerbaijan and that the Government should be invited to submit written observations on the admissibility and merits of the case.

62. On 7 April 2021 the application of Rule 39 of the Rules of Court, as decided on 17 July 2018, was discontinued, after information was provided to the Court indicating that the applicants' son had been returned to Armenia.

THE LAW

I. PRELIMINARY OBJECTION REGARDING THE APPLICANTS' STANDING TO LODGE AN APPLICATION ON MR KAREN GHAZARYAN'S BEHALF

63. The Court notes that the Government lodged an objection, submitting that the applicants did not have the requisite standing to lodge the application. They referred to Article 34 of the Convention, which reads as follows:

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

A. The parties' and the third-party's submissions

1. The Government

64. The Government argued that the applicants were not – and did not claim to be – "direct victims" and that there were no reasons to allow them to apply on behalf of their son, Mr Karen Ghazaryan, who was not a disappeared person, but rather one who had served a sentence in another country. In particular, the applicants' son had not been in any more vulnerable a situation than any other person who had been prosecuted and sentenced and he could at any stage have applied to the Court himself. The Government also asserted that there appeared to be a conflict of interest between the applicants and their son, in so far as there was no indication of Mr Karen Ghazaryan having requested his parents to apply to any international body on his behalf.

2. The applicants

65. In their application of 14 August 2018 (a date on which their son was still in Azerbaijan) the applicants maintained that their son was in a vulnerable position: he was under the total control of the authorities of Azerbaijan, being kept in incommunicado detention without any access to the outside world; he was not covered by human rights guarantees since the authorities of Azerbaijan deemed him to be a military prisoner; he was being kept in a hostile and discriminatory environment on the basis of his ethnicity; and the situation was ongoing.

66. In their subsequent observations, submitted after Mr Karen Ghazaryan had been transferred to Armenia, the applicants maintained that the above-mentioned detention incommunicado had lasted from 15 July 2018 until 15 December 2020 (the date of Mr Karen Ghazaryan's transferral), and that this had been a decisive factor with regard to his vulnerability and the validity of their application on his behalf.

67. As to the arguments of the Government to the effect that the applicants had been communicating with their son through the ICRC, the applicants responded that throughout the entire period that they had been in contact with the ICRC's Armenia office, the latter had categorically refused to engage in any "legal process" between the applicants and their son. The ICRC officials had repeatedly stated that their mission could extend only to "family matters" and had categorically denied the repeated requests of the applicants for the Court's application form to be sent to Mr Karen Ghazaryan for his signature. Reference was made to correspondence and meetings between the applicants and the ICRC.

68. Moreover, the applicants argued that Mr Karen Ghazaryan's mental disability was another factor that should be considered by the Court when deciding on whether they, as his parents, should be allowed to apply on his behalf. They referred to the above-mentioned documents containing medically relevant information that they had submitted to the Court (see, *inter alia*, paragraphs 5, 36, 37, 39 and 40 above). They stated that since his discharge from the Avan facility, he had been awarded a disability pension in Armenia. After lodging their application with the Court, the applicants had attempted to raise the issue of the case before the Court with him, in order to determine whether he wished to lodge his own application, but he had not been fully cooperative as he had seemed not to be able to perceive and properly assess reality.

69. On the basis of the above, the applicants asked that the Court dismiss the Government's objection to their standing to lodge the application on their son's behalf.

3. The Government of Armenia, third-party intervener

70. The Government of Armenia, third-party intervener, submitted that it was undisputable that the applicants' son was in a vulnerable situation, given his nationality, his mental issues, and the overall inhuman treatment that he had suffered – including his isolation and his lack of contact with his family. Thus, in the view of the Government of Armenia, the lodging of the application with the Court by Mr Karen Ghazaryan's parents should be regarded as a valid introduction on his behalf as well.

B. The Court's assessment

71. The Court firstly observes that the applicants in their application to the Court of 14 August 2018 (which they lodged following the interim measure indicated by the Court on 17 July 2018 – see paragraph 57 above) portrayed themselves as having been victims of a violation of Article 3 of the Convention owing to the mental anguish and distress they had suffered in connection with the captivity of their son, Mr Karen Ghazaryan. They have since maintained that claim. As to that complaint, the Government's preliminary objection must be dismissed since it relates to rights pertaining to the applicants themselves.

72. Turning to the complaints submitted by the applicants with regard to the alleged violations of their son's rights, the applicants asserted that he had been the direct victim. The applicants did not provide any written authority to act; rather, they argued that exceptional circumstances justified their standing to lodge an application on behalf of their son.

73. The Court reiterates that if an application is not lodged by the victim himself or herself, Rule 45 § 3 of the Rules of Court requires the production of a duly signed written authority to act. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim on whose behalf they purport to act before the Court. However, the Court has held that, in the case of victims of alleged breaches of Articles 2, 3 and 8 of the Convention at the hands of the national authorities, applications lodged by individuals on behalf of those victims – even if no valid form of authority has been presented – may be declared admissible. In such situations, particular consideration has been given to factors relating to the victims' vulnerability that rendered them unable to lodge a complaint with the Court; due regard has also been paid to any connections between the person lodging the application and the victim (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 149, 14 September 2022).

74. In sum, a third party may, in exceptional circumstances, act in the name and on behalf of a vulnerable person without a duly signed written authority to act where the following two main criteria are satisfied: the risk that the direct victim will be deprived of effective protection of his or her

rights, and the absence of a conflict of interests between the victim and the applicant (see *Lambert and Others v. France* ([GC], no. 46043/14, § 102, ECHR 2015 (extracts)).

75. The Court has held that the list of factors capable of rendering a person vulnerable set out in *Lambert and Others* (cited above, § 92) – "on account of his or her age, sex or disability" – is not exhaustive. Individuals could be considered vulnerable on account of many other factors, such as the very nature of the complaint lodged with the Court on their behalf (see *N. and M. v. Russia* (dec.), nos. 39496/14 and 39727/14, 26 April 2016).

76. The applicants argued that their son was vulnerable – firstly, because he had been detained in complete isolation and, secondly, owing to his having mental health issues. The Court accepts that a detainee held incommunicado may be regarded as a vulnerable person who is at risk of being deprived of the effective protection of his or her rights under the Convention and that the same may be the case for a person suffering from mental health problems. The Court also considers that if both these two factors are present and apply at the same time, they may have to be viewed as a whole with a view to determining whether the person in question is at risk of being deprived of the effective protection of his or her rights under the Convention.

77. As to the restrictions on Mr Karen Ghazaryan's contact with the outside world (which are acknowledged by the respondent Government – see paragraph 49 above), the Court notes that he was not detained in complete isolation (see, also, paragraph 132 below). It was also not disputed by the applicants that the ICRC had at least on several occasions visited him and attempted to hand over letters from them to him (see paragraphs 12 and 51 above).

78. At the same time, the applicants never received any replies to their letters to their son, and he refused to open their letters (see, *inter alia*, paragraphs 13, 25 and 28 above), and the applicants pointed out that when they had raised questions concerning the procedure of lodging an application with the Court, the ICRC had refused their requests (see paragraph 67 above). Before the Court they documented correspondence with the ICRC in which they had requested, *inter alia,* that Mr Karen Ghazaryan be given power-of-attorney forms in order that he might empower them to lodge an application in his name.

79. The Court considers that the applicants have sufficiently made out a case that Mr Karen Ghazaryan was unable to contribute to the application lodged with the Court. It takes note, firstly, of the information provided about his history of mental and behavioural disorders prior to the matters complained of, which, among other things, had involved the applicants administering medicines to him by mixing them in his food (see paragraph 5 above). Secondly, as to the situation during his period of detention and imprisonment, the Court takes note of the applicants' failed attempts to obtain his contribution, in particular via the ICRC (see, *inter alia*, paragraph 78

above). It also takes note of the information about Mr Karen Ghazaryan's mental health during that period (see, in particular, paragraphs 29, 53 and 54 above). The Court observes that, while the reports produced at that time in their conclusions may appear not to reflect fully the seriousness of Mr Karen Ghazaryan's mental health disorder, their descriptions of his symptoms bear a resemblance to the reports produced subsequent to his repatriation (see, also, paragraph 127 below). The Court cannot but note that the symptoms, also as they are described in the reports dating from the time when Mr Karen Ghazaryan was still in captivity, on the face of it do not appear indicative of a person capable of lodging an application with the Court. Thirdly, following his repatriation, Mr Karen Ghazaryan suffered from serious mental health issues – as can be seen from the medical documents adduced (see, *inter alia*, paragraphs 36 and 40 above).

80. The Court finds in sum that the cumulative effect of Mr Karen Ghazaryan's serious mental health issues and his situation during his detention and confinement, entailed a vulnerability that rendered him unable to lodge a complaint with the Court (see paragraph 73 above), given the particular circumstances of the instant case. It is not clear that Mr Karen Ghazaryan had any possibility to request the applicants to lodge an application with the Court on his behalf, to sign a power of attorney authorising the applicants to lodge an application with the Court or to lodge an application with the Court himself. Given those circumstances, the Court does discern a risk that Mr Karen Ghazaryan will be deprived of the effective protection of his rights if the applicants are not allowed to lodge an application in his stead.

81. Regard being had to the above, the Court, in conclusion, discerns exceptional circumstances in the present case that would allow the applicants to act in the name and on behalf of their son, Mr Karen Ghazaryan. It therefore concludes that the applicants do have standing to lodge the application on his behalf.

82. It follows that the Government's objection to the application's compatibility *ratione personae* with the provisions of the Convention, pursuant to Article 35 § 3 (a), and their assertion that the application must be rejected, pursuant to Article 35 § 4, cannot be upheld.

83. Notwithstanding, the Court finds reason to note that the instant case demonstrates an inherent feature of the rule that it is he or she who has been victim of a violation that must apply to the Court – namely, that there is very limited information actually stemming from Mr Karen Ghazaryan himself in the case file, save for that which the Government argue is reflected in the documents that they have adduced (the validity of which the applicants contest). Indeed, the applicant themselves in their observations admitted, for example, that "very little is known [of] how the trial proceedings ... proceeded" following the time at when Mr Karen Ghazaryan was charged.

84. The Court is aware that the applicants' limited access to information may have caused them particular difficulties when seeking to lodge complaints relating to non-transferable rights belonging to Mr Karen Ghazaryan and in respect of which his personal experiences are relevant. However, in the Court's assessment, it has to proceed on the basis of the ordinary requirement that applicants must substantiate their complaints to the degree required by the principles relating to the burden of proof that apply to the various complaints. Particularly, in circumstances where those principles do not provide a basis for shifting the burden of proof to the respondent Government and applicants are unable to substantiate their complaints, those complaints may be considered as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

85. The applicants complained that their son's detention on several counts had entailed violations of Article 5 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> ..."

A. Admissibility

86. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' and the third-party's submissions

(a) The applicants

87. The applicants maintained that Mr Karen Ghazaryan had been arrested on 15 July 2018 on suspicion of having committed an offence and that the domestic-law provision under which the arrest of a suspect should not exceed forty-eight hours before he or she was brought before a court had been disregarded, rendering the initial detention unlawful within the meaning of Article 5 § 1 of the Convention.

88. Moreover, the applicants maintained that Mr Karen Ghazaryan had been kept in detention pending trial in the absence of any clear rules governing the maximum period for which a suspect could be held in detention pending trial. It appeared to the applicants that the relevant domestic regulation provided that an initial decision ordering detention would be automatically extended once criminal proceedings entered the trial phase – a regulation which, they submitted, was at variance with the Court's case-law. The domestic Criminal Code of Procedure had failed to provide any safeguards against indefinite detention pending trial, and the fact that Mr Karen Ghazaryan had remained in detention without any clear views and terms as to its period was not compatible with the principle of legal certainty reflected in Article 5 § 1 of the Convention.

89. According to the applicants, there had additionally been a violation of Article 5 § 3 of the Convention in that Mr Karen Ghazaryan had been brought before a judge only after six days, which they maintained had been in breach of the "promptness" requirement.

90. The applicants submitted, moreover, that there had been a violation of Article 5 § 4 of the Convention in so far as Mr Karen Ghazaryan had been ordered to be detained for four months – a period which, they asserted, had been excessive and which had not ensured that there would be regular subsequent reviews of Mr Karen Ghazaryan's case. Indeed, there had been no further judicial review until the verdict of 27 February 2019 (seven months and six days after the Gazakh District Court's order of 21 July 2018 that Mr Karen Ghazaryan be held in pre-trial detention for a period of four months). The applicants also argued that Mr Karen Ghazaryan had been deprived of effective legal assistance and other due process rights in respect of the detention proceedings and that the Government's arguments to the contrary could not be considered to constitute proof, in particular as they had not provided a copy of the record of the detention hearing.

(b) The Government

91. The Government submitted that Mr Karen Ghazaryan had been placed under disciplinary arrest for five days on 15 July 2018 by order of a deputy

commander of a military unit. He had been discovered and detained by members of the armed forces, and after measures undertaken to check his identity and possible connection with planned acts of sabotage he had been handed over to the investigating authorities. Given that those measures would require time and resources, Mr Karen Ghazaryan had been officially arrested on 19 July 2018. On that day the Military Prosecutor's Office had initiated a criminal investigation; two days later (on 21 July 2018) Mr Karen Ghazaryan had been brought before the District Court to decide on preventive measures, in keeping with the requirements of domestic law.

92. The Government emphasised that the "promptness" requirement stipulated by Article 5 § 3 of the Convention had first of all to be assessed in the light of the legislative provisions in force in the country concerned. In the instant case the actions of the domestic authorities had been in full conformity with the domestic legislation.

93. Moreover, the Government maintained that Mr Karen Ghazaryan had been present during the hearing relating to his detention and had been given the opportunity to express his position on the matter. In its decision the Gazakh District Court had taken into consideration the existence of a "reasonable suspicion" that Mr Karen Ghazaryan had committed an illegal act and the possibility that he might abscond or commit other illegal acts. The case had had a special character, and many factors could have impeded an effective investigation had Mr Karen Ghazaryan not been detained.

94. With regard to Article 5 § 4 of the Convention the Government argued that Mr Karen Ghazaryan had been afforded every right and opportunity to challenge the lawfulness of his detention, including by lodging an appeal with the Court of Appeal against the District Court's decision – an opportunity of which he had not made use. He had been provided with Armenian translations of relevant documents, and the court records showed that he had been given the opportunity to present facts on his own behalf. They also emphasised that he had been provided with legal assistance and an interpreter and had never disputed their competence or asked for them to be replaced. The Government stressed that Mr Karen Ghazaryan had not only chosen not to object to his detention, but that he had also admitted to the charges brought against him.

(c) The Government of Armenia, third-party intervener

95. The Government of Armenia, third-party intervener, stated that they agreed with the arguments submitted by the applicants and supported their complaints. They further stated that the applicants' son, Mr Karen Ghazaryan, had been arbitrarily detained and deprived of any conventional guarantees, which had resulted in violations of Article 5 §§ 1, 3 and 4 of the Convention.

2. The Court's assessment

(a) Article 5 § 1 of the Convention

96. The Court observes that the applicants proceeded on the assumption that Mr Karen Ghazaryan had been detained on 15 July 2018 for the purpose of bringing him before the relevant legal authority on suspicion of having committed an offence within the meaning of Article 5 § 1 (c) of the Convention, whereas the Government have indicated that an order for Mr Karen Ghazaryan's "disciplinary arrest" had been issued on 15 July 2018, and that he had been remanded in custody on 19 July 2018 on the basis of an investigation that had started on that day.

97. The Court, having studied the documents adduced by the Government, notes at the outset that they contain contradictory statements about the "disciplinary arrest". It is undisputed that Mr Karen Ghazaryan was apprehended at about 7 a.m. on 15 July 2018. In the order for his arrest issued at 10.30 p.m. on that same day, it was stated that the "[r]eason for arrest" was: "violating the State border". However, in the decision on pre-trial detention of 21 July 2018 (see paragraph 43 above) it was stated that Mr Karen Ghazaryan had been apprehended in the village at 7 a.m. "for an attempt to commit crimes". The indictment lodged against Mr Karen Ghazaryan on 11 October 2018 by the Major-General of Justice (the deputy prosecutor of the Prosecutor's Office), drawn up the day before, read that he had been "detained" on 15 July 2018 at around 7 a.m. in the "Balakend" area of the village of Kemerli "as a result of appropriate measures taken by the Azerbaijani army, ... for attempting to commit the premeditated murder of two or more individuals in connection with terrorism and national hatred and enmity", as well as a number of other serious crimes.

98. Nonetheless, the Court will proceed, as have the applicants, on the basis that the purpose of Mr Karen Ghazaryan being held under "disciplinary arrest" until 19 July 2018 (and his deprivation of liberty from that date onwards) could fall under Article 5 § 1 (c) of the Convention.

99. Sub-paragraph (c) of Article 5 § 1 of the Convention requires, like the other sub-paragraphs of that provision, lawfulness. According to the Court's settled case-law, the "lawfulness" requirement under Article 5 is not satisfied merely by compliance with the relevant domestic law; domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it – particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention. The notion underlying the expression "in accordance with a procedure prescribed by law" requires the existence under domestic law of adequate legal protections and "fair and proper procedures" (see, among other authorities, *Plesó v. Hungary*, no. 41242/08, § 59, 2 October 2012, and *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

100. As to whether the detention was "lawful" and "in accordance with a procedure prescribed by law" in this case, the applicants have argued, firstly, that there was a time-limit of forty-eight hours to bring detained persons before a court (as set out in Article 150 § 3 of the Code of Criminal Procedure of Azerbaijan), which was not respected. The Court finds that this part of the complaint is in principle more appropriately to be addressed under Article 5 § 3 of the Convention and will return to it below (see paragraphs 104-106).

101. Secondly, the applicants argued that there were no clear rules under domestic law governing the length of the period for which a person could be detained pending trial and that the rules that appeared to be in place – notably Article 158 § 3 of the Code of Criminal Procedure of Azerbaijan – effectively provided that detentions were to be automatically prolonged when a case was sent to trial, without any safeguards against indefinite stays in detention. The Government responded to that argument by stating that the actions of the domestic authorities had been in full conformity with the relevant domestic legislation. The Court notes that it examined domestic legislation apparently formulated in a similar manner to that applied in the instant case, in the case of *Poghosyan v. Armenia* (no. 44068/07, §§ 56-64, 20 December 2011), and concluded that the detention at issue in that case had been unlawful.

102. Given the circumstances of the instant case, the Court finds that it does not in any event appear that Mr Karen Ghazaryan was adequately protected against arbitrary detention, since (i) the Government have not given the Court any information rendering it capable of verifying the "lawfulness" requirement with regard to his "disciplinary arrest" from 15 until 19 July 2018, and (ii) even though his detention on remand on 21 July 2018 was fixed for a period of four months (see paragraph 43 above), Mr Karen Ghazaryan remained in detention after those four months without any extension orders being made or any further decisions on his detention being taken until his conviction on 27 February 2019 (see paragraphs 30 and 46 above). While the Government have emphasised that he could have appealed against the detention order issued by the first-instance court, they have not informed the Court of any procedures to which Mr Karen Ghazaryan could in principle have resorted after the four-month period had passed.

103. Given the circumstances of the instant case, the Court finds the above noted factors to be sufficient to conclude that Mr Karen Ghazaryan's detention was not supported by adequate legal safeguards and accordingly that there has been a violation of Article 5 § 1 of the Convention for failure to meet the "lawfulness" requirement set out therein.

(b) Article 5 § 3 of the Convention

104. In so far as the Court has accepted the Government's argument that Mr Karen Ghazaryan's arrest was effected for the purposes indicated in Article 5 § 1 (c), it follows that he enjoyed the right under Article 5 § 3 to be

brought promptly before a judge or other officer authorised by law to exercise judicial power.

105. As to the general interpretation of "promptly", the Court has on several occasions indicated that any period in excess of four days is *prima facie* too long (see, for example, *Oral and Atabay v. Turkey*, no. 39686/02, § 43, 23 June 2009; *McKay v. the United Kingdom* [GC], no. 543/03, § 47, ECHR 2006-X; and *Năstase-Silivestru v. Romania*, no. 74785/01, § 32, 4 October 2007). In the instant case, the Government have not disputed that Mr Karen Ghazaryan was kept for six days before he was brought before the Gazakh District Court, and the Court does not consider that the grounds provided by the Government (namely, the alleged need to investigate Mr Karen Ghazaryan and to check his identity) could justify the length of that period of time. It emphasises that it considers it immaterial whether, under domestic law, different (prescribed) procedures should have been followed in respect of the "disciplinary arrest" ordered on 15 July 2018 and to what the Government have coined as the "official arrest" on 19 July 2018. Given these circumstances, moreover, the Court does not find decisive the question of whether the six-day period was in accordance with domestic law or not – a question on which the parties disagree (see paragraphs 87 and 92 above).

106. There has accordingly been a violation of Article 5 § 3 of the Convention on the grounds that Mr Karen Ghazaryan was not "promptly" brought before a judge or another officer authorised by law to exercise judicial power.

(c) Article 5 § 4 of the Convention

107. With regard to Article 5 § 4 of the Convention the Court notes that it has already examined the applicants' allegation that there had been no further reviews after the case had been sent for trial and has found that that the lack of any access to any such further review constituted one of the reasons why Mr Karen Ghazaryan's detention could not be considered to have met the lawfulness criterion under Article 5 § 1 (see paragraph 102 above). The Court will not re-assess this matter from the perspective of Article 5 § 4.

108. As to the initial period of Mr Karen Ghazaryan's detention, the Court notes that it is not disputed that the Gazakh District Court's decision of 21 July 2018 was amenable to appeal. The Court has not been provided with any further information about this matter and considers that it does not have grounds for considering that an appeal to the Court of Appeal would not in principle constitute a remedy that would satisfy the requirements of Article 5 § 4 of the Convention (see, for example, *McGoff v. Sweden*, 26 October 1984, § 28, Series A no. 83). There is insufficient information regarding the case for the Court to draw conclusions about the practical possibility of Mr Karen Ghazaryan lodging such an appeal.

109. In the light of the above, the Court does not find that it has been established that there has been a separate violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION IN RESPECT OF MR KAREN GHAZARYAN

110. The applicants complained that Mr Karen Ghazaryan – in the light of the circumstances relating to his capture, detention and trial in Azerbaijan had been put in a life-threatening situation (contrary to his right to life, as provided by Article 2 of the Convention) – and subjected to treatment contrary to Article 3. The two provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

111. The Court notes that the applicants made joint submissions under Articles 2 and 3 of the Convention and argued that the situation as a whole in which Mr Karen Ghazaryan had found himself while deprived of his liberty in Azerbaijan meant that his life had been placed in real and imminent danger. It considers that, although the Government made no specific objection in respect of the admissibility of the complaint under Article 2 of the Convention, it must nevertheless examine of its own motion whether the facts of the case fall within the ambit of that provision, given that it falls within its own jurisdiction *ratione materiae* (see, for example, *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

112. The general principles regarding the right to life under Article 2 of the Convention can be found in, among many other authorities, *Salman v. Turkey* [GC], no. 21986/93, §§ 97-100, ECHR 2000-VII, and *Aktaş v. Turkey*, 24351/94, §§ 289-291, 24 April 2003. The general principles

concerning the requirement of an effective official investigation when someone has died in suspicious circumstances can be found in, for example, *Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010, with further references; *Šilih v. Slovenia* [GC], no. 71463/01, §§ 154 and 158, 9 April 2009; and *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 221-223 and 225, ECHR 2004-III, with further references. The Court reiterates that Article 2 also comes into play in situations where the person concerned was the victim of an activity or conduct (whether public or private) which by its nature put his or her life at real and imminent risk, and he or she has suffered injuries that appeared life-threatening when they occurred, even though he or she ultimately survived (see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49 and 54, ECHR 2004-XI; *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020; and *Khojoyan and Vardazaryan v. Azerbaijan*, no. 62161/14, § 34, 4 November 2011).

113. With regard to the instant case, the Court observes that it is not one concerning death either during or in the aftermath of detention. Moreover, while the Court has noted the medical report emphasised by the applicants (namely, that dated 16 December 2020 – a day after his return to Armenia), in which it was stated that Mr Karen Ghazaryan presented a danger to his own health and life because of his mental state (see paragraph 36 above), the Court cannot see that either that report or any of the other medical documents adduced gives it a basis for considering that his life during his deprivation of freedom in Azerbaijan was put at real and imminent risk and that he suffered injuries that appeared life-threatening as they occurred.

114. It follows that Article 2 of the Convention is not applicable to the facts of the case and that the complaint lodged under that provision must be declared inadmissible for incompatibility *ratione materiae* with Article 2, in accordance with Article 35 §§ 3 (a) and 4.

115. With regard to the complaint lodged under Article 3 of the Convention, the Court notes that that 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' and the third-party's submissions

(a) The applicants

116. The applicants maintained that they had presented evidence that their son had been subjected to ill-treatment. They pointed to the report issued by the Avan facility (where Mr Karen Ghazaryan had been admitted after his return to Armenia) – in particular, the information contained therein to the effect that he, given his mental state, presented a danger to his health and life. Moreover, they pointed to photographs of Mr Karen Ghazaryan taken by their

lawyer at the hospital on 16 December 2020. Furthermore, they referred to the fact that on 24 December 2021 the Yerevan Court of First Instance had issued a court order for the compulsory confinement of Mr Karen Ghazaryan for in-patient treatment at the Avan mental-health facility. The applicants argued that the mental state of their son, as it had been recorded by medical professionals, had not been compatible with the guarantees of prohibition of torture and other forms of cruel and degrading treatment.

117. The applicants noted that the Government had adduced a medical paper describing the medical examination of Mr Karen Ghazaryan of 25 September 2019 – one year, two months and twenty days before the diagnoses issued by the Armenian doctors on 16 December 2020; they argued that it was beyond reasonable doubt that his condition – at least in the period between those dates – had been the same or similar to that recorded by the Armenian doctors. The applicants asserted that given the fact that there was a lack of medical papers that could rebut the findings of the Armenian doctors, it had to be presumed that the authorities of Azerbaijan had not provided Mr Karen Ghazaryan with the necessary medication for and treatment of his mental disorder (that of paranoid schizophrenia). The applicants emphasised that they had regularly informed the ICRC of their concerns relating to their son's mental disability and that a lack of prescribed medicine would entail a deterioration of his health. The ICRC had informed the authorities of Azerbaijan of these matters.

118. In addition, the applicants argued that by keeping Mr Karen Ghazaryan in solitary confinement, the authorities had failed to secure the kind of facilities required for prisoners with disability. This situation had lasted a long time and had caused irreparable harm to his health, put his life in danger and caused him enormous mental and physical anguish that had lasted for around two and a half years until the treatment for his schizophrenia had resumed in Armenia. Given the particular circumstances of the instant case the use of solitary confinement over so long a time as two years and five months had also in and of itself amounted to a violation of the Convention. Procedural guarantees had not, either, been respected. Mr Karen Ghazaryan had not been informed in writing in a language that he had understood of the reasons for the measure, and had not been given the opportunity to express his views on the matter; moreover, throughout the excessively long period that it had been applied it had never been reviewed. No reasoned decision of the prison authorities had been adduced by the Government.

119. In so far as the applicants asserted that Mr Karen Ghazaryan had not been made aware that he could (i) appeal against the decision on his detention (which had been ordered for four months) or (ii) challenge the decision to place him in solitary confinement or (iii) otherwise challenge the multiple failures to provide him with access to the facilities that were necessary and requisite for a person with a mental disability, they contended that there had

additionally been violations of the procedural limbs of Articles 2 and 3 of the Convention.

(b) The Government

120. The Government submitted that Mr Karen Ghazaryan had never been forced to undergo any kind of treatment contravening the requirements of Article 3 of the Convention at any stage during the period that he had been deprived of his liberty. According to the Government, the Azerbaijani authorities had respected his human dignity; from the very first moment of his being deprived of liberty he had been provided with the necessary living conditions and medical assistance.

(c) The Government of Armenia, third-party intervener

121. The Government of Armenia, third-party intervener, indicated that they consented with the arguments submitted by the applicants and supported their complaints.

2. The Court's assessment

(a) General principles

122. As follows from the Court's above-noted finding relating to admissibility of the complaints under Article 2 and Article 3, respectively (see paragraphs 111-115), only the complaint under Article 3 of the Convention will be examined on the merits.

123. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of democratic society, prohibiting in absolute terms torture or inhuman or degrading treatment or punishment. General principles relevant to the instant case, in particular as concerns the issues of medical treatment and the burden of proof, are set out in cases such as *Blokhin v. Russia* ([GC], no. 47152/06, §§ 135-140, 23 March 2016) and *Rooman v. Belgium* ([GC], no. 18052/11, §§ 141-148, 31 January 2019).

124. With regard to the use of solitary confinement in prisons, the Court has stated that solitary confinement is one of the most serious measures that can be imposed within a prison. In view of the gravity of the measure, the domestic authorities are under an obligation to assess all the relevant factors in an inmate's case before placing him in solitary confinement. In order to avoid any risk of arbitrariness resulting from a decision to place a prisoner in solitary confinement, the decision must be accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure. Firstly, solitary confinement measures should be ordered only in exceptional cases and after every precaution has been taken, as specified in paragraph 53 and – since 1 July 2020 – paragraph 53A of the European Prison Rules. Secondly, the decision imposing solitary confinement must be based on genuine grounds – both at the outset and when its duration is extended.

Thirdly, the decisions issued by the authorities should allow it to be established that those authorities have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour, and they must provide substantive reasons in support thereof. The statement of reasons should be increasingly detailed and compelling as time goes by. Lastly, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances (see, for example, *A.L. (X.W.) v. Russia*, no. 44095/14, § 76, 29 October 2015, with further references to *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 83, 27 January 2009; *Onoufriou v. Cyprus*, no. 24407/04, §§ 70 and 71, 7 January 2010; and *Ramirez Sanchez v. France* [GC], no. 59450/00, § 139, ECHR 2006-IX).

(b) Application of those principles to the facts of the case

125. The Court observes at the outset that the case does not concern alleged injuries sustained during detention in a manner and in circumstances where it would be justified to reverse the burden of proof (see *Blokhin*, cited above, § 139; also contrast, for example, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 82-83, ECHR 2015). It has studied the photographs of Mr Karen Ghazaryan that were taken upon his return to Armenia, showing what has been described as "keloid scars" (see paragraphs 36 and 39 above), but cannot see that these have been explained by reference to something specific during the time when he was in the custody of the authorities of the respondent State. Furthermore, as to his mental disability, the Court observes that it is not contested by the applicants that he suffered from this disability prior to his having been detained in Azerbaijan. What in the instant case falls for the Court to examine is therefore the applicants' submission that there had been a violation of Article 3 of the Convention because Mr Karen Ghazarayan had not been provided with the requisite medical care as a prisoner with a mental disability, which they alleged had led to a deterioration in his condition, and because he had been kept in solitary confinement.

126. Starting with the issues of mental disability, the Court observes that the information from the ICRC's doctors was not entirely conclusive on that point. At first, an ICRC doctor expressed strong doubts that Mr Karen Ghazaryan was suffering from any mental illness and stated that he was completely healthy and did not need any medication (see paragraph 16 above); later there were worries about his condition (see paragraphs 28-29 and 32-33 above), but it also transpires that there was contact between the ICRC and a prison doctor (see paragraphs 26 and 28 above). In their last meeting with ICRC representatives, the applicants were informed that their son's health was assumed to be satisfactory and that he was not receiving any medication (see paragraph 35 above).

127. The Court additionally observes that while the assessments of Mr Karen Ghazaryan's mental health state and his need for treatment are very different in the medical documents adduced by the parties, the descriptions of his symptoms bear more similarities, such as those relating to his making statements about Israel and God (see paragraphs 29, 36, 40 and 53 above).

128. While the Court does not call into question the information provided by the applicants about their son's health, it is nonetheless (on the basis of all the information provided to it) unable to draw any clear conclusion regarding the medical care that he (i) should have received and (ii) actually did receive during the period in which he was deprived of his liberty.

129. Turning to the issue of solitary confinement, the Court observes that it does not appear to be disputed that Mr Karen Ghazaryan was placed in solitary confinement continuously (apart from a few days) from 15 July 2018 until 15 December 2020.

130. The Court observes that the applicants' complaint is at this point largely based on a lack of information, given the fact that Mr Karen Ghazaryan himself has done no more than explain that, save for a few days, he did not see any other inmates; in particular, the applicants argue that no documents have been adduced to justify the measure of solitary confinement – either when it was first imposed or throughout the period in which it was in place.

131. Furthermore, the Court notes that, in the instant case, the Government stated in their observations that "[as a] safety measure ..., the applicant was placed in a solitary confinement". They also set out that he was kept in a cell measuring nine square metres, was supervised by doctors and was allowed to go outside for at least one hour daily (see paragraph 49 above).

132. However, while the brief description given by the Government indicate that Mr Karen Ghazaryan's solitary confinement was not a matter of a complete sensory or total social isolation, but rather a type of "partial and relative" isolation (see, for example, *Ramirez Sanchez*, cited above, § 135), no further explanation and no decision or any other document has been provided to the Court that would make it possible to verify the necessity of any confinement measure. No mention has for example been made of whose safety the applied confinement measure aimed to ensure, whether the need for that measure was reviewed at any point in time, or whether Mr Karen Ghazaryan was informed of any reasons for that measure.

133. In the light of the serious nature of solitary confinement measures, the Court has found violations in situations where the reasons for applying such a measure have been unclear (see, for example, *Onoufriou v. Cyprus* (no. 24407/04, § 71, 7 January 2010) or where there has been no evidence of the authorities having assessed all the relevant factors (see, for example, the above-cited cases of *Ramishvili and Kokhreidze*, § 83, and *A.L. (X.W.)*, §§ 77-82, both cited above).

134. The Court, on the basis of the case file, does not have any grounds for concluding that the placement of Mr Karen Ghazaryan in solitary confinement was based on an objective assessment as to whether or not the measure in question was necessary and appropriate or that there existed any procedural safeguards guaranteeing his welfare and the proportionality of the measure; accordingly, the Court draws the conclusion that his solitary confinement amounted to inhuman and degrading treatment contrary to Article 3 of the Convention, without it having to consider separately the applicant's arguments concerning the physical conditions of his detention (see similarly *A.L. (X.W.) v. Russia*, cited above, § 81, and *A.B. v. Russia*, no. 1439/06, § 112, 14 October 2010).

135. In sum, while the Court does not call into question the information given by the applicants concerning the mental health of Mr Karen Ghazaryan prior to and subsequent to his captivity, it fails to see that this information alone gives the Court sufficient basis for drawing any clear conclusion as to whether Mr Karen Ghazaryan was the victim of ill-treatment within the meaning of Article 3 of the Convention. However, as concerns his being kept in solitary confinement for a prolonged period, the Court finds that there has been a violation of that provision on the grounds that no material has been adduced to explain the circumstances of that measure, including its necessity and any possible procedural safeguards that may have been taken in respect of it.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANTS PERSONALLY

136. The applicants complained that they had been exposed to mental anguish and distress in relation to their son's captivity that had amounted to ill-treatment within the meaning of Article 3 of the Convention.

A. Admissibility

137. 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' and the third-party's arguments

(a) The applicants

138. The applicants complained that they had been exposed to mental anguish and distress once they had learned that their son had been captured in Azerbaijan and, moreover, when they had learned that he was being portrayed as a military prisoner by the authorities of Azerbaijan. They had

subsequently been unable to obtain information (or had obtained only very limited information) about his situation. They had been in fear because they had heard of other cases where civilians caught by border troops of Azerbaijan had not returned to Armenia, and also in the light of the hostility existing between Armenia and Azerbaijan.

(b) The Government

139. The Government submitted that the applicants' mental anguish and distress regarding the capture of their son could not have exceeded the degree of distress that is inherent in every arrest and detention or have attained the minimum level of severity required to be able invoke a violation of Article 3 of the Convention.

(c) The Government of Armenia, third-party intervener

140. The Government of Armenia, third-party intervener, stated that they agreed with the arguments submitted by the applicants and supported their complaints.

2. The Court's assessment

141. The Court notes that after the applicants' son had during the night of 15 July 2018 left the home where he lived together with them, his capture was announced on the following day (see paragraphs 6 and 8 above). The Court finds it established that the applicants were able to gain only limited information about his situation until he was returned on 15 December 2020 (see, *inter alia*, paragraphs 13, 17, 25 and 34 above) and notes the fear and anguish that they felt during that period, as described in their application to the Court.

142. The Court does not call into question the emotional distress of the applicants regarding their son's captivity, detention, trial and imprisonment, especially so in the light of their son's particular vulnerability owing to his mental health complaints (see, *inter alia*, paragraphs 79-80 above). It notes, however, that, according to its case-law relating to complaints of this sort (see, for example, *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, § 90, 30 January 2020, and *Khojoyan and Vardazaryan*, cited above, § 74), special features that give the suffering of applicants a distinct dimension and character are required before individuals can themselves be deemed to be victims of violations of Article 3 of the Convention owing to circumstances involving family members. The facts of the instant case are not such that give rise to that particular categorisation (contrast, for example, *Petrosyan v. Azerbaijan*, no. 32427/16, §§ 74-75, 4 November 2021).

143. It follows that there has been no violation of Article 3 of the Convention in respect of the applicants personally.

V. REMAINING COMPLAINTS

144. The applicants also complained that Mr Karen Ghazaryan's trial had been unfair and not conducted in accordance with Article 6 § 1 of the Convention. In particular, they maintained that the entire trial hearing had been staged and that there had been numerous failures to afford him safeguards required by Article 6 § 3. They also complained that the dissemination in the local Azerbaijani media of pictures of him dressed in a military-style outfit had constituted a violation of Article 8.

145. Moreover, they complained that they and their son had not had at their disposal effective domestic remedies in respect of their Convention complaints, as required by Article 13 and that Mr Karen Ghazaryan had suffered discrimination in the enjoyment of his Convention rights on the grounds of his Armenian origin, contrary to Article 14 read in conjunction with Articles 2, 3, 5, 6, 8 and 13. Lastly, they argued that the respondent State in the present case had hindered the applicants' son's effective exercise of his right of petition, as guaranteed by Article 34.

146. The Government contested the above-noted complaints. The Government of Armenia, third-party intervener, stated that they supported the applicants' claims.

147. As indicated above, the application is characterised by the fact that hardly any information has been provided by Mr Karen Ghazaryan himself; this includes (as the applicants have themselves admitted – see paragraph 83 above) information about the circumstances of his capture in Azerbaijan and of his trial there. While the Court has reviewed all of the applicants' arguments (many of which relate to the documents adduced by the Government), it considers that it has not been provided by the applicants with material relating to their complaints under Articles 6, 8 and 14 of the Convention to the degree that there is a prospect of any findings of violations of those provisions. By extension, as regards the complaints under Articles 13 and 34, the Court considers that – in the absence of any observations or information submitted by Mr Karen Ghazaryan – it does not have any reason to examine further which possibilities or hindrances he may have met under either provision.

148. Given those circumstances, the Court considers that it cannot but declare the remaining complaints under Articles 6, 8, 13 and 14 inadmissible for being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

149. 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

150. The applicants claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

151. The Government submitted that the claim was unsubstantiated and unreasonable. Furthermore, the applicants could not make any claim in respect of just satisfaction on behalf of their son, as he was not an applicant. A finding of a violation would in any event suffice.

152. The Court notes that there have been violations of the rights of the applicants' son, Mr Karen Ghazaryan, but not a separate violation of any of their rights under the Convention (see paragraphs 141-143 above). Having regard to its considerations concerning the admissibility of the complaints lodged on Mr Karen Ghazaryan's behalf (see paragraphs 72-82 above), the Court awards Mr Karen Ghazaryan EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. This is to be paid to the applicants, to be held in trust for him.

B. Costs and expenses

153. The applicants also claimed EUR 6,450 for the costs and expenses incurred before the Court.

154. The Government submitted that the case had been identical for both applicants and that they had not needed separate representatives. The amount was also excessive and unreasonable. The Government considered that EUR 2,000 would suffice.

155. 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 this case, the applicants entered into two separate conditional fee agreements with their respective lawyers, each amounting to EUR 3,225. Agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI). In the present case the Court does not find it decisive that it is the applicants who have incurred the costs and expenses, whereas the violations pertain to their son's rights. Regard being had to the documents in its possession and the above criteria, and taking into account the fact that only a part of the application has been adjudicated on the merits, the Court considers it reasonable to award the sum of EUR 3,225, covering costs and

expenses under all heads for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

156. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. *Dismisses*, by a majority, the Government's objection to Mr Armen Ghazaryan's and Ms Astghik Bayramyan's standing to lodge the application on behalf of their son, Mr Karen Ghazaryan;

2. *Declares*, by a majority, the complaints concerning Articles 3 and 5 of the Convention in respect of the applicant's son, Mr Karen Ghazaryan, admissible;

3. *Declares*, unanimously, the complaint concerning Article 3 of the Convention in respect of the applicants, Mr Armen Ghazaryan and Ms Astghik Bayramyan, admissible;

4. *Declares*, unanimously, the remainder of the application inadmissible;

5. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention in respect of the applicants' son, Mr Karen Ghazaryan;

6. *Holds*, by six votes to one, that there has been a violation of Article 5 § 3 of the Convention in respect of the applicants' son, Mr Karen Ghazaryan;

7. *Holds*, unanimously, that there has been no violation of Article 5 § 4 of the Convention in respect of the applicants' son, Mr Karen Ghazaryan;

8. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the applicants' son, Mr Karen Ghazaryan;

9. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention in respect of the applicants, Mr Armen Ghazaryan and Ms Astghik Bayramyan;

10. *Holds*, by six votes to one,

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts**:**
   (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be held in trust for the applicant's son, Mr Karen Ghazaryan;
   (ii) EUR 3,225 (three thousand two hundred and twenty five euros), jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (iii) 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;

11. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President