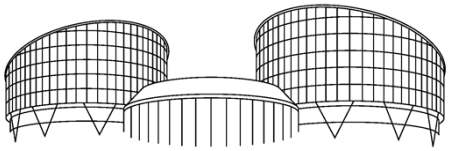

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MAKUCHYAN AND MINASYAN v. AZERBAIJAN AND HUNGARY

(Application no. 17247/13)

JUDGMENT

Art 2 (procedural) • Azerbaijan's unjustified failure to enforce prison sentence for ethnic hate crime, imposed abroad on its officer, who was pardoned, promoted and awarded benefits upon return • Insufficient evidence of flawed criminal proceedings in Hungary • Officer not suffering from serious mental condition • Lack of legal basis for military promotion and other benefits • Resulting impunity incompatible with State's obligation to effectively deter the commission of offences against lives
Art 2 (substantive) • Life • Azerbaijan's "approval and endorsement" of crimes committed by its agent in private capacity, without clear and unequivocal "acknowledgement" and "adoption" of crimes "as its own" • Very high threshold under international law for State responsibility for an act otherwise non-attributable to a State • Cumulative conditions of "acknowledgement" and "adoption" of impugned act as having been perpetrated by State not fulfilled • Domestic monitoring of military officers' compliance with professional standards not inadequate
Art 2 (procedural) (Hungary) • No failure by Hungary to ensure that Azerbaijani national would continue to serve his prison sentence upon transfer to home country • Procedure set out in the Council of Europe Convention on Transfer of Sentenced Persons followed in entirety • No evidence that Hungarian authorities were or should have been aware that the convicted prisoner would be released in Azerbaijan
Art 14 (+ Art 2) • Azerbaijan's failure to disprove arguable allegation of discrimination • State measures leading to the officer's impunity having causal link to the Armenian ethnicity of his victims • Officer glorified by high-ranking officials for his extremely cruel hate crime

STRASBOURG

26 May 2020

FINAL

12/10/2020

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Makuchyan and Minasyan v. Azerbaijan and Hungary,

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

Ganna Yudkivska, *President*,
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Robert Spano,
Faris Vehabović,
Egidijus Kūris,
Lətif Hüseynov, *judges*,
and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 5 June 2018, 25 June 2019, 17 September 2019 and 3 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 17247/13) against Azerbaijan and Hungary 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 Hayk Makuchyan and Mr Samvel Minasyan ("the applicants"), on 25 February 2013. On 27 April 2016 Mr Minasyan's legal representatives informed the Court that Mr Minasyan had died on 8 October 2013 and that his widow, Ms Gayane Nikoghosyan, and their two children, Ms Seda Minasyan and Mr Nshan Minasyan, had stated that they would like Mr Minasyan's case to proceed.

2. The applicants were represented by Mr P. Leach and initially also by Mr V. Grigoryan, lawyers practising in London, and by Mr H. Harutyunyan, Mr L. Gevorgyan, and initially also by Ms S. Sahakyan, lawyers practising in Yerevan. The Azerbaijani Government were represented by their Agent, Mr Ç. Əsgərov. The Hungarian Government were represented by their Agent, Mr Z. Tallódi.

3. Mr Péter Paczolay, the judge elected in respect of Hungary, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court). The President of the Chamber accordingly appointed Mr Robert Spano, the judge elected in respect of Iceland, to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

4. The applicants alleged, in particular, that Azerbaijan had violated Article 2 of the Convention by granting a presidential pardon to a person who had killed the second applicant's relative and attempted to kill the first applicant and who had been sentenced to life imprisonment in Hungary. They also complained that there had been a violation of Article 14 taken in

conjunction with Article 2 because the Armenian ethnic origin of the victims had been the main reason for the murder at issue and for the various subsequent actions of the Azerbaijani authorities, including the pardon and the glorification of the perpetrator. Finally, the applicants complained that Hungary had violated Article 2 of the Convention by granting a request for the transfer of the prisoner without obtaining adequate binding assurances to the effect that he would be required to complete his prison sentence in Azerbaijan.

5. On 12 January 2016 the application was communicated to the respondent Governments. On 7 October 2019 the Court requested further factual information from the respondent Governments.

6. In addition to written observations by the respondent Governments and the applicants, third-party comments were received from the Armenian Government, who had exercised their right to intervene in the case (Article 36 § 1 of the Convention and Rule 44 § 1 (b)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1975 and lives in Ejmiatsin. The second applicant was born in 1958 and lived in Yerevan.

The first applicant is a member of the Armenian military. The second applicant was the uncle of the deceased G.M., who was a lieutenant in the Armenian army.

A. Events of 19 January 2004

8. In January 2004 the first applicant and G.M. arrived in Budapest (Hungary) with a view to participating in a three-month English language course organised within the framework of the NATO-sponsored "Partnership for Peace" programme. The course included two participants from each of the former Soviet Socialist Republics, including two officers from the Azerbaijani army. The participants were all accommodated on the campus of Hungary's National Defence University.

9. At around 5 a.m. on 19 February 2004, one of the members of the Azerbaijani army, R.S., murdered G.M. while he was asleep by decapitating him with at least twelve blows of an axe. R.S. then tried to break down the door of the first applicant's room, allegedly yelling "Open the door, you Armenian! We will cut the throats of all of you!" He was ultimately stopped by the police who had meanwhile arrived at the scene.

10. The Azerbaijani Government disputed whether R.S. had really yelled out "We will cut the throats of all of you!" They argued that only the first applicant had testified to that effect.

B. Criminal proceedings in Hungary

11. In subsequent criminal proceedings, R.S. was questioned by the police four times during the investigation. The first round of questioning took place on 19 February 2004 in the presence of a court-appointed defence lawyer and, at R.S.'s request, an interpreter from Hungarian into Russian. During the questioning, which lasted for three hours, R.S. gave a detailed account of the events. He said that he strongly disliked Armenians because he had lost relatives in the Nagorno-Karabakh conflict. As for the Armenian participants in the language course, R.S. said they had provoked and mocked him and the Azerbaijani flag on several occasions, which was why he had decided to buy an axe and kill them on the anniversary of the beginning of the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh region (for general background information, see *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 12-31, ECHR 2015, and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 14-28, ECHR 2015). For that purpose, he had bought an axe and a sharpening stone in a local store two days prior to the killing. R.S. also admitted that he had murdered G.M. on account of his Armenian origin; he showed no remorse for the crimes committed.

12. At the third round of questioning R.S. said for the first time that, although he spoke Russian, he did not always understand the Russian-language interpreter he had been provided with. At the fourth round of questioning, at his request, R.S. was provided with an interpreter from Hungarian into his native language.

13. The Azerbaijani Government disputed whether R.S. had killed G.M. solely on account of his Armenian nationality. To that end, they produced an affidavit lodged by R.S.'s defence lawyer during the appeal stage of the proceedings, which stated that there was no reasonable evidence that the crime had been committed either because of the Armenian origin of the victim or with extreme brutality. The affidavit also stated that R.S.'s defence rights had been seriously violated during his trial in Hungary. In particular, he had not been informed of his rights during the police questioning and he had initially been provided with an interpreter from Hungarian into Russian, a language which he did not understand.

14. During the criminal proceedings, R.S. was also subjected to four expert psychiatrist examinations. The reports of two of those examinations established that R.S. had been able to understand the danger and the consequences of his actions. Although he had had limited consciousness at the material time, he had not been suffering from a pathological state of mind, rather one which could be considered as healthy but reflecting the gravity of the situation. One of the other psychiatric reports stated that R.S. suffered from post-traumatic stress disorder, and one report was deemed

unacceptable by the court since it had failed to provide replies to relevant questions.

15. On 13 April 2006 the Budapest High Court found R.S. guilty of the exceptionally cruel and premeditated murder of G.M. and of the preparation of the murder of the first applicant. The court also concluded that the crimes had been committed with vile motives and exclusively because of the Armenian nationality of the victims. The first-instance court considered all four psychiatric reports and gave detailed reasons for accepting the conclusions of two of them. It also examined in detail the issue of the alleged premeditation of the crimes, R.S.'s proficiency in Russian (concluding that he had been fluent in that language) and the seriousness of his intent to kill the first applicant. R.S. was sentenced to life imprisonment, with a possibility of conditional release after thirty years.

16. R.S. appealed against the first-instance judgment, claiming, in substance, that because of his poor command of Russian, his psychiatric examinations had not been properly conducted. He also claimed that he had not bought the axe in order to kill the Armenian participants on the course, but for self-defence.

17. The first-instance judgment was upheld by the Budapest Court of Appeal on 22 February 2007. The second-instance court observed that, as regards the language issue, R.S. had been offered an interpreter into whichever language he requested. It also observed that the first-instance court had paid attention to establishing the mental capacity of R.S. by conducting multiple assessments of his mental state, confronting the various experts with each other and committing no faults of logic in its assessment. R.S. was sent to serve his sentence in a Hungarian prison.

C. R.S.'s transfer to Azerbaijan

18. R.S. requested to be transferred to Azerbaijan in 2006 and 2008 in order to enable him to serve his prison sentence in his home country. Both requests were refused by the Hungarian authorities, allegedly owing to another unrelated set of criminal proceedings for violence against a prison guard that had been pending against him in Hungary (see paragraph 188 below).

19. On 12 July 2012 Azerbaijan lodged a fresh request for R.S.'s transfer. Upon a request by the Hungarian authorities under Article 6 § 1 (c) of the Council of Europe Convention on the Transfer of Sentenced Persons ("the Transfer Convention", see paragraph 38 below), on 15 August 2012 Azerbaijan's Ministry of Justice informed them that, in the event of the transfer of a prisoner convicted abroad, the enforcement of the sentence would be continued in Azerbaijan without any "conversion" of the sentence. In addition, the letter stated that in Azerbaijan a person serving a life imprisonment sentence could only be released on parole after serving at

least twenty-five years of the sentence. On 17 August 2012 the Hungarian Minister of Justice agreed to R.S.'s transfer to Azerbaijan with a view to his serving the remainder of his sentence there.

20. On 31 August 2012 R.S. was transferred to Azerbaijan. On arrival, he was set free on the basis of a presidential pardon that had been issued on the same day.

21. On 1 September 2012 R.S. was promoted to the rank of major by the Minister of Defence in a public ceremony. On 6 December 2012 he was provided with the use of a flat belonging to the State housing fund and, on an unknown date, he was also awarded eight years of salary arrears.

22. Following R.S.'s release, on 31 August 2012 the Hungarian Government issued a statement in response to the transfer and pardon of R.S., reiterating the conditions for such a transfer under the Transfer Convention. Furthermore, it reiterated the fact that the Azerbaijani Ministry of Justice had stated that the act for which the sentence had been imposed constituted a criminal offence in Azerbaijan punishable by life imprisonment with the possibility of being released at the earliest only after twenty-five years. Additionally, assurances had been received that R.S.'s sentence would not be converted but would instead continue to be enforced, pursuant to the judgment of the Hungarian courts.

23. In a press release dated 2 September 2012, the Hungarian government expressed its disapproval of the presidential pardon given to R.S. and of the resulting breach of international law, emphasising that it had acted in accordance with all the relevant international rules.

24. A report issued by the Hungarian Commissioner for Fundamental Rights on 7 December 2012 observed that the transfer of R.S. had actually been approved (though not enforced) before any assurances had been received from the Azerbaijani authorities. In the Commissioner's opinion the Hungarian authorities ought to have requested assurances from Azerbaijan that it would not grant a pardon to R.S. – at least not without Hungary's prior knowledge. The failure to do so had endangered the rule of law and the requirement of legal certainty. The Commissioner further stressed that the Hungarian authorities should have been aware of the fact that, upon his transfer, R.S. would be pardoned and that the societies of the two countries assessed his acts in fundamentally different ways.

D. Statements by Azerbaijani officials and public figures

25. The applicants pointed out that a special section had been set up on the web page of the President of Azerbaijan labelled "Letters of Appreciation regarding [R.S.]", where individuals could express their congratulations on his release and pardon. They also submitted the statements cited verbatim below, which, according to them, were made by various Azerbaijani officials and public figures and other individuals, either

after the killing and attempted murder, or following the granting of R.S.'s pardon. The Azerbaijani Government have not contested the veracity of these statements.

"[R.S.] should become an exemplary model of patriotism for the Azerbaijani youth." Elmira Suleymanova, Azerbaijani Ombudsman (2004).

"Armenians should better not sleep peacefully as long as the Karabakh conflict is unsettled, the possibility of incidents similar to the one in Budapest cannot be ruled out." Agshin Mehdiyev, Ambassador, Permanent Representative of Azerbaijan to the Council of Europe (2004).

"... If at present stage, the Azerbaijani public does not manage to rescue [R.S.] from the hands of the Armenian diaspora, we will not be able to win the war for the liberation of the occupied Azerbaijani lands in the future." Gultekin Gajiyeva, then a member of the Azerbaijani delegation to the Parliamentary Assembly of the Council of Europe (2004).

"If we do not manage to defend [R.S.] now, no Azerbaijani will bear arms against the Armenians in case of need in the future." Zakhid Oruj, Azerbaijani member of parliament (2004).

"[R.S.] must become a symbol of patriotism for the Azerbaijani youth. We therefore ask for high distinction of the Azerbaijani officer for such courage." The Organisation for the Liberation of Karabakh (2005).

"Dear [R.S.]! Congratulations! Inshallah, I wish that you celebrate your thirty-fifth birthday at home. After having met you in the Hungarian jail and a long talk with you, I am grateful to fate that I am closely acquainted with such a patriotic young man who loves his country." An Azerbaijani Member of Parliament (2011).

"We all dream that [R.S.], being a role model for any Azerbaijani citizen, returns to the motherland. However, unfortunately, that is still impossible. So what are the reasons it has not been possible to achieve his extradition? Of course, our enemies hinder that, they exert every possible effort to prevent his return to the motherland. And that is understandable – they have no heroes like [R.S.] and will never have; ones who love their motherland, their people, love their nation more than themselves and care for its honour. As for us, we have many young men and women like [R.S.], who are selfless patriots." Elnara Kerimova (2011).

"[R.S.] hacked an Armenian officer to death with an axe in 2004. At first people supported him, and then forgot him. When Eynullah Fatullayev was in custody, there were more people with bleeding hearts for him, than for [R.S.] who killed an Armenian serf." Cinare Vuqar (2011).

"At present, conferral of the title of a national hero upon [R.S.], who is a hostage in a Hungarian prison, may become a pillar and basis for raising patriotic and combat spirit of the Azerbaijani youth ... He was forced to choose that path, and as a true officer, he punished – in a truly Turkish way – the man who insulted the flag of the independent Azerbaijan. The motherland must evaluate this deed on the merits. Mr President! On behalf of the Azerbaijani youth, we ask you, as the President and the Commander-in-Chief of the armed forces to confer a title of a national hero upon [R.S.] and to perpetuate his name." Zaur Aliyev, head of the "Diaspora and Lobby" Centre for Strategic Research (2011).

"[R.S.] has been released! Congratulations, Azerbaijani people! We are grateful to the President of the country for returning [R.S.] to Azerbaijan and for pardoning him." Ganira Pashayeva, Member of Parliament (2012).

"[R.S.] has fulfilled his duty before the Azerbaijani people; the State and the public have evaluated [R.S.] on the merits." Akif Nagi, Chairman of the Organisation for the Liberation of Karabakh (2012).

"The decree of the Azerbaijani President Ilham Aliyev on pardoning is worthy of the highest praise. The Ministry of Defence has been glad to hear the news on [R.S.'s] extradition from Hungary to Azerbaijan and the further pardon of him." Teymur Abdullayev, deputy head of the Azerbaijani Ministry of Defence's press office (2012).

"It has become yet another proof of humanism of President Ilham Aliyev, of his care for Azerbaijani citizens." Elmira Suleymanova, Azerbaijani Ombudsman (2012).

"For this reason it is necessary to create conditions for service of such officers as [R.S.], who are willing to sacrifice themselves, patriots of Azerbaijan." Bahar Muradova, Azerbaijani Vice-speaker of Parliament (2012).

"Several thousands of representatives of Azerbaijani Diaspora of Ukraine have been very happy to learn about extradition and pardon of the officer of Azerbaijani army, [R.S.]." Hikmet Javadov, delegate to the Congress of Azerbaijanis in Ukraine (2012)

"The handover of [R.S.] to the Azerbaijani side and his pardon is a heart-warming event for the whole Azerbaijan and is an evidence of triumph of justice." Rauf Mardiyev, Chairman of the Ireli Public Union (2012).

"And I am absolutely sure that it is quite natural that [R.S.] was welcomed in Azerbaijan as a hero." Geydar Dzhemal, Political Analyst, Chairman of the Islamic Committee of Russia (2012).

"Having granted a pardon to [R.S.], the President of Azerbaijan explained to the whole world that people working for their Homeland should protect it." Araz Alizade, Chairman of the Social Democratic Party (2012).

"In my opinion, the decision related to his extradition was a right one. And it is adequate that the Head of the State adopted the decision on granting pardon so quickly, without looking back on the Armenian clamours. It also coincides with public expectations." Rasim Musabekov, Azerbaijani member of parliament (2012).

"In our opinion it is a fair decision, which undoubtedly makes our enemies worry. However, we don't care, for the aim of each Azerbaijani is to fight against his enemies, wherever he is." Abulfaz Garayev, Azerbaijani Minister of Culture and Tourism (2012).

"People accepted the order of the President of Azerbaijan on granting pardon after the extradition to Azerbaijan with great pleasure and satisfaction." Ali Akhmedov, Deputy Chairman of PYA, its Executive Secretary, Member of Parliament.

"[R.S.] was returned to his homeland and on that very day the order on granting a pardon to him was signed. I think it's important that the given problem between Hungary and Azerbaijan is solved, and those having worked for it deserve praise. [R.S.] was severely punished for his actions, for his serious mistake, in the course of his stay in Hungary he behaved particularly faultlessly, learned the language, translated books. His arrival to his homeland, his release, is a very positive fact, congratulations to his family and relatives." Isa Gambar, leader of the Musavat Party (2012).

"I personally assess the order of the President of Azerbaijan on granting pardon to R.S. as a courageous and brave step taken by the Head of State, as well as restoration of justice ... Let's not forget that [R.S.] and Nagorno-Karabakh are victims of the Armenian provocations. [R.S.] is free, now it is Nagorno-Karabakh's turn, which will be independent very soon. The day is close when President Ilham Aliyev, Supreme Commander-in-Chief of the country, will declare the independence[1] of Nagorno-Karabakh." Ali Ahmedov, Deputy Chairman of the Yeni Azerbaijan party (2012).

"The granting of a pardon to [R.S.], officer of the Azerbaijani army, by President Ilham Aliyev is a very happy event ... [R.S.'s] extradition from Hungary to Azerbaijan and the pardon granted to him logically derive from the policy pursued by the President of Azerbaijan on releasing officer-patriots ... Logically, [R.S.'s] release is the proof of attention paid to our patriots and people with national spirit ... The actions taken by [R.S.] then were forced. Showing disrespect to our nation, hurting our feelings by an Armenian made him take that step ... [R.S.'s] moral superiority was shown during his imprisonment." Mubariz Qurbanii, Deputy Executive Secretary of the Yeni Azerbaijan party, and Member of Parliament (2012).

"This brave step taken by the Head of State shows that, as President of Azerbaijan and Supreme Commander-in-Chief, he supports every national, every soldier and officer of Azerbaijan. This is also an appeal for solidarity to all the Azerbaijani people in front of the enemy." Fuad Aleskerov, head of the Azerbaijani presidential administration's Department for Work with Law-enforcement Bodies (2012).

"This event is a reason for happiness and pride for each of us. To see our soldier here, the faithful son of his nation, taken to prison only because he rose to protect the glory and honour of his homeland and people, is very impressive ... The Armenian party launched an anti-Azerbaijani campaign, made up all kinds of slander with respect to this matter. That is why the steps for [R.S.'s] transfer to Azerbaijan should have been taken in full secrecy. For a year, secret negotiations and correspondence were conducted under the strict control of President Ilham Aliyev, including with law-enforcement bodies of Hungary. The agreement reached during the visit of Viktor Orbán, Prime Minister of Hungary, to Azerbaijan, played a crucial role in this matter. [R.S.] was transferred to Azerbaijan due to the determination and will of the President of Azerbaijan." Novruz Mammadov, head of the Azerbaijani presidential administration's Foreign Relations Department (2012).

"[R.S.'s] release strengthened the authority of the nation. [R.S.] is not only the son of his father, but he is also the representative of the Azerbaijani people ... this event may enhance the national spirit ... [R.S.] will fight against the Armenians at the Karabakh front. I am sure that people congratulating each other today will congratulate each other for the liberation of the occupied lands." Zahid Orudj, member of the Azerbaijani Parliamentary Commission on Defence and Security (2012).

26. The Azerbaijani Government submitted the following statements by various officials:

"... The question of the extradition of [R.S.] was a national and public issue of Azerbaijan in every sense of the word ... Of course, the act committed by [R.S.] has never been approved by the authorities of Azerbaijan; for that act he was arrested by the Hungarian court, and we believe that this corresponds to committed act. But there is one question that Azerbaijani society has discussed for several years. ... At that

1. The text as submitted by the applicants refers to "liberation".

time, the Hungarian court treated [R.S.] too cruelly, and imposed an inappropriate punishment on him, under heavy pressure from the Armenians, including the pressure of the representatives of some of the pro-Armenian diaspora, and foreign organisations ... For the crime committed by [R.S.], European countries, Azerbaijan, and Armenia itself and others impose a punishment of fifteen years, and after serving half the sentence, a prisoner, falling under an amnesty for good behaviour, is released. Therefore, the punishment passed by the Hungarian court for eight and a half years has continuously been assessed by Azerbaijani people as an inappropriate decision ... The result is obvious, and today, after eight and a half years of serving the sentence, the Azerbaijani society regards [R.S.'s] release as a just act. In fact, the President of Azerbaijan pardoned [R.S.] using both the opinion formed during that time, and the possibility, created by Azerbaijani law as well ... The Azerbaijani authorities and socio-political circles do not assess the act committed by [R.S.] as heroic ... We believe that R.S. had to answer for what he did, and he did answer. But the inappropriateness of the sentence passed against him to some extent has inclined the Azerbaijani public towards [R.S.] ..." Ali Hasanov, head of the Azerbaijani presidential administration's Social and Political Department (2012).

"As far as the issue of glorification is concerned, then the facts are clearly distorted in order to blow them up. Even though we brought tragic reasons, which led to a grave event, [R.S.'s] actions were never approved or justified at the official level. He was not welcomed by the high officials ..." Statement by the delegation of the Ministry of Justice of Azerbaijan to the Council of Europe's thirty-first Conference of Ministers of Justice (2012).

II. RELEVANT DOMESTIC LAW

A. Azerbaijan

27. The Constitution of the Republic of Azerbaijan of 12 November 1995, as amended by the referendum of 24 August 2002, provides as follows:

Article 109
Powers of the President of the Republic of Azerbaijan

"The President of the Republic of Azerbaijan:

...

22. [is empowered to] grant a pardon;

..."

Article 113
Acts of the President of the Republic of Azerbaijan

"I. When establishing general rules, the President of the Republic of Azerbaijan shall issue decrees, and in respect of other questions, he or she shall issue orders."

Article 130
The Constitutional Court of the Republic of Azerbaijan

"III. The Constitutional Court of the Republic of Azerbaijan, on the basis of a request submitted by the President of the Republic of Azerbaijan, the Milli Majlis of the Republic of Azerbaijan, the Cabinet of Ministers of the Republic of Azerbaijan, the Supreme Court of the Republic of Azerbaijan, the Prosecutor's Office of the Republic of Azerbaijan, and the Ali Majlis of the Autonomous Republic of Nakhchyvan, shall resolve the following issues:

1. the conformity of laws of the Republic of Azerbaijan, decrees and orders of the President of the Republic of Azerbaijan, resolutions of the Milli Majlis of the Republic of Azerbaijan, resolutions and orders of the Cabinet of Ministers of the Republic of Azerbaijan, and normative legal acts of central executive bodies with the Constitution of the Republic of Azerbaijan;

2. the conformity of decrees of the President of the Republic of Azerbaijan, resolutions of the Cabinet of Ministers of the Republic of Azerbaijan, and normative legal acts of central executive bodies with laws of the Republic of Azerbaijan;

...

V. Every person shall have the right to lodge, in accordance with the procedure provided by law, complaints with the Constitutional Court of the Republic of Azerbaijan against normative acts of the legislative and executive authorities, acts of municipalities, and judicial acts infringing his or her rights and freedoms, for resolution by the Constitutional Court of the Republic of Azerbaijan of the issues referred to in items 1-7 of Paragraph III of the present Article, for the purpose of restoration of his or her violated rights and freedoms."

28. The relevant provisions of the Code of Criminal Procedure of Azerbaijan provide as follows:

Article 56
Persons entitled to damages

"56.0. The following persons shall have the right to compensation for the damage caused through error or abuse by the prosecuting authority:

56.0.1. an accused who is acquitted;

56.0.2. a person against whom a criminal prosecution is discontinued ...;

56.0.3. a person against whom a criminal prosecution should have been discontinued ... but was not discontinued in a timely manner and was pursued further.

56.0.4. a person against whom a criminal prosecution should have been discontinued ..., but which was continued even though the decision [on discontinuation] was upheld;

56.0.5. a person unlawfully arrested or placed in a medical or educational institution by force or a person kept in detention on remand without legal grounds for longer than the prescribed period of time;

56.0.6. a person unlawfully subjected to coercive procedural measures during criminal proceedings ..."

Article 57
Characteristics of compensation

"57.1. The persons stipulated in Article 56 of this Code shall be paid compensation for non-material, physical and material damage resulting from error or abuse by the prosecuting authority. These persons' residence and labour rights shall also be restored; if that is not possible, they shall be guaranteed financial compensation for a breach of these rights ..."

Article 58
Compensation for damage suffered

"58.1. Material damage as a result of error or abuse by the prosecuting authority shall be substantiated, then calculated and compensated for in full.

58.2. Compensation for pecuniary and non-pecuniary damage shall be paid on the basis of a fair assessment by the court if no other statutory arrangement is laid down.

58.3. Compensation shall be paid as follows to the persons stipulated in Article 56 of this Code for:

58.3.1. loss of salary, pension, allowances and other income;

58.3.2. loss of property caused by forfeiture, transfer to the State, removal by the investigating authorities or distraint;

58.3.3. legal costs;

58.3.4. fees paid to defence counsel;

58.3.5. fines paid or taken during the execution of the sentence ..."

Article 59
Restoration of other rights in relation to compensation for damage

"59.1. The persons provided in Article 56 of this Code shall have the following rights regarding compensation for damage suffered:

59.1.1. to be reinstated in their previous position; if that is not possible, to be appointed to an equivalent position or to receive financial compensation for loss of the previous position;

59.1.2. for periods of deprivation of liberty and restricted liberty to be included in their [recorded] periods of employment;

59.1.3. to return to their previous residence; if that is not possible, to move to equivalent accommodation with regard also to district and situation;

59.1.4. to the restoration of any special or military rank;

59.1.5. to the return of any honorary title or State award ..."

29. The Regulation on Pardons, approved by Order no. 538 of 18 July 2001 of the President of the Republic of Azerbaijan sets out the procedure to be followed in cases of pardons. It provides that a convicted person may apply for a pardon upon expiry of a certain period of time. A pardon application is to be submitted to the Commission on Pardon Issues (*Əfv Məsələləri Komissiyası*), operating directly under the authority of the President of the Republic of Azerbaijan. The Commission examines the

case, consults the Prosecutor General and the Supreme Court, and delivers a recommendation to the President to refuse or to allow the pardon application. The relevant parts of the Regulation read as follows:

I. General terms

"1. In accordance with Article 109 § 22 of the Constitution of the Republic of Azerbaijan, a pardon, being a discretionary power of the President of the Republic of Azerbaijan, is granted in respect of individually identified persons. Pardons shall be granted, as a rule, in line with the provisions of this Regulation. Decisions on pardons shall be formalised by an executive order of the President of the Republic of Azerbaijan.

2. Pardons may be granted to nationals of the Republic of Azerbaijan, foreigners or stateless persons convicted by the courts of the Republic of Azerbaijan or the courts of other States and serving their sentence in the Republic of Azerbaijan.

3. Further to the executive order of the President of the Republic of Azerbaijan:

3.1. the convicted person may be released from serving the remaining part of the sentence;

3.2. the term of imprisonment may be reduced;

3.3. the remaining part of the sentence may be replaced with a lighter sentence.

4. Further to the executive order of the President of the Republic of Azerbaijan, life imprisonment may also be replaced with imprisonment for a term not exceeding twenty-five years or the criminal record of the convicted person can be erased. ...

II. Application for a pardon

...

8. An application for a pardon may be submitted, as a rule, upon expiry of the following periods:

...

8.4. in relation to a person sentenced to life imprisonment – after serving ten years of the sentence ..."

30. The relevant parts of the Regulation on Military Service, approved by Law no. 377-IQ of 3 October 1997 of the Republic of Azerbaijan, read as follows:

Chapter IV
Military promotion

"41. Every military serviceman shall be assigned the relevant military rank depending on his or her service position, military and special education, duration of service, duration of being a reservist, belonging to a type and branch of the armed forces, achievements and other conditions provided in this Regulation. ...

42. Military servicemen shall be advanced in rank consecutively according to their military position and following the expiry of their term of service in the previous rank.

Military servicemen shall be advanced in rank, having regard to the provisions of this Article, as follows:

junior rank officers – by the [Minister of Defence of the Republic of Azerbaijan];

senior rank officers – by the [Minister of Defence of the Republic of Azerbaijan];

general officers – by the [President of the Republic of Azerbaijan] upon submission of the [Minister of Defence of the Republic of Azerbaijan].

45. The following years in grade shall be defined:

... captain ... four years ...

... major ... five years ...”

31. The relevant parts of Law no. 274-IVQ of 23 December 2011 on military duty and military service (*Hərbi vəzifə və hərbi xidmət haqqında qanun*) provide as follows:

Article 32

“32.1 Servicemen who have demonstrated higher moral and military skills in the exercise of their military duties, achieved higher results in military preparedness and in strengthening military discipline, performed an exemplary service and executed military duties may be promoted early to a higher military rank after carrying out half of the service period provided for at the previous military rank (in times of war, regardless of the period of service).”

Article 33

“33.1 Servicemen who have been convicted of a serious or an especially serious crime may be deprived of their military rank by a court decision.”

B. Hungary

32. Article 166 of the Hungarian Criminal Code (Act no. IV of 1978), as in force at the material time, reads as follows:

“1. A person who kills someone commits a felony punishable by imprisonment for between five and fifteen years.

2. The penalty shall be imprisonment for between ten and twenty years, or life imprisonment, if the homicide is committed:

(a) with premeditation;

...

(c) with other malice aforethought or with any other malicious motive;

(d) with particular cruelty;

...

3. Any person who engages in preparations to commit homicide [may be punished] by imprisonment for between one and five years.”

III. RELEVANT INTERNATIONAL MATERIALS

33. Below is a selection of the legal documents which are most relevant to the applicants' case.

A. United Nations

34. Article 11 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("the Draft Articles") reads as follows:

Article 11
Conduct acknowledged and adopted by a State as its own

> "Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own."

35. The relevant parts of the Commentary on Article 11 of the Draft Articles read as follows:

> "(4) Outside the context of State succession, the *United States Diplomatic and Consular Staff in Tehran* case provides a further example of subsequent adoption by a State of particular conduct. There ICJ drew a clear distinction between the legal situation immediately following the seizure of the United States embassy and its personnel by the militants, and that created by a decree of the Iranian State which expressly approved and maintained the situation.
>
> In the words of the Court:
>
> 'The policy thus announced by the Ayatollah Khomeini, of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the United States Government was complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts. The result of that policy was fundamentally to transform the legal nature of the situation created by the occupation of the Embassy and the detention of its diplomatic and consular staff as hostages. The approval given to these facts by the Ayatollah Khomeini and other organs of the Iranian State, and the decision to perpetuate them, translated continuing occupation of the Embassy and detention of the hostages into acts of that State.'
>
> ...
>
> (5) As regards State practice, the capture and subsequent trial in Israel of Adolf Eichmann may provide an example of the subsequent adoption of private conduct by a State. On 10 May 1960, Eichmann was captured by a group of Israelis in Buenos Aires. He was held in captivity in Buenos Aires in a private home for some weeks before being taken by air to Israel. Argentina later charged the Israeli Government with complicity in Eichmann's capture, a charge neither admitted nor denied by Israeli Foreign Minister Golda Meir, during the discussion in the Security Council of the complaint. She referred to Eichmann's captors as a 'volunteer group'. Security Council resolution 138 (1960) of 23 June 1960 implied a finding that the Israeli Government was at least aware of, and consented to, the successful plan to capture Eichmann in Argentina. It may be that Eichmann's captors were 'in fact acting on the

instructions of, or under the direction or control of' Israel, in which case their conduct was more properly attributed to the State under article 8. But where there are doubts about whether certain conduct falls within article 8, these may be resolved by the subsequent adoption of the conduct in question by the State.

(6) The phrase 'acknowledges and adopts the conduct in question as its own' is intended to distinguish cases of acknowledgement and adoption from cases of mere support or endorsement. ICJ in the *United States Diplomatic and Consular Staff in Tehran* case used phrases such as 'approval', 'endorsement', 'the seal of official governmental approval' and 'the decision to perpetuate [the situation]'. These were sufficient in the context of that case, but as a general matter, conduct will not be attributable to a State under article 11 where a State merely acknowledges the factual existence of conduct or expresses its verbal approval of it. In international controversies, States often take positions which amount to 'approval' or 'endorsement' of conduct in some general sense but do not involve any assumption of responsibility. The language of 'adoption', on the other hand, carries with it the idea that the conduct is acknowledged by the State as, in effect, its own conduct. Indeed, provided the State's intention to accept responsibility for otherwise non-attributable conduct is clearly indicated, article 11 may cover cases where a State has accepted responsibility for conduct of which it did not approve, which it had sought to prevent and which it deeply regretted. However such acceptance may be phrased in the particular case, the term 'acknowledges and adopts' in article 11 makes it clear that what is required is something more than a general acknowledgement of a factual situation, but rather that the State identifies the conduct in question and makes it its own.

...

(8) The phrase 'if and to the extent that' is intended to convey a number of ideas. First, the conduct of, in particular, private persons, groups or entities is not attributable to the State unless under some other article of chapter II or unless it has been acknowledged and adopted by the State. Secondly, a State might acknowledge and adopt conduct only to a certain extent. In other words, a State may elect to acknowledge and adopt only some of the conduct in question. Thirdly, the act of acknowledgment and adoption, whether it takes the form of words or conduct, must be clear and unequivocal.

(9) The conditions of acknowledgement and adoption are cumulative, as indicated by the word 'and'. The order of the two conditions indicates the normal sequence of events in cases in which article 11 is relied on. Acknowledgement and adoption of conduct by a State might be express (as for example in the *United States Diplomatic and Consular Staff in Tehran* case), or it might be inferred from the conduct of the State in question."

36. In the Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*, Judgment of 27 February 2007, *ICJ Reports* 2007, p. 43), the International Court of Justice held as follows:

"414. Finally, the Court observes that none of the situations, other than those referred to in Articles 4 and 8 of the ILC's Articles on State Responsibility, in which specific conduct may be attributed to a State, matches the circumstances of the present case in regard to the possibility of attributing the genocide at Srebrenica to the Respondent. The Court does not see itself required to decide at this stage whether the ILC's Articles dealing with attribution, apart from Articles 4 and 8, express present

customary international law, it being clear that none of them apply in this case. The acts constituting genocide were not committed by persons or entities which, while not being organs of the FRY, were empowered by it to exercise elements of the governmental authority (Art. 5), nor by organs placed at the Respondent's disposal by another State (Art. 6), nor by persons in fact exercising elements of the governmental authority in the absence or default of the official authorities of the Respondent (Art. 9); finally, the Respondent has not acknowledged and adopted the conduct of the perpetrators of the acts of genocide as its own (Art. 11).

415. The Court concludes from the foregoing that the acts of those who committed genocide at Srebrenica cannot be attributed to the Respondent under the rules of international law of State responsibility: thus, the international responsibility of the Respondent is not engaged on this basis."

37. In its Decision on defence motion challenging the jurisdiction of the Tribunal, issued on 9 October 2002 in *Prosecutor v. Dragan Nikolić* (Case No. IT-94-2), the International Criminal Tribunal for the former Yugoslavia held as follows:

"60. In determining the question as to whether the illegal conduct of the individuals can somehow be attributed to SFOR, the Trial Chamber refers to the principles laid down in the Draft Articles of the International Law Commission ('ILC') on the issue of 'Responsibilities of States for Internationally Wrongful Acts'. These Draft Articles were adopted by the ILC at its fifty-third session in 2001. The Trial Chamber is however aware of the fact that any use of this source should be made with caution. The Draft Articles were prepared by the International Law Commission and are still subject to debate amongst States. They do not have the status of treaty law and are not binding on States. Furthermore, as can be deduced from its title, the Draft Articles are primarily directed at the responsibilities of States and not at those of international organisations or entities. As Draft Article 57 emphasises,

> [t]hese articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State for the conduct of an international organization.

61. In the present context, the focus should first be on the possible attribution of the acts of the unknown individuals to SFOR. As indicated in Article I of Annex 1-A to the Dayton Agreement, IFOR (SFOR) is a multinational military force. It 'may be composed of ground, air and maritime units from NATO and non-NATO nations' and 'will operate under the authority and subject to the direction and political control of the North Atlantic Council.' For the purposes of deciding upon the motions pending in the present case, the Chamber does not deem it necessary to determine the exact legal status of SFOR under international law. Purely as *general* legal guidance, it will use the principles laid down in the Draft Articles insofar as they may be helpful for determining the issue at hand.

...

64. The Trial Chamber observes that both Parties use the same and similar criteria of 'acknowledgement', 'adoption', 'recognition', 'approval' and 'ratification', as used by the ILC. The question is therefore whether on the basis of the assumed facts SFOR can be considered to have 'acknowledged *and* adopted' the conduct undertaken by the individuals 'as its own'. It needs to be re-emphasised in this context that it cannot be deduced from the assumed facts that SFOR was in any way, directly or indirectly, involved in the actual apprehension of the accused in the FRY or in the transfer of the accused into the territory of Bosnia and Herzegovina . Nor has it in any way been

argued or suggested that SFOR instructed, directed or controlled such acts. What can be concluded from the assumed facts is merely that the Accused was handed over to an SFOR unit after having been arrested in the FRY by unknown individuals and brought into the territory of Bosnia and Herzegovina. From the perspective of SFOR, the Accused had come into contact with SFOR in the execution of their assigned task. In accordance with their mandate and in light of Article 29 of the Statute and Rule 59 *bis*, they were obliged to inform the Prosecution and to hand him over to its representatives. From these facts, the Trial Chamber can readily conclude that there was no collusion or official involvement by SFOR in the alleged illegal acts."

B. Council of Europe materials

38. The 1983 Council of Europe Convention on the Transfer of Sentenced Persons (ETS 112 – "the Transfer Convention") was ratified by both Azerbaijan and Hungary, in 2001 and 1993, respectively. The relevant provisions of that treaty read as follows:

Preamble

"The member States of the Council of Europe and the other States, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Considering that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society; and

Considering that this aim can best be achieved by having them transferred to their own countries ..."

Article 2 – General principles

"1. The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.

2. A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.

..."

Article 6 – Supporting documents

"1. The administering State, if requested by the sentencing State, shall furnish it with:

(a) a document or statement indicating that the sentenced person is a national of that State;

(b) a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;

(c) a statement containing the information mentioned in Article 9.2.

..."

Article 9 – Effect of transfer for administering State

"1. The competent authorities of the administering State shall:

(a) continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or

(b) convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.

2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.

3. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.

..."

Article 10 – Continued enforcement

"1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State."

Article 11 – Conversion of sentence

"1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:

(a) shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;

(b) may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

(c) shall deduct the full period of deprivation of liberty served by the sentenced person; and

(d) shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure."

Article 12 – Pardon, amnesty, commutation

"Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws."

39. A declaration by the Azerbaijani Government in respect of Article 12 of the Convention on the Transfer of Sentenced Persons contained in the instrument of ratification submitted by the Azerbaijani Government reads as follows:

"In accordance with Article 12 of the Convention, the Republic of Azerbaijan declares that decisions regarding the pardons and amnesties of sentenced persons transferred by the Republic of Azerbaijan should be agreed with the relevant competent authorities of the Republic of Azerbaijan."

40. Recommendation 1527 (2001) of the Parliamentary Assembly of the Council of Europe on the Operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations, in so far as relevant, reads as follows:

"1. The Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 112) provides for the transfer of foreign prisoners to their home countries, both for their own sake and because transfer enhances rehabilitation and reintegration into society, and consequently reduces recidivism. ...

9. For the reasons set out above, the Assembly recommends that the Committee of Ministers: ...

9.3. draw up a new recommendation to member states on the interpretation and application of the Convention, with the following objectives:

...

b. to state clearly that the Convention is not designed to be used for the immediate release of prisoners on return to their own country; ..."

41. Resolution 2022 (2014) of the Parliamentary Assembly of the Council of Europe on measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112), in so far as relevant, reads as follows:

"1. The Convention on the Transfer of Sentenced Persons (ETS No. 112) provides for the transfer of foreign prisoners to their home countries. Its purpose is primarily humanitarian, to improve prospects of rehabilitation and reintegration of prison inmates into society.

...

3. The Assembly notes with concern that the Convention was invoked in order to justify the immediate release, upon transfer to Azerbaijan, of [R.S.], an Azerbaijani soldier convicted of murdering an Armenian fellow participant on a 'Partnership for Peace' training course in Hungary, sponsored by the North Atlantic Treaty Organization (NATO). Upon his arrival in Azerbaijan, he was welcomed as a national hero and granted an immediate pardon – long before the expiry of the minimum sentence set by the Hungarian court – and a retroactive promotion as well as other rewards.

4. While recognising that States Parties, by virtue of Article 12 of the Convention, have a sovereign right to grant pardons and amnesties to persons sentenced to a term of imprisonment, the Assembly recalls that the principle of good faith in international relations, recognised, *inter alia*, by the Vienna Convention on the Law of Treaties, and the principles of the rule of law require that treaties be interpreted in line with their objects and purposes.

5. The Assembly therefore:

5.1. condemns the use of Article 12 of the Convention by Azerbaijan in the case of [R.S.] as a violation of the principles of good faith in international relations and of the rule of law;

5.2. confirms its position, expressed in Recommendation 1527 (2001) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations, that the Convention is not designed to be used for the immediate release of prisoners upon return to their home country;

5.3. underscores the importance of applying the Convention in good faith and, in interpreting its provisions, adhering to the principles of the rule of law, in particular in transfer cases that might have political or diplomatic implications;

5.4. recommends to States Parties to the Convention to make, where appropriate, *ad hoc* arrangements between a sentencing and an administering State in the form of an addendum to a transfer agreement under the Convention, which would spell out mutual expectations and provide for adequate assurances by the administering State."

IV. RELEVANT EUROPEAN UNION MATERIALS

42. In its resolution of 13 September 2012 on Azerbaijan: the [R.S.] case (2012/2785(RSP)), the European Parliament held as follows:

"The European Parliament,

...

A. whereas [R.S.] had been jailed in a Hungarian prison since 2004 after brutally killing an Armenian colleague during a course sponsored by NATO's Partnership for Peace Programme in Budapest; whereas [R.S.] had pleaded guilty and had expressed no remorse, defending his action on the grounds that the victim was Armenian;

B. whereas on 31 August 2012 [R.S.], a lieutenant of the Azerbaijani armed forces who had been convicted of murder and sentenced to life imprisonment in Hungary, was transferred to Azerbaijan at the longstanding request of the Azerbaijani authorities;

C. whereas immediately after [R.S.] was transferred to Azerbaijan the Azerbaijani President, Ilham Aliyev, pardoned him in line with the Constitution of the Republic of Azerbaijan and Article 12 of the Convention on the Transfer of Sentenced Persons;

D. whereas Article 9 of the Convention on the Transfer of Sentenced Persons, to which Hungary and Azerbaijan are both signatory parties, states that a person sentenced in the territory of one state may be transferred to the territory of another in order to serve the sentence imposed on him or her, provided that the conditions laid down in that Convention are met;

E. whereas the Deputy Minister of Justice of the Republic of Azerbaijan, Vilayat Zahirov, sent an official letter to the Ministry of Public Administration and Justice of Hungary on 15 August 2012, in which he stated that the execution of the decisions of foreign states' courts regarding the transfer of sentenced persons to serve the remaining part of their prison sentences in the Republic of Azerbaijan were carried out in accordance with Article 9 (1) (a) of the Convention, without any conversion of their sentences; whereas he further gave an assurance that, according to the Criminal Code of the Republic of Azerbaijan, the punishment of a convict serving a life sentence could only be replaced by a court with a term of imprisonment for a specified period, and that the convict could be released on conditional parole only after serving at least 25 years of his or her prison sentence; and whereas the Azerbaijani authorities subsequently denied having given any diplomatic assurances to the Hungarian authorities;

F. whereas [R.S.] received a glorious welcome in Azerbaijan and a few hours after his return was granted a presidential pardon, set free and promoted to the rank of major during a public ceremony;

G. whereas the decision to set [R.S.] free triggered widespread international reactions of disapproval and condemnation;

...

1. Stresses the importance of the rule of law and of honouring commitments made;

2. Deplores the decision by the President of Azerbaijan to pardon [R.S.], a convicted murderer sentenced by the courts of a Member State of the European Union; regards that decision as a gesture which could contribute to further escalation of the tensions between two countries, and which is exacerbating feelings of injustice and deepening the divide between those countries, and is further concerned that this act is jeopardising all peaceful reconciliation processes within the societies concerned and may undermine the possible future development of peaceful people-to-people contact in the region;

3. Considers that, while the presidential pardon granted to [R.S.] complies with the letter of the Convention on the Transfer of Sentenced Persons, it runs contrary to the spirit of that international agreement, which was negotiated to allow the transfer of a person convicted on the territory of one state to serve the remainder of his or her sentence on the territory of another state;

4. Considers the presidential pardon granted to [R.S.] as a violation of the diplomatic assurances given to the Hungarian authorities in Azerbaijan's request for transfer on the basis of on the Convention on the Transfer of Sentenced Persons;

5. Deplores the hero's welcome accorded to [R.S.] in Azerbaijan and the decision to promote him to the rank of major and pay him eight years' back salary upon his arrival, and is concerned about the example this sets for future generations and about the promotion and recognition he has received from the Azerbaijani state;

6. Takes the view that the frustration in Azerbaijan and Armenia over the lack of any substantial progress as regards the peace process in Nagorno-Karabakh does not justify either acts of revenge or futile provocations that add further tension to an already tense and fragile situation;

..."

THE LAW

I. PRELIMINARY ISSUES

A. *Locus standi*

43. The second applicant died on 8 October 2013. His wife and children expressed the wish to continue the application on his behalf.

44. The respondent Governments did not submit any comments in this respect.

45. The Court observes that in various cases in which an applicant has died in the course of Convention proceedings it has taken into account statements from the applicant's heirs or close family members expressing a wish to pursue the application (see, among other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014, and *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, § 92, 21 June 2007). The Court considers that the second applicant's wife and children, who stated their intention of continuing the proceedings, have a legitimate interest in obtaining a finding that there was a breach of their relative's rights under the Convention (see *Igor Shevchenko v. Ukraine*, no. 22737/04, § 36, 12 January 2012).

46. Accordingly, the Court finds that the second applicant's heirs have standing to continue these proceedings.

B. Compatibility *ratione loci* of the application

47. The Court observes at the outset that no objection was raised by the Azerbaijani Government as to the Court's competence *ratione loci* in the present case. However, given that the case involves facts that took place in more than one country, the Court must examine this question of its own motion (see *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 56, 31 July 2014).

48. The Court recently summarised – in *Güzelyurtlu and Others v. Cyprus and Turkey* ([GC], no. 36925/07, §§ 178-90, 29 January 2019) – its case-law regarding jurisdiction as follows:

"178. 'Jurisdiction' under Article 1 is a threshold criterion. ... As the Court has emphasised, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial ...

...

> 181. To date, there have been very few cases in which the Court has had to examine complaints under the procedural limb of Article 2 where the death occurred under a different jurisdiction from that of the State in respect of which the procedural obligation is said to arise.
>
> ...
>
> 188. In the light of the above-mentioned case-law it appears that if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law ..., the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court ...
>
> ...
>
> 190. Where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, 'special features' in a given case will justify departure from this approach, according to the principles developed in *Rantsev* [*v. Cyprus and Russia*, no. 25965/04], §§ 243-44[, ECHR 2010 (extracts)]. However, the Court does not consider that it has to define *in abstracto* which 'special features' trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other."

49. In respect of the procedural limb of Article 2, the Court notes that both the crimes and the conviction of R.S. occurred in Hungary. However, Azerbaijan subsequently sought his transfer with a view to his continuing his prison sentence in his home country, in line with the Council of Europe's Transfer Convention.

50. The Court reiterates in this connection that the enforcement of a sentence imposed in the context of the right to life must be regarded as an integral part of the State's procedural obligation under Article 2 (see, *mutatis mutandis*, *Kitanovska Stanojkovic and Others v. the former Yugoslav Republic of Macedonia*, no. 2319/14, §§ 32-33, 13 October 2016). It therefore considers that, regardless of where the crimes were committed, in so far as Azerbaijan agreed to and assumed the obligation under the Transfer Convention to continue the enforcement of R.S.'s prison sentence commenced by the Hungarian authorities (see paragraph 48 above), it was bound to do so, in compliance with its procedural obligations under Article 2 of the Convention (see, *mutatis mutandis*, *Aliyeva and Aliyev*, cited above, § 56).

51. The Court is therefore satisfied that in the present case there are "special features" that triggered the existence of Azerbaijan's jurisdictional

link in relation to the procedural obligation under Article 2 (see *Güzelyurtlu and Others*, cited above, § 190).

52. As regards the complaint under the substantive limb of Article 2, as formulated by the applicants in the present case, the Court considers that the issue of jurisdiction – that is to say, whether the victims were under the control of R.S. and whether he acted as an Azerbaijani State agent at the time of the crimes – is interlinked with the substance of the applicants' allegations and will be examined simultaneously with their complaint.

C. The Azerbaijani Government's objection of non-exhaustion of domestic remedies

1. Submissions by the parties

(a) The Azerbaijani Government

53. The Azerbaijani Government submitted that the applicants had not exhausted domestic remedies, as they had failed to approach the Constitutional Court by lodging a request with the President, Parliament, the Cabinet of Ministers, the Supreme Court or the Prosecutor's Office. The Azerbaijani Government accepted that the Court had previously held that a constitutional complaint lodged with the Constitutional Court did not amount to an ordinary and effective remedy that applicants were required to use for the purposes of Article 35 § 1 of the Convention (citing *Islam-Ittihad Association and Others v. Azerbaijan*, no. 5548/05, 13 November 2014), but argued that that decision should be revisited. While *Sargsyan v. Azerbaijan* ([GC], no. 40167/06, ECHR 2015) demonstrated the difficulties inherent in accessing remedies in the context of the Azerbaijan-Armenia conflict, the fact that recourse to the Constitutional Court existed as a viable option could not be ignored.

(b) The applicants

54. The applicants argued that there were no effective domestic remedies available to them, particularly given the evidence of official State engagement in, and support for, the Convention violations perpetrated in their case. The general background to the Nagorno-Karabakh conflict and the state of relations between Azerbaijan and Armenia were relevant, especially in the light of the fact that R.S., the first applicant and G.M. were military officers in their respective armies.

55. Under the Azerbaijani Constitution, an individual was only entitled to apply for some sort of review to the Constitutional Court directly in relation to "legal and normative acts by executive authorities". The presidential order pardoning R.S. had not been a normative act but an individual act; therefore, they had no right to apply to the Constitutional Court. Thus, it was clear, in accordance with the Court's well-established

case-law, that an application to the Constitutional Court was not a remedy that was available to the applicants.

56. The Court had consistently found that, as regards Azerbaijan, applicants were not required to apply to the Constitutional Court as this was not considered to offer a form of redress that was adequately accessible, and it did not constitute an ordinary and effective remedy that applicants were required to use for the purpose of Article 35 § 1 of the Convention (the applicants cited *Ismayilov v. Azerbaijan*, no. 4439/04, §§ 37-40, 17 January 2008; *Muradova v. Azerbaijan*, no. 22684/05, § 86, 2 April 2009; and *Islam-Ittihad Association and Others*, cited above, § 34). In addition, the Azerbaijani Government had not produced any examples of a case in which an individual in any form of comparable situation had successfully used the Constitutional Court mechanism in the way that they had suggested.

57. Referring to *Sargsyan* (cited above, §§ 118-19), the applicants argued that Azerbaijan had failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and offering reasonable prospects of success.

(c) The Armenian Government, third-party intervener

58. The Armenian Government also referred to *Sargsyan* (cited above) and argued that owing to the unresolved conflict in Nagorno-Karabakh, it was difficult for Armenian nationals to gain access to remedies in Azerbaijan. Nothing had changed since the Court's judgment in *Sargsyan*, and Azerbaijan had failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and offering reasonable prospects of success.

2. The Court's assessment

59. The Court reiterates that the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that any remedy it cites was in fact an effective one, and was available both in theory and in practice at the relevant time – that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact pursued, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-73, 25 March 2014).

60. Moreover, the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. This rule is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed, it is essential to have regard not only to the existence of formal remedies in the legal system of the State concerned, but also to the general legal and political context in which they operate, as well as the particular circumstances of the individual case (see *Panorama Ltd and Miličić v. Bosnia and Herzegovina*, no. 69997/10, § 56, 25 July 2017, and the cases cited therein). This means, *inter alia*, that the Court must examine whether, given all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust available domestic remedies (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 91, 29 November 2007).

61. As regards the present case, the Court notes that under Azerbaijani law, a presidential pardon is not a normative legal act, but rather a decision based on the discretionary power of the Head of State. Other than claiming that the applicants could have attempted to have their case reviewed by the Constitutional Court, the Government did not submit a single example of a domestic decision in which such a course of action had been successful. The Court therefore dismisses the Government's objection in this respect.

D. The Azerbaijani Government's objection of no significant disadvantage

1. Submissions of the parties

(a) The Azerbaijani Government

62. The Azerbaijani Government maintained that the applicants had suffered no significant disadvantage. R.S. had spent over eight years in prison and the applicants had not been adversely affected and had not suffered any loss or injury due to the granting of the pardon. While they might feel aggrieved, that was not sufficient to constitute a significant disadvantage. No major issues regarding human rights arose in the present case; R.S. had been arrested, tried, convicted and punished. Whether a pardon granted by the President of Azerbaijan had been politically wise was not the issue. It had been legitimate under Azerbaijani law, had been granted for humanitarian reasons and was not in contravention of the terms of the Transfer Convention.

(b) The applicants

63. The applicants observed that under the "significant disadvantage" test, the assessment of the "minimum threshold" depended on the circumstances of the case. The Court took account of the nature of the right allegedly breached, the seriousness of the impact of the alleged violation on

the exercise of the right and the potential consequences of the violation on the applicants' personal situation (the applicants referred to *Giusti v. Italy*, no. 13175/03, § 34, 18 October 2011, and *Gagliano Giorgi v. Italy*, no. 23563/07, § 115, ECHR 2012 (extracts)).

64. Given the issues raised by the case as to the two respondent States' positive obligations under Article 2 – notably to ensure the proper implementation of R.S.'s sentence for murder and attempted murder – the applicants submitted that they had clearly suffered a significant disadvantage. As a result of his pardon, R.S. had served a substantially shorter sentence and, following his transfer, the applicants had seen R.S. glorified and accepted in Azerbaijan as a hero.

65. In any event, "respect for human rights" would require an examination of the application on the merits, given its gravity, the new legal issues raised by the case, and the fact that the issue remained unacknowledged and unresolved in Azerbaijan and could therefore recur in future cases. Moreover, the Court was precluded from applying the "significant disadvantage" criterion as there was no available domestic remedy and the case had accordingly not been "duly considered by a domestic tribunal".

66. Finally, the applicants pointed out that under international law, pardons and amnesties in circumstances where States had sought to avoid their obligation to take punitive measures had been considered a form of denial of justice.

(c) The Hungarian and Armenian Governments

67. Neither the Hungarian Government nor the Armenian Government submitted any argument in this regard.

2. The Court's assessment

68. As pointed out in previous case-law (see *Mura v. Poland* (dec.), no. 42442/08, § 20, 2 June 2016), the purpose of the new admissibility criterion in Article 35 § 3 (b) is to enable the more rapid disposal of unmeritorious cases and thus to allow the Court to concentrate on its central mission of providing legal protection of human rights at the European level (see the Explanatory Report to Protocol No. 14, CETS 194, §§ 39 and 77-79). The High Contracting Parties clearly wished the Court to devote more time to cases warranting consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributes (ibid., § 77).

69. The question of whether the applicant has suffered any "significant disadvantage" represents the main element of the rule set forth in Article 35 § 3 (b) of the Convention (see *Adrian Mihai Ionescu v. Romania* (dec.),

no. 36659/04, 1 June 2010; see also *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010-V). Inspired by the general principle of *de minimis non curat praetor*, this first criterion of the rule rests on the premise that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (see *Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011). The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see *Gagliano Giorgi*, cited above, § 55). The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case (see *Korolev*, cited above, and *Eon v. France*, no. 26118/10, § 34, 14 March 2013). However, the applicant's subjective perception alone cannot suffice to conclude that he or she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see, *inter alia*, *Mura*, cited above, §§ 21 and 24).

70. The second element contained in Article 35 § 3 (b) compels the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention – for instance whether there is a need to clarify the States' obligation under the Convention or to induce the respondent State to resolve a structural deficiency.

71. Finally, the third criterion under Article 35 § 3 (b) does not allow the rejection of an application if the case has not been "duly considered by a domestic tribunal". The purpose of this criterion is to ensure that every case receives a judicial examination, whether at the national level or at the European level – in other words to avoid a denial of justice (see *Korolev*, cited above, and *Finger v. Bulgaria*, no. 37346/05, § 73, 10 May 2011).

72. Turning to the present case, the Court observes, firstly, that the subject matter of the case is the right to life, which is, as the Court has stressed time and again, one of the most fundamental provisions of the Convention. Secondly, the case raises questions of a general character affecting the observance of the Convention – in particular, the extent of the procedural obligation under Article 2. Thirdly, no domestic tribunal – Azerbaijani or Hungarian – has ever examined the applicants' Article 2 grievances.

73. In view of the above, the Court considers that the Azerbaijani Government's objection should be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. The applicants contended that Azerbaijan was in breach of its substantive obligations under Article 2 of the Convention, as the murder of G.M. and the attempted murder of the first applicant had been committed by an Azerbaijani military officer and was therefore attributable to the State.

75. Furthermore, they submitted that both respondent Governments were in breach of their procedural obligations under Article 2 owing to the circumstances in which R.S. had been pardoned by the Azerbaijani authorities.

76. Article 2, in so far as relevant, reads as follows:

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

A. Admissibility

1. Applicability of Article 2 as regards the first applicant

(a) Submissions by the parties

(i) The Azerbaijani Government

77. The Azerbaijani Government contested that Article 2 was applicable as regards the first applicant.

78. Referring to the Court's case-law, they argued that in cases where the victim did not die and suffered no injury, the applicability threshold was very high (*Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, §§ 150-56, 28 February 2012; *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, §§ 128-35, ECHR 2008 (extracts); and *Makaratzis v. Greece* [GC], no. 50385/99, § 51, ECHR 2004-XI). Only in exceptional circumstances would physical ill-treatment by State agents where death had not ensued constitute a breach of Article 2.

79. In the first applicant's case there had been a low level of risk as he and R.S. had not been in the same room and had been separated by a locked door. R.S had been apprehended following the speedy arrival of the police before any actual injury could be caused. There had been no physical contact or physical ill-treatment. In addition, the actual words spoken by R.S. were disputed.

80. The events in question had taken place outside Azerbaijan's jurisdiction, and any effective control that could have been exercised had been limited. Azerbaijan had not authorised, condoned or justified the crime committed and it had fallen outside the normal and expected duties of its soldiers. Azerbaijan had not acted or failed to act in a manner that could properly be criticised. At the time of the events in question, R.S. had been emotionally disturbed and had been subjected to abuse by the Armenian officers. He had reacted in a criminal manner in a way which Azerbaijan could not have foreseen.

(ii) The applicants

81. According to the applicants, it was well established in the Court's case-law that Article 2 could be applicable even where the use of force did not in fact have lethal consequences. The applicability of that provision depended upon the extent to which life had been put at risk, taking into

account, among other things, the degree and type of force used and the intention or aim behind it (the applicants referred in particular to the following cases: *İlhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII; *Berktay v. Turkey*, no. 22493/93, §§ 153-54, 1 March 2001; *Evrim Öktem v. Turkey*, no. 9207/03, 4 November 2008; *Denis Vasilyev v. Russia*, no. 32704/04, 17 December 2009; *Soare and Others v. Romania*, no. 24329/02, 22 February 2011; *Peker v. Turkey (no. 2)*, no. 42136/06, 12 April 2011; *Trévalec v. Belgium*, no. 30812/07, 14 June 2011; *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, ECHR 2012 (extracts); *Taydaş v. Turkey*, no. 52534/09, 26 November 2013; *Atiman v. Turkey*, no. 62279/09, 23 September 2014; and *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, 13 October 2015).

82. The applicants pointed out that R.S.'s attack on the first applicant had been immediately preceded by his murder of G.M., which he had committed by decapitating him while G.M. had been asleep. It was evident from the domestic proceedings that R.S. had clearly intended to murder the first applicant with an axe, as he had done to G.M. He had only been prevented from doing so by a locked door and ultimately the intervention of the Hungarian police, who had disarmed him. Were it not for those factors, it was highly likely that the first applicant would also have been murdered by R.S. The motive for both attacks was the same, namely the victims' Armenian nationality.

83. In cases where the victim had not in fact died, the Court applied a test based on the risk to life. The first applicant's case clearly involved a "potentially lethal" attack (*Makaratzis*, cited above, § 52) and was one in which his "life [had been] in serious danger" (*Kotelnikov v. Russia*, no. 45104/05, § 97, 12 July 2016). In addition, the risk to his life had been "imminent" (*Kolyadenko and Others*, cited above, § 155).

84. The applicants submitted that "physical ill-treatment" or "physical contact" were not a prerequisite for the applicability of Article 2 in situations where no actual loss of life had taken place, as suggested by the Azerbaijani Government. In their case R.S. had been convicted of attempted murder; the fact that there had been "no physical contact" was irrelevant to his conviction and was certainly not decisive for the applicability of Article 2. Similarly, in *Budayeva and Others* and *Kolyadenko and Others* (both cited above) Article 2 had been found to be applicable, despite no actual injury having been sustained by the applicants.

(iii) The Hungarian Government

85. The Hungarian Government took the view that, given the circumstances of the case, Article 2 was applicable to the first applicant.

(iv) The Armenian Government, third-party intervener

86. The Armenian Government also took the view that Article 2 was applicable to the first applicant. It was only by chance that he had survived what the Hungarian courts had found to constitute attempted murder.

87. The Armenian Government relied on the case of *Isayeva v. Russia* (no. 57950/00, § 175, 24 February 2005), arguing that the Court had, in general, found that the same principles applied where a victim had died during a planned act of murder as where the victim had survived and the act had amounted to attempted murder. The Court had found on numerous occasions that both the substantive and procedural obligations of Article 2 could apply even though the person at risk had not died (*L.C.B. v. the United Kingdom*, 9 June 1998, *Reports* 1998-III; *Osman v. the United Kingdom*, 28 October 1998, *Reports* 1998-VIII; *Yaşa v. Turkey*, 2 September 1998, *Reports* 1998-VI; and *Atiman*, cited above).

88. Further, the Court had considered cases where the deprivation of life had been an unintended outcome, whereas in the instant case, the intent of R.S. to kill had been established by the Hungarian courts. For instance, in *Taydaş* (cited above, § 25) the applicant's fortuitous survival had not prevented the Court from examining the complaint under Article 2, since the use of force had been potentially fatal and had put the applicant's life at risk. In *Haász and Szabó* (cited above, § 48), the Court had concluded that the applicant had been a victim of conduct which by its very nature had put her life at risk. In *Makaratzis* (cited above), the Court had found it unnecessary to decide whether or not there had been an intention to kill, as the applicant had been a victim of conduct which by its very nature had put his life at risk.

(b) The Court's assessment

89. The Court has emphasised on many occasions that Article 2 of the Convention may come into play even if a person whose right to life was allegedly breached did not die (see, among other authorities, *Makaratzis*, cited above, § 55, and *Fergec v. Croatia*, no. 68516/14, §§ 21-24, 9 May 2017, and the cases cited therein). It is therefore essential to determine in the present case whether the first applicant's life was endangered as a result of the events complained of.

90. The Court has already applied Article 2 in certain cases where there was a serious risk of an ensuing death, even if the applicants were alive at the time of the application. For example, in *Budayeva and Others* the applicants' physical integrity was threatened as a result of a natural catastrophe. Although some of the applicants sustained no actual injury (ibid., § 146), the Court found Article 2 applicable to the circumstances of their case. Similarly, in *Kolyadenko and Others* (cited above, §§ 153-56), the first, third and sixth applicants suffered no actual physical injury in a

sudden flood in their homes. Having examined the circumstances of their case as a whole, the Court nonetheless concluded that their lives had been at imminent risk and that Article 2 was therefore applicable to their case.

91. The Court has also examined, on the merits, allegations made under Article 2 by persons claiming that their life was at risk, even though no such risk had yet materialised, when it was persuaded that there had been a serious threat to their lives (see *R.R. and Others v. Hungary*, no. 19400/11, §§ 26-32, 4 December 2012, where the applicants complained of having been excluded from a witness protection programme; see also *Selahattin Demirtaş v. Turkey*, no. 15028/09, §§ 30-36, 23 June 2015, where the applicant complained that a newspaper article had put his life at risk).

92. In addition, the Court has also held that, although there was no State involvement in the death of an individual, the basic procedural requirements applied with equal force to the conduct of an investigation into a life-threatening attack on an individual, regardless of whether or not death had resulted (see *Menson and Others v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

93. In the present case, according to the facts as established by the Hungarian courts, after he had decapitated G.M., R.S. tried to break down the door of the first applicant's room with an axe, shouting threats to kill him. Other persons present in the dormitory called the police, who ultimately stopped R.S. before he could actually carry out his threats. While it is true that the first applicant did not sustain any actual bodily harm, the above-described circumstances clearly indicate that his life had been in serious and imminent danger. What is more, despite no actual injury, the Hungarian courts nonetheless sentenced R.S. for the "preparation of his murder". In doing so, they too must have considered that the applicant had been in a life-threatening situation, even though no actual injury had ensued.

94. In the Court's opinion, the above-mentioned circumstances leave no doubt as to the existence of an imminent risk to the life of the first applicant, which brings his complaint on that account within the scope of Article 2 of the Convention. The fact that he survived and sustained no injuries has no bearing on this conclusion.

2. Conclusion

95. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Substantive obligations under Article 2 of the Convention as regards Azerbaijan

1. Submissions of the parties

(a) The applicants

96. Firstly, the applicants argued that Azerbaijan was directly responsible for the murder and attempted murder because both crimes had been committed by an Azerbaijani military officer. Secondly, the applicants argued that Azerbaijan had acknowledged and accepted that conduct as its own.

97. The assessment of a State's responsibility for acts perpetrated by State officials when "off duty" required the Court to assess the "totality of the circumstances and consider the nature and circumstances of the conduct in question" (*Sašo Gorgiev*, cited above, § 48). The applicants referred to a number of previous cases where the Court had found the lethal use of force by "off-duty" State agents to be imputable to the State (*Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, 12 January 2012, and *Sašo Gorgiev*, cited above).

98. The applicants submitted that R.S. and his two victims had been in Budapest in order to attend a NATO-sponsored language training course as serving members of the armed forces of their respective States – in other words, clearly acting in the course of their respective official duties. R.S.'s position had therefore not been the same as that of the perpetrators of the homicide in *Enukidze and Girgvliani v. Georgia* (no. 25091/07, 26 April 2011), who had been "off duty" in that they had been attending a private birthday celebration.

99. Furthermore, there had been a serious failure of regulation comparable to, and indeed arguably more serious than, the shortcomings identified in the cases of *Gorovenky and Bugara* and *Sašo Gorgiev* (both cited above). The Azerbaijani Government had submitted that R.S. had been suffering from a "temporary mental impairment or diminished responsibility or perhaps insanity", and also that it was "clear that R.S. had been in a vulnerable situation and medically unwell", and that he had been "emotionally disturbed". The Azerbaijani authorities had not carried out any form of assessment of R.S.'s fitness to be recruited, or his continuing fitness to serve as a member of Azerbaijan's armed forces or to attend the NATO-sponsored training course. Nor was there any evidence that Azerbaijan had rigorous safeguards in place to vet members of its armed forces for their suitability to serve.

100. In addition to that general duty, there was a further and more specific obligation that arose in view of R.S.'s particular mental state. If the Azerbaijani Government had been aware that R.S. had been suffering from a mental impairment, there was nothing to suggest that it had not been a

pre-existing condition, which should have been assessed and diagnosed before he had actually travelled to a three-month training course at which Armenian officers would also be present. It was, at least in part, a direct result of the Azerbaijani authorities' failure to assess R.S.'s capacity to withstand such a situation that had led to his vast overreaction in the face of various "humiliations" (as he perceived them) and his commission of a gruesome murder. The Azerbaijani Government had not submitted any medical documentation to the Court to establish the nature, gravity or history of R.S.'s alleged mental illness.

101. The applicants also referred to Article 11 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts and pointed out that conduct could be attributed to a State where the State in question had acknowledged and adopted the conduct in question as its own. Such acknowledgment and adoption did not need to be expressed and could be inferred from the conduct of the State in question. In addition, where such acknowledgement and adoption was unequivocal and unqualified, there was good reason to give it retroactive effect.

102. The statements denying support and approval for the crimes committed by R.S. relied on by the Azerbaijani Government did not counteract the evidence showing that R.S. had been glorified and celebrated as a hero, not only by the Azerbaijani public, but by the Azerbaijani authorities. The applicants referred to statements in support of R.S. made by high-ranking Azerbaijani government officials, members of political parties and representatives of civil society (see paragraph 25 above). A special section had been set up on the webpage of the President of Azerbaijan labelled "Letters of Appreciation regarding [R.S.]", where individuals could express their congratulations on his release and pardon. One man – a member of parliament, famous singer and artist – had described R.S. as a "hero" who deserved his own statue.

103. The fact that R.S. had been welcomed in Azerbaijan as a hero was a matter of public knowledge and had been covered by the international media. On his return to Azerbaijan, the Ministry of Defence had promoted R.S. to the rank of major, awarded him a flat and given him the pay he had lost since his arrest in Hungary. That was corroborated by the European Commission against Racism and Intolerance in its June 2016 report on Azerbaijan. The applicants argued that the benefits granted to R.S. were those provided by the Code of Criminal Procedure of Azerbaijan in respect of acquitted or wrongfully prosecuted or arrested individuals; this demonstrated that Azerbaijan viewed R.S. as someone who had been unfairly convicted.

104. Finally, in support of their arguments the applicants referred to the judgment of the International Court of Justice (ICJ) in *United States Diplomatic and Consular Staff in Tehran*. In that case, the attribution of the acts of the militants in question to the Islamic State of Iran had come as a

consequence of the failure of the Iranian authorities to protect the diplomatic and consular premises and personnel, combined with the obligation not to incite violence or provide public support for the acts of militants. By analogy, the applicants in the instant case argued that Azerbaijan had endorsed R.S.'s acts and had created an atmosphere of immunity by sending a clear message that the killing of an Armenian officer had been an act deserving of honours.

(b) The Azerbaijani Government

105. The Azerbaijani Government denied that Azerbaijan had been responsible for the acts of R.S. Relying on *Enukidze and Girgvliani* (cited above), they argued that, while R.S. had been in Budapest in the course of his official duties, the nature of his crime had been so abusive and so remote from his official status that such serious criminal behaviour could not be attributable to Azerbaijan. The general rule set out by the International Law Commission in its 2011 Draft Articles on Responsibility of States for Internationally Wrongful Acts was that the only conduct attributed to a State at the international level was that of its organs or government, or of others who had "acted under the direction, instigation or control of those organs – i.e. as agents of the State".

106. The Azerbaijani Government strongly denied the applicants' allegation that Azerbaijan had acknowledged and accepted the conduct of R.S. as its own. On the contrary, it had made clear that it did not approve of the criminal act but rather had been concerned by what it considered flaws in the conviction of R.S. and the length of his sentence in the light of the particular circumstances of his case. The Azerbaijani Government cited statements denying that R.S.'s actions had been approved or justified at an official level and that he had been neither glorified nor considered a hero in Azerbaijan (see paragraph 26 above).

107. The Azerbaijani Government argued that R.S. had been verbally abused by the Armenian officers while in Budapest, which had precipitated a state of mind that had stemmed from his "difficult experiences in the past and tipped him over the edge". However, there was nothing to suggest that he had been suffering from a pre-existing mental condition or illness that should have been diagnosed before he had travelled to Budapest.

(c) The Hungarian and Armenian Governments

108. Neither the Hungarian Government nor the Armenian Government submitted any argument in this regard.

2. The Court's assessment

109. Article 2 of the Convention, as one of its most fundamental provisions, enshrines one of the basic values of the democratic societies

making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that this provision be interpreted and applied so as to make its safeguards practical and effective (see *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV).

110. Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see *Makaratzis*, cited above, § 57). This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective prevention. The Court has previously held that this framework must include regulations geared to the special features of certain activities, particularly with regard to the level of the potential risk to human lives (see *Sašo Gorgiev*, cited above, § 42).

111. Turning to the present case, the Court attaches crucial importance to the fact that R.S., although a member of the Azerbaijani military forces at the material time, was not acting in the exercise of his official duties when he killed the second applicant's relative and was preparing to kill the first applicant. In particular, he was not engaged in any planned operation or in a spontaneous chase (contrast *Leonidis v. Greece*, no. 43326/05, § 58, 8 January 2009). On the contrary, according to the record of the circumstances of the case established by the Hungarian courts, the crimes were committed as a result of R.S.'s private decision to kill, during the night and outside of training hours, the Armenian participants on the NATO-sponsored language course that they were attending because they had allegedly previously mocked and provoked him. It has not been suggested that the crimes committed by R.S. were committed on orders given by his superiors and nor is there is any evidentiary basis for such a far-reaching conclusion.

112. In so far as the applicants relied on Article 11 of the Draft Articles and claimed that Azerbaijan had subsequently "acknowledged" and "adopted" R.S.'s conduct as its own, and assuming that in the present case the Court were to interpret the substantive limb of Article 2 of the Convention in the light of Article 11 of the Draft Articles (see paragraph 114 below), it notes at the outset that the current standard under international law – which stems from the latter provision, as expounded in the Commentary on Article 11 of the Draft Articles ("the ILC Commentary" – see paragraph 35 above) – sets a very high threshold for State responsibility for an act otherwise non-attributable to a State at the time of its commission. That threshold is not limited to the mere "approval" and "endorsement" of the act in question, which, in the words of the ILC Commentary, "do not involve any assumption of responsibility" (ibid.); Article 11 of the Draft Articles explicitly and categorically requires the

"acknowledgment" and "adoption" of that act (see paragraph 34 above). The differentiation between, on the one hand, the mere "approval" and "endorsement" of the act in question – which in and of themselves do not bring about the responsibility of a respective State for that act – and, on the other hand, its "acknowledgment" and "adoption" as a threshold that must be reached for that responsibility to be invoked has also been endorsed in the case-law of the International Criminal Tribunal for the former Yugoslavia (ICTY – see paragraph 37 above). Moreover, the two conditions – "acknowledgment" and "adoption" – are cumulative, as stems directly from the wording of Article 11 of the Draft Articles, and, in addition, require that the State "acknowledge" and "adopt" the act "as its own", which again demonstrates the very stringent requirements set by that provision. The Court furthermore observes that, according to the ILC Commentary, such an act of "acknowledgment" and "adoption" must, importantly, be "clear and unequivocal", whether it takes the form of words or conduct (see paragraph 35 above).

113. In the context of the present case, in order to assuredly establish that there has been a violation by the State of Azerbaijan of Article 2 of the Convention under its substantive limb, those cumulative conditions and the threshold that has to be reached under Article 11 of the Draft Articles require that it be convincingly demonstrated that, by their actions, the Azerbaijani authorities not only "approved" and "endorsed" the impugned acts (R.S. killing G.M. and preparing to kill the first applicant), but also "clearly and unequivocally" "acknowledged" and "adopted" these acts "as [their] own" within the meaning of those terms, as they are interpreted and applied under international law. In other words, they require that the Azerbaijani authorities "acknowledge" and "adopt" them as acts perpetrated by the State of Azerbaijan – thus directly and categorically assuming responsibility for the killing of G.M. and the preparation of the murder of the first applicant.

114. The Court is called upon to assess the measures undertaken by the Azerbaijani authorities in the light of the threshold set by Article 11 of the Draft Articles. In this context, the Court is mindful of the evolution of international law on State responsibility and is conscious that the case-law on this particular issue is scarce and that further developments may therefore be expected in this area (see, *mutatis mutandis*, *Jones and Others v. the United Kingdom*, nos. 34356/06 and 40528/06, § 213, 14 January 2014). The Court reiterates that, according to the ICTY, the Draft Articles are "still subject to debate amongst States", "do not have the status of treaty law" and are "not binding on States", and that "any use of this source should be made with caution" (see paragraph 37 above). Nevertheless, the Court's assessment in the present case must be limited to the existing rules of international law, as expounded in the ILC Commentary and applied by international tribunals (see paragraphs 35-37 above).

115. The Court reiterates the circumstances of the present case in which the State of Azerbaijan took measures in the form of pardoning R.S., releasing him immediately upon his return, awarding him eight years' salary arrears, providing him with a flat for his own use and promoting him within the military. Each of those measures certainly constituted, individually and cumulatively, the subsequent "approval" and "endorsement" of R.S.'s acts by various institutions and the highest officials of the State, and that "approval" and "endorsement" strongly resonated with the feelings of Azerbaijani society at large. In particular, such measures as awarding R.S eight years' salary arrears or promoting him within the military are indications not only of the State's explicit, clear and unequivocal "endorsement" of the crimes committed by him, but also of their appreciation of R.S.'s conduct at the time when he was in the military service of the State of Azerbaijan.

116. In this context, the Court also notes the particularly disturbing statements submitted by the applicants concerning R.S. that were made by various political and other public figures during the material time frame (see paragraph 25 above), the majority of which indicated personal approval on the part of various Azerbaijani officials and other persons of R.S.'s conduct or his transfer and pardon. The applicants argued that such glorifying statements – including those contained in the special section dedicated to R.S. on the official web page of the President of Azerbaijan (see paragraph 25 above) – amounted to Azerbaijan's "acknowledgment" and "adoption" of R.S.'s crimes as its own. The Court agrees that many of the statements in question are particularly disturbing in that they glorify R.S. as a national hero for the gruesome crimes that he committed.

117. In sum, the Court considers it clear that, viewing the actions of the Azerbaijani government as a whole, including the decision to pardon R.S. and then to promote him to the rank of major in a public ceremony and to award him eight years of salary arrears and the use of a flat (see paragraphs 20-21 above), Azerbaijan must be considered to have demonstrated its "approval" and "endorsement" of R.S.'s conduct.

118. The Court now turns to the assessment of the impugned measures from the standpoint of whether they constituted not the mere "approval" and "endorsement" by the State of Azerbaijan of the criminal acts committed by R.S., but also their "acknowledgment" and "adoption" within the meaning of Article 11 of the Draft Articles. Although not decisive for the Court's assessment, it is of importance that R.S.'s criminal acts were purely private acts of a criminal nature, and not related, whether directly or indirectly, to any State action at the time when they were committed (see paragraph 111 above). It has not escaped the Court's attention that the impugned measures – in particular, the granting of salary arrears and promoting R.S. in rank within the military – were undertaken by the State of Azerbaijan. That being so, the legal question before the Court in its examination of the applicants'

complaints under the substantive limb of Article 2 remains whether the very fact that the impugned measures were taken by the State of Azerbaijan allows for their categorisation – within the context of the factual circumstances, as submitted and argued by the parties, and in accordance with the standards of international law as it stood at the material time and stands today (see paragraphs 114-116 above) – in such a manner as to justify the Court concluding that the State of Azerbaijan not only manifestly demonstrated its "approval" and "endorsement" of R.S.'s acts, but in fact "clearly and unequivocally" "acknowledged" and "adopted" them as acts not just, strictly speaking, perpetrated by R.S., but in fact as having been perpetrated by the State itself. Having most thoroughly examined the nature and scope of the impugned measures within the overall context in which they were taken and in the light of international law, the Court is unable to conclusively find that such "clear and unequivocal" "acknowledgement" and "adoption" indeed took place. In substance, those measures can be interpreted not so much as the State's "acknowledgment" and "adoption" of R.S.'s criminal acts, as such, but rather as having the purpose of publicly addressing, recognising and remedying R.S.'s adverse personal, professional and financial situation, which the authorities of Azerbaijan perceived, unjustifiably in the Court's view, as being the consequence of the allegedly flawed criminal proceedings in Hungary (see paragraph 106 above). It follows that, although the Court considers it beyond any doubt that by their actions various institutions and highest officials of the State of Azerbaijan "approved" and "endorsed" the criminal acts of R.S., applying the very high threshold set by Article 11 of the Draft Articles – as interpreted and applied by international tribunals, in particular the ICJ and the ICTY (see paragraphs 36-37 above) – the Court cannot but conclude that, on the facts of the case, as presented by the applicants, it has not been convincingly demonstrated that the State of Azerbaijan "clearly and unequivocally" "acknowledged" and "adopted" "as its own" R.S.'s deplorable acts, thus assuming, as such, responsibility for his actual killing of G.M. and the preparation of the murder of the first applicant. The Court places emphasis on the fact that this assessment is undertaken on the basis of the very stringent standards set out by the existing rules of international law, as they stood at the material time and stand today, from which the Court sees no reason or possibility to depart in the present case. Therefore, contrary to what was argued by the applicants, the present case cannot be considered fully comparable to the ICJ's judgment in *United States Diplomatic and Consular Staff in Tehran*.

119. Lastly, the applicants claimed that Azerbaijan had failed to properly regulate military-service requirements and in particular had failed to establish R.S.'s mental state prior to sending him into an environment in which he would inevitably be called upon to interact with representatives of the Armenian military. Admittedly, in cases where crimes have been

committed by police officers acting outside of their official duties, the Court has already held that the member States of the Council of Europe are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria (see *Enukidze and Girgvliani*, cited above, § 290, and *Gorovenky and Bugara*, cited above, § 38). The Court accepts that similar standards may apply to members of the armed forces. However, having regard to the particular circumstances of the present case, the Court is not convinced that the private acts of R.S. could have been foreseen by his commanding officers or should be held imputable to the Azerbaijani State as a whole, just because that individual happened to be its agent. Indeed, the impugned acts were so flagrantly abusive and so far removed from R.S.'s official status as a military officer that, on the facts of the case, his most serious criminal behaviour cannot engage the State's substantive international responsibility. What is more, nothing in the case file suggests that the procedure in Azerbaijan for the recruitment of members of the armed forces and the monitoring of their compliance with professional standards at the time that R.S. was sent on his mission – including their continued mental fitness to serve – was inadequate.

120. In the light of the above-mentioned reasons, and even assuming that Azerbaijan might be considered to have jurisdiction over R.S.'s actions in the particular circumstances of the present case, the Court is unable to conclude that there has been a violation by Azerbaijan of the substantive limb of Article 2 of the Convention.

C. Procedural obligations under Article 2 of the Convention as regards Azerbaijan

1. Submissions of the parties

(a) The applicants

121. The applicants claimed that Azerbaijan had violated its procedural obligations under Article 2 of the Convention. That aspect of the case related primarily to the duty of the State to establish and implement effective criminal-law provisions, supported by adequate law-enforcement machinery, to ensure the punishment of breaches of the right to life (the applicants referred to *Enukidze and Girgvliani*, cited above, §§ 241 and 268, and *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 61, 8 April 2008). The applicants emphasised that the issues of deterrence and the prevention and suppression of offences were inextricably linked to the question of punishment, all of which were highly relevant to the case, given its very high profile both nationally and internationally. Such a profile meant that the Azerbaijani authorities' failure to act in an appropriate way to ensure that others were deterred from committing similar offences had magnified

the effects of the case. Justice had very obviously not been done, nor had it been seen to be done.

122. The Court had, in comparable circumstances, required national authorities to act with thoroughness, objectivity and integrity and to act in a way which commanded the trust of the next of kin and of the general public. Such attributes were absent in the applicants' case and, in addition, there had been a heightened obligation because of the involvement of a State agent and the need for deterrence (the applicants referred to *Enukidze and Girgvliani*, cited above, and also, in the context of the applicability of Article 13, *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004).

123. The applicants made reference to international judicial practice relating to pardons and amnesties, relying in particular on decisions and statements of the UN Human Rights Committee and the Inter-American Court of and Commission on Human Rights. They also cited the 1933 case of *Lettie Charlotte Denham and Frank Parlin Denham (U.S.) v. Panama*, in which the United States-Panama General Claims Commission had taken the view that the sentence of eighteen years and four months imposed on a murderer had not been inadequate by international standards but that the subsequent reduction of that sentence by one third had given rise to international liability. In that case the Commission had held that "the failure of an individual criminal to serve an adequate term may give rise to an international liability even where the original sentence is adequate". Thus, in certain circumstances pardons and amnesties had been considered a form of denial of justice under international law.

124. The Azerbaijani Government appeared to be seeking to directly challenge some of the factual findings of the Hungarian courts and to raise various alleged procedural irregularities, as well as questioning the mental state of R.S. when he had committed the offences, and using those arguments to explain the circumstances leading to the pardon. The applicants submitted that the basis of the pardon was the Azerbaijani authorities' scepticism of, or at the very least their ambivalence towards, the conviction and sentence of R.S. handed down by the Hungarian courts. It was clear that R.S. had been pardoned for overtly political reasons relating to the ongoing Nagorno-Karabakh conflict with Armenia. Such reasons should have no bearing whatsoever on the decisions made in the course of domestic criminal proceedings.

125. In subverting the Hungarian courts' judgment and by acting in a way that had been motivated by political grounds entirely extraneous to the criminal justice process, the Azerbaijani Government had obviously failed to comply with their positive obligations under Article 2 of the Convention. To protect life and prevent impunity for life-endangering offences, in the present case, had required the Azerbaijani authorities to uphold and respect – and to be seen to uphold and respect – the Hungarian courts' conviction of

and sentence imposed on R.S. The effect of the exercise of the President's discretion to issue a pardon had therefore been "to lessen the consequences of a serious criminal act ... rather than to show that such acts could in no way be tolerated" (the applicants referred to *Ali and Ayşe Duran*, cited above, § 68). Rather than being promoted and receiving other benefits, R.S. should have been dismissed from the military (*Abdülsamet Yaman*, cited above, § 55). The "humanitarian reasons" for the pardon given by the Azerbaijani Government had not been substantiated.

126. Accordingly, there had been a "manifest disproportion" between the gravity of the act in question and the punishment that had been implemented (the applicants referred to *Enukidze and Girgvliani*, cited above, §§ 268-69), depriving the criminal prosecution of any remedial effect; as such, there had been a procedural violation of Article 2 of the Convention.

127. That conclusion was strengthened by the fact that, in pardoning R.S., the Azerbaijani government had acted in breach of the Transfer Convention. While the Transfer Convention made reference to the possibility of prisoners being pardoned (Article 12), the Convention was explicit that the purpose of transferring prisoners was so that they could then serve in the administering State the sentences imposed on them by the sentencing State. Under the Vienna Convention on the Law of Treaties, any interpretation of the Transfer Convention "in good faith" and "in the light of its object and purpose" could only lead to the conclusion that it had been breached by the actions of the Azerbaijani Government in the case. Those arguments were supported and strengthened by many statements issued by governments and international agencies in response to the transfer of R.S. in August 2012.

128. The applicants also pointed out Azerbaijan's declaration in respect of the Transfer Convention (see paragraph 39 above) to the effect that any decisions in relation to pardons or amnesties concerning prisoners transferred by Azerbaijan would have to be agreed with the Azerbaijani authorities. To apply such a principle in the present case would have required the Azerbaijani authorities to have obtained the prior agreement of the Hungarian authorities to pardoning R.S., which they had not.

129. Furthermore, the pardon granted to R.S. was incompatible with the requirements of the Azerbaijani Criminal Code, which stated that if a convicted prisoner sentenced to life was pardoned, his sentence should be replaced by a term of imprisonment of not more than twenty-five years.

130. Finally, the applicants submitted that the measures taken by the Azerbaijani authorities with the effect of subverting his sentence had not been sufficiently prescribed by law. The authorities had furthermore failed to involve or consult the applicants in any way. Accordingly, the procedural breach of Article 2 had been compounded by the absence of adequate legal safeguards in respect of the pardon and the other benefits granted to R.S.

(b) The Azerbaijani Government

131. The Azerbaijani Government submitted that in pardoning R.S. they had acted in accordance with the Transfer Convention and that it would be odd for adherence to one European Convention to amount to a violation of another.

132. The present case did not concern an instance of a State granting a pardon to a person convicted of a crime within its own jurisdiction, such as in the cases of *Enukidze and Girgvliani* (cited above) and *Nikolova and Velichkova v. Bulgaria* (no. 7888/03, 20 December 2007), but rather a situation where a State had pardoned a State agent convicted in a foreign country in circumstances arguably giving rise to concern.

133. It was relevant that R.S. was an internally displaced person from the region of Azerbaijan which was currently under Armenian military occupation. He had been forced to leave his home at the age of 15 and had lost close relatives in the conflict. While those events did not justify murder, insufficient attention had been paid to his history and state of mind in the criminal proceedings.

134. Referring to the affidavit lodged by R.S.'s defence lawyer, the Azerbaijani Government argued that R.S. had been seriously abused both physically and verbally by the Armenian officers and that that situation had led to a state of mind that might be defined as temporary mental impairment or diminished responsibility, or perhaps insanity. It was clear that R.S. had been in a vulnerable situation and medically unwell. In his defence lawyer's opinion, the Hungarian courts had not taken that sufficiently into consideration. There were further concerns relating to the criminal proceedings as such. R.S. had been interrogated in Russian, a language in which he was not proficient, and he had not been provided with a lawyer during the first interrogation.

135. In raising those concerns, the Azerbaijani Government did not intend to impugn the decision of the Hungarian courts but rather to explain the circumstances which had led to the pardon. The presidential pardon had been granted, accordingly, in the spirit of humanitarian concerns for the history, plight and mental condition of R.S.

136. There had been no duty on Azerbaijan to carry out an effective investigation. In the circumstances of the case and in the light of the concerns about the trial, the sentence actually served by R.S. and his psychological state, it was difficult to point to "unreasonable leniency", as set out in *Enukidze and Girgvliani* (cited above), where a pardon had been granted just two years after the conviction of the applicant in that case (in contrast to R.S., who had served eight and a half years in prison in Hungary).

137. The applicants' references to general practice under international law concerning amnesties and pardons were not relevant since they dealt with patterns of violations rather than a single instance committed by an

individual. Contrary to the applicants' submissions, the text of the presidential pardon was in the public domain and freely available, and further details of the reasons for R.S.'s pardon and further measures taken following his transfer to Azerbaijan had been given in statements made by Azerbaijani officials.

138. As regards the question as to whether there had been a breach of the Transfer Convention, the Azerbaijani Government argued that under the Vienna Convention, it was only where the meaning of a text was ambiguous or obscure, or led to a manifestly absurd or unreasonable result, that recourse might be had to supplementary means of interpretation under Article 32. They furthermore referred to the advisory opinion of the ICJ in *Competence of the General Assembly for the Admission of a State to the United Nations* (*ICJ Reports* 1950, p. 4) and argued that in interpreting and applying the provisions of a treaty, a tribunal must endeavour to give effect to them in "their natural and ordinary meaning" in the context in which they occurred.

139. The focus of the Transfer Convention was to facilitate the transfer of foreign prisoners to their home country rather than to address the substantive issue of the length of the sentence to be served in the administering State. The Azerbaijani Government argued that the general principle set out in Article 2 of the Transfer Convention that a transfer was to be made "in order [for the transferee] to serve the sentence imposed on him" was not supported by other substantive provisions in the Transfer Convention. Referring to Article 9 of the Transfer Convention, the Azerbaijani Government argued that there could be no question as to Azerbaijan's authority to take all appropriate decisions as regards the enforcement of the sentence. That position was reinforced by the text of Article 12, which suggested that the administering State had full competence as regards the granting of a pardon or the commutation of a sentence.

140. The Azerbaijani Government referred to the conclusion of the European Parliament that, even though the spirit of the Transfer Convention might have been infringed by the pardon, it had in fact complied with the letter of that instrument. In *R (Michael Shields v Secretary of State for Justice)*, the High Court of England and Wales had held that the power of the executive to grant a pardon, pursuant to English law and Article 12 of the Transfer Convention, to a person convicted and sentenced in Bulgaria was not constrained by Article 13 of the European Convention on Human Rights.

141. As regards their declaration in respect of the Transfer Convention (see paragraph 39 above), the Azerbaijani Government argued that, despite its formal title of a "declaration", it was open to determination whether that provision indeed constituted a declaration, or whether it in fact constituted a "reservation" whereby Azerbaijan had sought to modify or exclude the legal

effect of the provision in question, or whether it merely signalled a political attitude. It was worth noting that the declaration in question was one of five such declarations made on the same date, alongside one (so entitled) "reservation". Logic would suggest that Azerbaijan had distinguished between "declarations" and "reservations" and that the declaration in question had not in fact been intended as a reservation. In any event, the declaration was not applicable in the circumstances in question, as it referred to persons transferred by Azerbaijan and not those transferred to it. It was not reciprocal, since Hungary had not made any equivalent declaration or reservation; as such there was no need to seek the consent of Hungary to any pardon it might wish to make.

(c) The Armenian Government, third-party intervener

142. The Armenian Government argued that Azerbaijan's presidential pardon of R.S. had hindered the enforcement of the sentence imposed by the Hungarian courts and the administration of justice.

143. The purpose of the Transfer Convention was to give an opportunity to a person deprived of his liberty to serve his sentence in his home country with a view to facilitating social rehabilitation and reducing difficulties such as language barriers, alienation from local culture and customs and absence of contact with relatives. Article 3 of the Transfer Convention stipulated that the Convention was applicable only if, at the time of receipt of the request for transfer, the sentenced person still had at least six months of the sentence to serve, or if the sentence was "indeterminate". The Explanatory Report to the Transfer Convention stated that the Convention had been conceived as an instrument to further the offender's social rehabilitation, an aim which could only be usefully pursued where the length of the sentence to be served was sufficiently long. That principle demonstrated that the possibility of setting a sentenced person free immediately after a transfer had not been envisaged, as confirmed by the Parliamentary Assembly of the Council of Europe in its Resolution 1527 (2001).

144. Furthermore, in Resolution 2022 (2014) the Parliamentary Assembly had condemned the use of Article 12 of the Transfer Convention by Azerbaijan in respect of R.S. as "a violation of the principles of good faith in international relations and of the rule of law". That resolution also underlined the importance of applying the Transfer Convention in good faith in cases that might have political or diplomatic implications.

145. Thus, the pardoning of R.S. had failed to meet the core purpose of the Transfer Convention.

146. The Explanatory Report to the Transfer Convention clarified that the obligation in Article 9 § 2 of the Transfer Convention had been imposed on the administering State because the information could have a bearing on the sentencing State's decision on whether or not to agree to a requested transfer. Where the administering State opted for continued enforcement, it

was bound by the legal nature as well as the duration of the sentence, as determined by the sentencing State.

147. Azerbaijan had given assurances to the relevant Hungarian authorities stating that the sentence imposed by Hungary would be continued, rather than converted; they had thus been bound to ensure that R.S. served the sentenced imposed on him. The Armenian Government argued that Azerbaijan had given misleading and false assurances, in breach of international standards and obligations under the Transfer Convention.

148. The Armenian Government referred to statements made by high-ranking officials of Azerbaijan, including a statement made by the head of the government's Foreign Relations Department that "to see our soldier here – a faithful son of his nation – taken to prison only because he rose to protect the glory and honour of his homeland and people, is very impressive" and argued that, contrary to the claims of the Azerbaijani Government, the pardoning and honouring of R.S. had been organised in advance by the authorities. He had been pardoned, promoted, offered an apartment and awarded salary arrears.

149. The international community had expressed great concern with regard to the process.

150. The Armenian Government furthermore argued that Azerbaijan had made a declaration in respect of the Transfer Convention that "decisions regarding pardons and amnesties of sentenced persons transferred by the Republic of Azerbaijan should be agreed with the relevant authorities of the Republic of Azerbaijan". This demonstrated the emphasis given by the Azerbaijani government to the importance of agreement in relation to pardons and amnesties granted to persons sentenced in its own courts, while totally disregarding the similar right of Hungary to be at least informed of its decision to grant a pardon to R.S. Referring to the Vienna Convention on the Law of Treaties, the Armenian Government submitted that the said declaration had in fact constituted a reservation and that the principle of reciprocity could not be ruled out.

151. The Armenian Government furthermore argued that in granting R.S. a pardon, Azerbaijan had violated not only international law, but also its own domestic legislation. Azerbaijan's domestic law only allowed for a life sentence to be reduced to twenty-five years' imprisonment. Furthermore, the question of granting a pardon to a person sentenced to life imprisonment could only be considered after the person had served ten years of his sentence.

152. Relying on *Enukidze and Girgvliani* (cited above), the Armenian Government argued that States should apply stricter rules when punishing their own agents for committing serious life-endangering crimes and that it was a State's duty to "combat the sense of impunity that offenders may consider themselves to enjoy by virtue of their very office and to maintain public confidence in, and respect for, the law-enforcement system".

153. Lastly, a number of medical examinations had been carried out and the Hungarian courts had found R.S. to have been sane and of sound mind when he had committed the crimes at issue. In any event, it was open to R.S. to file an application to the Court as regards the fairness of the criminal proceedings in respect of him.

2. The Court's assessment

(a) General principles

154. Having regard to its fundamental character, Article 2 of the Convention contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 229, 30 March 2016; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015; and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 298, ECHR 2011 (extracts)). The duty to conduct such an investigation arises in all cases of killing and other suspicious deaths, whether the perpetrators were private persons or State agents or are unknown (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 93, 26 July 2007, and *Rantsev v. Cyprus and Russia*, no. 25965/04, § 232, ECHR 2010 (extracts)).

155. The relevant principles applicable to the effective investigation have been summarised by the Court on many occasions as follows (see, for example, *Armani Da Silva*, cited above, §§ 229-39): those responsible for carrying out an investigation must be independent from those implicated in the events in question; the investigation must be "adequate"; its conclusions must be based on thorough, objective and impartial analysis of all relevant elements; it must be sufficiently accessible to the victim's family and open to public scrutiny; and it must be carried out promptly and with reasonable expedition. In order to be "adequate" the investigation must be capable of leading to a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (ibid., §§ 240 and 243).

156. The requirements of Article 2 go beyond the stage of the official investigation and persist throughout proceedings in the national courts, which must as a whole satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences or grave attacks on physical and moral integrity to go unpunished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 95-96, ECHR 2004-XII; *Mojsiejew v. Poland*, no. 11818/02, § 53, 24 March 2009; and *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 142, 1 July 2014).

157. Lastly, the Court has already held that when an agent of the State is convicted of a crime that violates Article 2 or Article 3 of the Convention,

the subsequent granting of an amnesty or pardon could scarcely be said to serve the purpose of an adequate punishment. On the contrary, States are to be all the more stringent when punishing their own agents for the commission of serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider themselves to enjoy by virtue of their very office (see, *mutatis mutandis*, *Enukidze and Girgvliani*, cited above, § 274).

(b) Application of those principles in the present case

158. Turning to the present case, the Court notes that a large portion of the procedural obligation to effectively investigate loss of life in the present case – namely the criminal investigation and R.S.'s conviction – was carried out by Hungary. Having served over eight years of his prison term there, R.S. was transferred to Azerbaijan in order to continue serving his prison sentence in his home country. However, upon his return, R.S. was released on the basis of a pardon by the Azerbaijani President. This was followed by granting him a flat in Baku, salary arrears for the time he had spent in prison in Hungary and a promotion in military rank at a public ceremony (see paragraph 21 above), and was accompanied by strong support and approval from a number of Azerbaijani public figures and high-ranking officials (see paragraph 25 above).

159. What the Court is called upon to examine in the present case is whether and to what extent the Azerbaijani authorities' actions following R.S.'s return to Azerbaijan were in line with the above-mentioned principles arising from the Court's case-law on procedural obligations under Article 2, particularly in relation to the enforcement of his prison sentence imposed in another country.

160. The Court observes at the outset that pardons and amnesties are primarily matters of member States' domestic law and are in principle not contrary to international law, save when relating to acts amounting to grave breaches of fundamental human rights (see *Marguš v. Croatia* [GC], no. 4455/10, § 139, ECHR 2014 (extracts)). Under Article 12 of the Transfer Convention, amnesties and pardons are allowed by either the sentencing or the administering State (see paragraph 38 above).

161. The Court stresses in this context that it does not have authority to review the Contracting Parties' compliance with instruments other than the European Convention on Human Rights and its Protocols; even if other international treaties may provide it with a source of inspiration, it has no jurisdiction to interpret the provisions of such instruments (see *Mihailov v. Bulgaria*, no. 52367/99, § 33, 21 July 2005). It has no authority, therefore, to determine whether Azerbaijan has complied with its obligations under the Transfer Convention.

162. At the same time, the Court is not prevented from having regard to the Parliamentary Assembly of the Council of Europe's conclusion in 2001 concerning pardons and the Transfer Convention, according to which the latter was not designed to be used for the immediate release of prisoners upon their return to their own countries (see paragraph 40 above). Indeed, according to the Preamble to the Transfer Convention, its main aims are to promote justice and the social rehabilitation of sentenced persons. Moreover, in its 2014 resolution, the Parliamentary Assembly concluded that, by granting R.S. a pardon, Azerbaijan had violated the principle of good faith and the rule of law (see paragraph 41 above). Other international bodies have also deplored the treatment and glorification of R.S. upon his return to Azerbaijan (see paragraph 42 above).

163. Turning to the present case, the Court considers that from the point at which Azerbaijan assumed responsibility for the enforcement of R.S.'s prison sentence – that is to say, the moment of his transfer – it was called upon to provide an adequate response to a very serious ethnically motivated crime for which one of its citizens had been convicted in another country (see paragraph 15 above and paragraph 213 below). In the Court's opinion, in view of the extremely tense political situation between the two countries, the authorities should have been all the more cautious, given that the victims of the crimes in the present case were of Armenian origin (see, to this effect, the European Parliament's resolution cited at paragraph 42 above).

164. However, instead of continuing to enforce R.S.'s prison sentence – as specified in the letter from the Azerbaijani government to the Hungarian government that was sent during negotiations regarding R.S.'s transfer (see paragraph 19 above) – the Azerbaijani authorities set R.S. free immediately upon his return.

165. As the main reason for R.S.'s immediate release, the Azerbaijani Government relied on "humanitarian concerns for the history, plight and mental condition of R.S.". They also contested the fairness of the criminal proceedings conducted against him in Hungary. However, the Court is not convinced by any of these arguments.

166. First of all, in the absence of any proof other than an affidavit lodged by R.S.'s defence lawyer (see paragraph 13 above), it is difficult to seriously question the fairness of criminal proceedings conducted in another Council of Europe member State. Indeed, R.S. was afforded a criminal trial in Hungary before courts at two levels of jurisdiction, which delivered well-reasoned decisions. In particular, the Hungarian courts explained that R.S. himself had initially asked for an interpreter from Hungarian into Russian and that – once he had complained about not understanding that language to the necessary degree – they conducted an in-depth analysis of the disadvantage at which this might put him in the proceedings against him. In the end, they concluded that it was proven that R.S. had a good command of Russian and that, in any event, at his request he had subsequently been

provided with interpreters and translations of documents into his native language (see paragraph 15 above).

167. Furthermore, it is not clear about which rights R.S. was allegedly not informed during the criminal proceedings against him (see paragraph 13 above), since it can be seen from the first-instance judgment of the Budapest High Court that he had been afforded legal counsel from the time of his first questioning on 19 February 2004 (see paragraph 11 above). In any event, there is insufficient evidence that any procedural omission – if indeed there had been one – was not subsequently offset by procedural safeguards or that such an omission rendered the entire proceedings against him unfair (see, *mutatis mutandis*, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 262, 13 September 2016). Moreover, had R.S. considered his trial unfair, he could have lodged an application under Article 6 with the Court against Hungary once the criminal proceedings against him had come to an end, but he failed to do so.

168. The remaining reasons relied on by the Azerbaijani Government, such as the personal history and mental difficulties of R.S. – as understandable as they may be – could hardly be sufficient to justify the failure of the Azerbaijani authorities to enforce the punishment imposed against one of their citizens for a serious hate crime committed abroad. In particular, the Court is satisfied that R.S.'s mental capacities were thoroughly assessed during his trial in Hungary by a number of medical experts and that he was found to have been mentally able to understand the dangers and consequences of his actions at the time of the offences (see paragraph 15 above). The subsequent decision by the Azerbaijani authorities to promote R.S. to a higher military rank would clearly suggest that he was deemed fit to continue to serve in the military and therefore did not suffer from a serious mental condition.

169. Quite apart from his pardon, the Court is particularly struck by the fact that, in addition to immediate release, upon his return to Azerbaijan R.S. was granted a number of other benefits, such as salary arrears for the period spent in prison, a flat in Baku and a promotion in military rank awarded at a public ceremony. The Azerbaijani Government did not provide any explanation as to why R.S. had been granted those benefits, nor did they indicate the legal basis for such actions apart from citing the applicable regulation on military promotion (see paragraph 30 above). Indeed, the salary arrears at the least appear not to have had a legal basis in the Code of Criminal Procedure, which allows for such a measure only in cases where an individual has been acquitted or wrongfully convicted (see paragraph 28 above).

170. In the Court's view, the foregoing – taken as a whole – indicates that R.S. was treated as an innocent or wrongfully convicted person and bestowed with benefits that appear not to have had any legal basis under domestic law.

171. The Court reiterates in this connection, as it has already held in similar cases, that, as a matter of principle, it would be wholly inappropriate and would send a wrong signal to the public if the perpetrator of very serious crimes such as those in the present case were to maintain his or her eligibility for holding public office in the future (see *Türkmen v. Turkey*, no. 43124/98, § 53, 19 December 2006; *Abdülsamet Yaman*, cited above, § 55; and *Enukidze and Girgvliani*, cited above, § 274). As already stated, in the present case not only did R.S. remain eligible for public office, but he was also promoted to a higher military rank in a public ceremony.

172. In view of the foregoing, the acts of Azerbaijan in effect granted R.S. impunity for the crimes committed against his Armenian victims. This is not compatible with Azerbaijan's obligation under Article 2 to take effective action to deter the commission of offences against the lives of individuals.

173. There has thus been a violation by Azerbaijan of Article 2 of the Convention under its procedural limb.

D. Procedural obligations under Article 2 of the Convention as regards Hungary

1. Submissions of the parties

(a) The applicants

174. The applicants complained that Hungary had violated Article 2 of the Convention by granting the request for R.S.'s transfer without obtaining adequate binding assurances to the effect that he would be required to complete his prison sentence in Azerbaijan.

175. The applicants submitted that the Hungarian authorities had had a positive obligation to ensure respect for the applicants' right to life. The nature and extent of the positive obligations under Article 2 in the circumstances of the case set out in relation to Azerbaijan were equally applicable to Hungary. It was a Hungarian court which had convicted and sentenced R.S. and accordingly there had been a positive obligation on the Hungarian government not to take any steps which would undermine that decision.

176. In addition, the Hungarian authorities had been required to show "special vigilance and a vigorous reaction" (they referred to *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII), which in the instant case meant taking sufficient steps to ensure that R.S. served his sentence, as handed down, for murder and attempted murder.

177. The positive obligations under Article 2 had required that, prior to agreeing and implementing R.S.'s release and transfer, the Hungarian authorities should have taken reasonable measures to ensure that R.S. would

continue to serve his sentence in Azerbaijan. However, they had failed to seek or obtain adequate assurances as to the continued detention of R.S. prior to deciding to transfer him back to Azerbaijan.

178. The disclosed correspondence between the respondent Governments showed that no such assurances had been sought. Furthermore, a letter from the Azerbaijani Ministry of Justice dated 15 August 2012 to the Hungarian Ministry of Public Administration and Justice appeared to have been written in general terms, setting out applicable domestic law. It did not state, in specific terms, how it had been proposed that R.S. would be dealt with following his transfer, a fact that had been confirmed by the Azerbaijani Government in their observations.

179. As regards the question of assurances made between States, the Court's established practice was to assess whether they provided a sufficient guarantee that the applicant would in practice be protected against the risk of treatment prohibited by the Convention (the applicants referred to *Saadi v. the United Kingdom* [GC], no. 13229/03, § 148, ECHR 2008; *Ismoilov and Others v. Russia*, no. 2947/06, § 127, 24 April 2008; *Soldatenko v. Ukraine*, no. 2440/07, §§ 73-74, 23 October 2008; and *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 189, ECHR 2012 (extracts)).

180. The Hungarian authorities had been aware of the highly politically charged nature of R.S.'s case, not least given R.S.'s admission in the course of the criminal proceedings that his motives had been related to the Nagorno-Karabakh conflict. The report of the Hungarian Commissioner for Fundamental Rights had concluded that, taking account of all the circumstances, the Hungarian government should have been aware that if R.S. were to be transferred to Azerbaijan his sentence would almost certainly be terminated and he would be released, because the Azerbaijani public deemed the case to concern an "honourable murder". The Parliamentary Assembly of the Council of Europe had reached a similar conclusion.

181. The applicants submitted that the Hungarian authorities had known or ought to have known that the Azerbaijani authorities would release R.S. on his return. The applicants referred to statements made by Hungarian high-ranking public officials and allegations reported in the media that the Hungarian government had been aware of the possible outcome following the transfer and had allowed it to go ahead in order for Hungary to be able to sell government bonds to Azerbaijan. In *Military and Paramilitary Activities in and against Nicaragua* the ICJ had indicated that statements emanating from high-ranking political figures were of particular probative value when the acknowledged facts or conduct were unfavourable to the State. The Court had adopted that approach and extended its application to prominent political figures in general in the case of *Chiragov and Others v. Armenia* ([GC], no. 13216/05, §§ 177-79, ECHR 2015). Furthermore,

taking into account the statements made by Azerbaijani officials in support of R.S. before his transfer, the applicants argued that the consequences of the transfer could have clearly been anticipated.

182. The decision to transfer R.S. appeared to have been made by the Minister of Justice without the involvement of any judge, court or prosecutor, or any other independent process of scrutiny or accountability. The Hungarian Government had not demonstrated that the domestic law had required the Minister to take account of relevant factors or to ignore irrelevant ones. Accordingly, the applicants submitted that there was an insufficient domestic legislative framework in place to regulate the transfer of sentenced prisoners in order to avoid arbitrariness or abuse of process. The applicants had been neither consulted nor informed about the decision taken by the Hungarian authorities to transfer R.S. to Azerbaijan.

183. The applicants pointed to inconsistencies in the observations of the respondent Governments as regards the number of transfer requests received and the reasons for their refusal.

184. Lastly, the applicants dismissed Hungary's argument that it had had reason to believe that, as a Council of Europe member State, Azerbaijan would act in line with its international obligations. The fact that a State was a member of the Council of Europe did not constitute grounds for presuming that it would behave in line with its international obligations.

(b) The Hungarian Government

185. The Hungarian Government denied that Hungary had violated any of its positive obligations under Article 2 of the Convention. The authorities had conducted criminal proceedings and had found R.S. guilty of premeditated murder with malice and extraordinary cruelty as well as preparation of murder and had sentenced him to life imprisonment, to be served in a maximum-security prison.

186. R.S.'s transfer to Azerbaijan had taken place in full compliance with the relevant international legal provisions and Hungarian laws. The Hungarian Government had not known (and could not have known) that there was a probability of R.S.'s release following his transfer. Azerbaijan was a Council of Europe member State and a Contracting State to the Transfer Convention. Hungary had had every reason to believe that Azerbaijan would act in line with its international obligations. Hungary had acted in good faith and in accordance with the provisions of the Transfer Convention.

187. Neither the Transfer Convention nor the domestic law had obliged the Hungarian authorities to obtain assurances from Azerbaijan, and nor did the relevant provisions refer to the possibility of obtaining such assurances. As required by the Transfer Convention, the Hungarian Government had requested further information from the Azerbaijani authorities; the latter had responded, stating that they would continue with the enforcement of the

sentence without any "conversion" or new proceedings being instituted. They had further stated that under the Azerbaijani Criminal Code the sentence of a person serving life imprisonment could only be changed by a court and that such a person could only be released after serving twenty-five years of imprisonment. The Hungarian authorities had had no reason to believe that the Azerbaijani authorities would act in defiance of that official letter.

188. Previous requests for the transfer of R.S. had been submitted by Azerbaijan but no decision had been taken because another set of criminal proceedings for violence against a prison guard had been pending against him. In those proceedings, R.S. had eventually been convicted and sentenced to eight months' imprisonment, suspended for two years. Following the completion of those proceedings in January 2008, no further request for the transfer of R.S. had been submitted by Azerbaijan until 2012.

(c) The Armenian Government, third-party intervener

189. The Armenian Government took the view that the Hungarian authorities had not demonstrated sufficient diligence or scrutiny when reviewing the transfer request and assessing the risk factors. The Hungarian authorities had known or ought to have known that there was a high probability of R.S. being released by the Azerbaijani authorities following his transfer, especially in the light of the circumstances of the conflict between Armenia and Azerbaijan and the statements made by high-ranking officials calling for R.S. to be released, but also in view of the vigorous interest shown by the Azerbaijani authorities in having R.S. returned.

190. In that regard, the Hungarian Commissioner for Fundamental Rights had concluded in a report that the Hungarian government should have been aware of the consequences of the transfer in the light of the view in Azerbaijan of the murder as "patriotic" and the publicity calling for R.S.'s release, as well as the fact that Azerbaijan had not committed itself in any official form to not granting a pardon or to asking for the consent of Hungary before granting one. Relying on the UNHCR Note on Diplomatic Assurances and the Court's case-law (*Soering v. the United Kingdom*, 7 July 1989, Series A no. 161; *Baysakov and Others v. Ukraine*, no. 54131/08, § 51, 18 February 2010; *Klein v. Russia*, no. 24268/08, §§ 55-56, 1 April 2010; and *Saadi v. Italy* [GC], no. 37201/06, § 147, ECHR 2008), the Armenian Government argued that the assurances received by the Hungarian authorities from Azerbaijan had been insufficient. It furthermore argued that simply restating legal provisions could not be considered to constitute sufficient diplomatic assurance. Furthermore, the authorities giving such assurances had to possess the authority to provide them.

191. The Hungarian authorities had failed to conduct a thorough investigation into the transfer procedures and potential outcomes and had

based the transfer decision on unreliable "assurances" which had simply recited domestic laws, been vague and lacked precision.

2. The Court's assessment

192. The Court observes that the Hungarian authorities prosecuted R.S. without delay. The criminal proceedings against him led to a conviction and a lifelong prison sentence, upheld on appeal. The applicants did not criticise either the conduct of those proceedings or their outcome. The imperative of establishing the circumstances of the crimes committed and the person responsible for the loss of life was thus satisfied in the present case.

193. What the applicants complained about was the alleged failure of the Hungarian authorities to ensure that R.S. would continue to serve his prison sentence even after he left Hungary. In particular, they argued that the Hungarian authorities knew or ought to have known that there was a likelihood that R.S. would be released if transferred to Azerbaijan and that therefore they should have requested specific diplomatic assurances that this would not be the case.

194. The Court has on numerous occasions examined situations in which a State was called upon to ensure that a person being expelled or extradited from its territory would not be exposed to treatment contrary to Articles 2 or 3 of the Convention in the requesting State (see, among many other authorities, *Saadi v. Italy*, cited above, § 125). Furthermore, in *Rantsev* (cited above), in the context of human trafficking, the Court found that, in view of the obligations undertaken by Russia to combat trafficking in human beings, the Court was competent to examine the extent to which Russia could have taken steps within the limits of its own territorial sovereignty to protect the applicant's daughter from being trafficked to another country, to investigate allegations of trafficking and to investigate the circumstances leading to her death in another country (ibid., § 208).

195. In this case, the Court is called upon to examine whether and to what extent a transferring State might be responsible for the protection of the rights of victims of a crime or their next of kin (see, *mutatis mutandis*, *Gray v. Germany*, no. 49278/09, § 87, 22 May 2014, and *Zoltai v. Hungary and Ireland* (dec.), no. 61946/12, § 32, 29 September 2015).

196. The Court would stress at the outset that its examination in the present case is necessarily limited by the factual context and evidence as submitted by the parties. The Court observes that the Hungarian authorities followed the procedure set out in the Transfer Convention in its entirety. In particular, they requested the Azerbaijani authorities to specify which procedure would be followed in the event of R.S.'s return to his home country (see paragraph 19 above). Although the reply of the Azerbaijani authorities was admittedly incomplete and worded in general terms – which in turn could have aroused suspicion as to the manner of the execution of R.S.'s prison sentence and prompted them to further action, as concluded by

the Hungarian Commissioner for Fundamental Rights (see paragraph 24 above) – no tangible evidence has been adduced before the Court by the parties in the present case to show that the Hungarian authorities unequivocally were or should have been aware that R.S. would be released upon his return to Azerbaijan. Indeed, bearing in mind particularly the time already served by R.S. in a Hungarian prison, the Court does not see how the competent Hungarian bodies could have done anything more than respect the procedure and the spirit of the Transfer Convention and proceed on the assumption that another Council of Europe member State would act in good faith.

197. Accordingly, in the specific circumstances of the present case, the Court cannot conclude that the Hungarian authorities failed to fulfil their procedural obligations under Article 2.

198. Therefore, there has been no violation by Hungary of Article 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

199. The applicants submitted that Azerbaijan had violated Article 14 of the Convention taken in conjunction with Article 2. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

200. The Court notes that this complaint is linked to the one examined above under Article 2 and must therefore likewise be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicants

201. The applicants submitted that R.S. had clearly committed the offences against his two victims because of their nationality and ethnic origin, as had been the conclusion of the Hungarian courts when convicting him. The fact that the victims' nationality had been the motive for the offences had been treated by the trial court as an aggravating circumstance.

202. The various actions taken by the Azerbaijani authorities, including pardoning R.S., had been carried out for the very reason that his actions had been committed against Armenian military officers. In its detailed 2014

report on the case of R.S. (see paragraph 41 above), the Parliamentary Assembly of the Council of Europe had concluded that

> "... the presidential pardon was seemingly granted as a reward for [the victim's] murder, motivated by nationalist hate. It did not imply forgiveness, but the glorification of a crime on political grounds."

203. The applicants referred to *Nachova and Others* (cited above, §§ 145 and 160), pointing to the Court's view on racial violence and the specific requirement to enforce the criminal law in that sphere.

204. They observed that Article 12 of the Transfer Convention did not provide for an absolute entitlement to grant pardons. The interpretation of the Transfer Convention by the Azerbaijani Government had failed to take into account the object and purpose of that treaty, namely the furtherance of the ends of justice and the social rehabilitation of sentenced persons by allowing foreigners deprived of their liberty the opportunity to serve their sentences within their own society. The applicants argued that Article 12 should be read as a safeguard clause, intended to ensure that there was no bar on the application of national laws on amnesty and pardon, in accordance with international law, if and when it was reasonable to apply such a measure. Even assuming that there was an absolute right to grant pardons, Article 12 of the Transfer Convention could not be interpreted as constituting a violation under the European Convention on Human Rights or other international instruments.

205. While there was nothing in Article 12 of the Transfer Convention to suggest that the receiving State should seek the consent of the sentencing State before a pardon or an amnesty was granted, the applicants referred to the declaration of January 2001 that Azerbaijan had submitted on ratifying the Transfer Convention and argued that, according to the International Law Commission's Guide to Practice on Reservations to Treaties and under the Vienna Convention on the Law of Treaties and judicial practice, that declaration in fact constituted a reservation and that the relevant legal consequences therefore applied. Under Articles 21 and 23 of the Vienna Convention, a reservation established with regard to another party modified those provisions to the same extent for that other party in its relations with the State expressing the reservation question, and any claim to the contrary would run counter to the fundamental principle of the sovereign equality of States. Azerbaijan could not, therefore, avoid the legal effects of its own reservation. Its decision regarding the pardon of R.S. should have been agreed with the competent authorities of Hungary. If the Court accepted that the declaration of Azerbaijan constituted an interpretative declaration and not a reservation, it would show the understanding of the Republic of Azerbaijan to be that the correct interpretation of Article 12 implied that the consent of the sentencing State had to be sought. Azerbaijan had therefore not acted in good faith.

206. Lastly, the applicants argued that the International Convention on the Elimination of All Forms of Racial Discrimination, to which both Azerbaijan and Hungary were parties, was relevant in the circumstances of the case. The applicants referred in particular to Articles 5 and 6 and argued that, following the transfer of R.S. to Azerbaijan, Hungary's jurisdiction had been substituted for that of Azerbaijan's as regards the need for effective protection and remedies and the enforcement of the punishment. The pardoning of R.S. had failed to ensure an appropriate punishment for a crime motivated by the ethnic origin of the victims.

(b) The Azerbaijani Government

207. The Azerbaijani Government denied that there had been a violation of Article 14 and referred to the difficulties inherent in finding such a violation (referring to *Nachova and Others*, cited above, § 157). It could not be established that the ethnic origin of the victims had been the sole motive for R.S.'s actions. He had been motivated by a number of factors and his motivation should be seen in the light of the provocations he had been exposed to by the Armenian officers and of his personal history. The Azerbaijani Government reiterated that they strongly denied having acknowledged or accepted R.S.'s conduct as their own. Azerbaijan did not approve of the crimes and it accepted that R.S. had been properly convicted. Azerbaijan's dissatisfaction emanated from the length of his sentence, given all the circumstances.

208. The Azerbaijani Government denied that the granting of the presidential pardon had been motivated by discrimination and reiterated the same reasons for that decision as advanced in the context of Article 2 (see paragraphs 133-135 above). They also submitted two statements by Azerbaijani officials which showed that R.S.'s actions had never been approved or justified at State level (see paragraph 26 above).

(c) The Armenian Government, third-party intervener

209. The Hungarian courts had clearly established that R.S.'s crimes had been committed "exclusively because of the ethnicity of the victims". The Armenian Government argued that Azerbaijan had not demonstrated the required "special vigilance" and "vigorous reaction", as set out in *Nachova and Others* (cited above), but had instead glorified and encouraged the killing of Armenians and praised a person who had been convicted of the murder and attempted murder of Armenians on the basis of their ethnicity. Statements made by high-ranking officials of Azerbaijan had been made in breach of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. The Court's assessment

(a) General principles

210. Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Nachova and Others*, cited above, § 145, and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (see *Timishev*, cited above, § 58).

211. As to the burden of proof in this sphere, the Court reiterates that in the proceedings before it there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. Proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others*, cited above, § 147).

212. The Court has further recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (see *Aktaş v. Turkey*, no. 24351/94, § 272, ECHR 2003-V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation on how the events in question occurred (see *Al Nashiri v. Romania*, no. 33234/12, §§ 492-93, 31 May 2018, and the cases cited therein). Finally, having recognised that proving racial motivation will often be extremely difficult in practice (see, among many other authorities, *Mižigárová v. Slovakia*, no. 74832/01, § 120, 14 December 2010), the Court has not ruled out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases of alleged discrimination and, if they fail to do so, finding a violation of Article 14 of the Convention on that basis (see *Nachova and Others*,

cited above, § 157; *Stoica v. Romania*, no. 42722/02, § 130, 4 March 2008; and *Adam v. Slovakia*, no. 68066/12, § 91, 26 July 2016).

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

213. At the outset, the Court observes that the Hungarian courts convicted R.S. of committing an exceptionally cruel murder and of making preparations for another murder; moreover, the sole motive for those crimes was the Armenian nationality of his victims (see paragraph 15 above). The ethnic bias in respect of R.S.'s crimes was thus fully investigated and highlighted by the Hungarian courts, and the Court sees no reason to question those conclusions. Nor did the applicants in the present case complain of a failure to investigate racist motives for R.S.'s crimes. In fact, the applicants submitted under Article 14 of the Convention that the victims' Armenian ethnic origin had not only been the main reason for the crimes in question, but also for the various subsequent actions of the Azerbaijani authorities, including the pardoning and glorification of the perpetrator. In that respect, the applicants' discrimination complaint differs significantly from complaints typically raised under the procedural limb of Articles 2 or 3 in other cases concerning discriminatory violence (compare, among many other authorities, *Lakatošová and Lakatoš v. Slovakia*, no. 655/16, § 65, 11 December 2018; *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, § 152, 27 January 2015; and *Angelova and Iliev*, cited above, § 107).

214. The Court has already found that the Azerbaijani authorities' actions in the present case constituted a breach of the procedural limb of Article 2 (see paragraph 172 above). Faced with the applicants' complaint of a violation of Article 14 taken in conjunction with Article 2, as formulated, the Court's task is to establish whether or not the Armenian ethnic origin of R.S.'s victims and the nature of his crimes played a role in the measures taken by the Azerbaijani authorities following his return to Azerbaijan.

215. In this connection, the Court observes that the applicants have provided a number of indications in support of their claim. Firstly, R.S. was pardoned immediately upon his return to Azerbaijan; there is nothing in the case file to indicate that a formal request to that end was ever made, and nor is there any indication that there ensued any kind of reflection process or legal procedure for the pardon (see paragraph 29 above). Secondly, R.S. was not only reinstated in his post in the military, he was also promoted in military rank in a public ceremony shortly after his return to Azerbaijan. Moreover, he received a flat in Baku, together with salary arrears in respect of the entire period that he had spent in prison (even though the latter measure was provided under the domestic law only in respect of acquitted persons – see paragraph 28 above). As already stated, the Government have not indicated a domestic legal basis for any of those additional measures

(see paragraph 169 above), which were understandably perceived as constituting rewards for R.S.'s actions (see paragraph 172 above). Nor have they provided any past examples of other convicted murderers who received similar benefits upon their release following a presidential pardon.

216. In addition, the Court finds particularly disturbing the statements made by a number of Azerbaijani officials glorifying R.S., his deeds and his pardon (see paragraph 25 above). It also deplores the fact that a large majority of those statements expressed particular support for the fact that R.S.'s crimes had been directed against Armenian soldiers, congratulated him on his actions and called him a patriot, a role model and a hero.

217. The applicants also drew the Court's attention to the fact that a special page on the website of the President of Azerbaijan had been created, labelled "Letters of Appreciation regarding [R.S.]", where individuals could express their congratulations on his release and pardon (see paragraph 102 above). A vast number of those letters were still viewable on that web page, all of them thanking the President for pardoning R.S. on the basis that they agreed with his having killed his Armenian victim. While it is true that the President himself had never posted anything in that section, its mere existence and the reason for it pointed to the idea that R.S. had been pardoned because his attack had been of an ethnic nature and that the granting of the pardon could be perceived as an important step in the process of legitimising and glorifying R.S.'s actions.

218. In the light of the above, and bearing in mind that the present case concerns one of the most fundamental rights guaranteed by the Convention, the Court is satisfied that the applicants have put forward sufficiently strong, clear and concordant inferences as to make a convincing prima facie case that the measures taken by the Azerbaijani authorities in respect of R.S. were racially motivated. The Court is mindful of the difficulty faced by the applicants in proving such bias beyond a reasonable doubt, given that the facts in issue lie wholly, or in large part, within the exclusive knowledge of the Azerbaijani authorities. The Court considers that, given the particular circumstances of the present case, it was therefore incumbent on the respondent Government to disprove the arguable discrimination allegation made by the applicants (see paragraph 212 above).

219. For their part, the Azerbaijani Government sought to justify their actions by relying on the same reasons they had advanced in order to justify R.S.'s pardon. Having already examined those arguments in the context of the applicants' complaint under the procedural limb of Article 2 and dismissed them as unconvincing (see paragraphs 165-168 above), the Court sees no reason to hold otherwise in the context of the present complaint.

220. The Azerbaijani Government also submitted two statements made by public officials in support of their contention that their actions in respect of R.S. had not been discriminatory (see paragraph 26 above). At this juncture, the Court reiterates that the present case does not merely concern

R.S.'s pardon, but more generally the hero's welcome accorded to him, the various benefits granted to him, and the unquestionable approval of his actions expressed by high-ranking officials and by Azerbaijani society as a whole (see paragraph 169 above). In the Court's view, the two statements provided by the Azerbaijani Government are therefore not sufficient to refute the overwhelming body of evidence submitted by the applicants indicating that the various measures leading to R.S.'s virtual impunity, coupled with the glorification of his extremely cruel hate crime, had a causal link to the Armenian ethnicity of his victims.

221. In the light of these circumstances, the Court considers that the Azerbaijani Government have failed to disprove the applicants' arguable allegation of discrimination. Given the specific circumstances of the present case, the Court therefore considers that there has been a violation by Azerbaijan of Article 14 of the Convention in conjunction with Article 2.

IV. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

222. Lastly, the applicants complained that both respondent Governments had failed to disclose documents requested by them in their letter to the Court of 11 July 2016. They referred, in particular, to the failure of Azerbaijan to disclose the presidential order pardoning R.S., and the minutes of the meetings held by the President and the instructions issued by him relating to R.S. They relied on Article 38 of the Convention, which reads as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

223. The Azerbaijani Government contested this claim, pointing out that the decision to pardon R.S. was in the public domain. The Hungarian Government did not comment on this point.

224. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV; *Gaysanova v. Russia*, no. 62235/09, § 144, 12 May 2016; and *Velikova v. Bulgaria*, no. 41488/98, § 77, ECHR 2000-VI). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a Government's part to submit any such information that is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with

its obligations under Article 38 of the Convention (see *Medova v. Russia*, no. 25385/04, § 76, 15 January 2009, and *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

225. Turning to the present case, the Court first of all observes that the applicants' complaint under Article 38 of the Convention relates to the alleged failure of the respondent Governments to comply with a request for documents submitted by the applicants' own lawyers, and not by the Court. It further notes that, following the Court's request for additional information (see paragraph 5 above), both respondent Governments submitted the requested documents within the requisite time-limit, including the presidential pardon decision concerning R.S. In the absence of any evidence to the contrary, the Court is aware of no further document which the Azerbaijani or Hungarian Governments could have furnished for a proper and effective examination of the present application but failed to do so. In conclusion, it cannot be said that either of the respondent Governments failed to cooperate with the Court in the present case.

226. Consequently, the Court considers that there has been no failure by Azerbaijan or Hungary to comply with Article 38 of the Convention in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

227. 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

228. The applicants did not seek any damages but requested the Court to consider ordering appropriate measures in the case in order to achieve *restitutio in integrum* – including, for example, measures analogous to the reopening of domestic proceedings. They suggested that this could include the revocation of the 2012 presidential order pardoning R.S.

229. As regards general measures, the applicants argued that the case had identified various shortcomings in the law and practice of the two respondent States as regards the transfer of sentenced prisoners and accordingly sought general measures to the effect that they be required to revise their legislation and practice in respect of the transfer of sentenced persons, in order to prevent any future violations of the Convention.

230. Finally, the applicants sought additional general measures aimed at implementing the recommendations as regards Azerbaijan of the European Commission against Racism and Intolerance in its various reports, which

had identified various discriminatory policies and practices in respect of Armenians.

231. Having regard to all the circumstances of the present case and to the explicit wishes of the applicants, the Court makes no pecuniary award under this head.

232. As regards the applicants' request to the Court that it order certain measures in respect of Azerbaijan, the Court reiterates that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects. The respondent State remains, in principle, free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see, among the latest authorities, *Čović v. Bosnia and Herzegovina*, no. 61287/12, § 43, 3 October 2017, and the cases cited therein). This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II).

233. In the particular circumstances of the present case the Court does not consider it appropriate to indicate the need for any general or individual measures in respect of Azerbaijan.

B. Costs and expenses

234. The applicants claimed 15,143.33 pounds sterling (GBP) in respect of the costs and expenses incurred before the Court. This amount is to cover approximately forty-five hours of work undertaken by the applicants' two London-based lawyers at an hourly rate of GBP 150, and approximately seventy hours of work undertaken by their two Yerevan-based lawyers at an hourly rate of 100 euros (EUR), plus translations and clerical costs.

235. The Azerbaijani Government contested these claims as excessive.

236. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed in full for the proceedings before the Court.

C. Default interest

237. 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. *Holds*, unanimously, that the second applicant's heirs have standing to pursue the application in his stead;

2. *Declares*, unanimously, the application admissible;

3. *Holds*, by six votes to one, that there has been no violation by Azerbaijan of Article 2 of the Convention in its substantive limb;

4. *Holds*, unanimously, that there has been a violation by Azerbaijan of Article 2 of the Convention in its procedural limb;

5. *Holds*, by six votes to one, that there has been no violation by Hungary of Article 2 of the Convention in its procedural limb;

6. *Holds*, by six votes to one, that there has been a violation by Azerbaijan of Article 14 of the Convention taken in conjunction with Article 2;

7. *Holds*, unanimously, that there has been no failure to comply with Article 38 of the Convention by either of the respondent Governments;

8. *Holds*, unanimously, that
   (a) Azerbaijan is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, GBP 15,143.33 (fifteen thousand one hundred and forty-three pounds sterling and thirty-three pence), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 26 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pinto de Albuquerque is annexed to this judgment.

G.Y.
M.T.

PARTLY DISSENTING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. I follow the opinion of the majority with two major reservations. My first reservation is with regard to the finding in the judgment that there has been no violation by Azerbaijan of Article 2 of the European Convention on Human rights ("the Convention") under its substantive limb. My second reservation is with regard to the majority's finding that there has been no procedural violation by Hungary under Article 2 of the Convention.

A. Azerbaijan's obligation under the substantive limb of Article 2

2. Two distinct issues form the basis of my argument that Azerbaijan has breached the substantive limb of Article 2 of the Convention. Firstly, Azerbaijan has met the requirements under Article 11 of the International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("the ILC Draft Articles on State Responsibility") by acknowledging and adopting the conduct of R.S. as its own, according to the factual circumstances evidenced in the file. Secondly, Azerbaijan has wrongfully granted a pardon, when it should have refrained from doing so in the light of international law. In other words, the present case calls for due regard to the teachings of international public law and particularly to the authoritative interpretations of the Council of Europe Parliamentary Assembly (PACE) and the European Parliament.

1. Acknowledgment and adoption by Azerbaijan of the conduct of R.S. as its own

3. Regarding Article 11 of the ILC Draft Articles on State Responsibility, it should first be mentioned that it reflects customary international law[2]. Under that Article a State may be held responsible for acts that were committed by a private person if it has acknowledged and adopted the person's conduct as its own[3]. The Tribunal in the *Iran-United States Claims* case stipulated that "in order to attribute an act to the State, it [was] necessary to identify with *reasonable certainty* the actors and their association with the State" [emphasis added][4].

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[2] See, for example, *Noble Ventures, Inc. v. Romania*, Award, ICSID Case No. ARB/01/11, 12 October 2005, para 69: "While those Draft Articles are not binding, they are widely regarded as a codification of customary international law."

[3] For an historical introduction to this article, see Olivier De Frouville, "Attribution: Private Individuals", in James Crawford and others, *The Law of International Responsibility*, Oxford, Oxford University Press, pp. 273-275.

[4] *Kenneth P. Yeager v. The Islamic Republic of Iran*, Iran–U.S. C.T.R., vol. 17 , p. 92, at pp. 101–102 (1987).

4. Azerbaijan's treatment of R.S. was aimed at nullifying the negative aspects of his previous conviction. Based on the established facts, R.S. was offered restorative measures to such an extent that Azerbaijan treated R.S. as a wrongfully prosecuted convict. One of the most indicative acts undertaken by Azerbaijan which demonstrates their treatment of his conduct as lawful was the repayment of his salary for the time he had spent in the Hungarian prison. In total, eight years' worth of salary was paid retrospectively. Even the majority express their opinion that "the foregoing – taken as a whole – indicates that R.S. was treated as an innocent or wrongfully convicted person and bestowed with benefits that appear not to have a legal basis under domestic law"[5]. Such action undertaken on the part of Azerbaijan clearly goes beyond statements of approval or endorsement. The repayment of salary arrears represents a positive action undertaken by the State of Azerbaijan in an effort to compensate R.S. for the time he was serving his appropriate and lawful sentence in Hungary.

5. Other than the salary arrears, R.S. became the beneficiary of further restorative measures through which Azerbaijan effectively sought to nullify his previous conviction. R.S. was welcomed back to the military, and indeed received a promotion to a higher military rank.

6. In addition to Azerbaijan's actions indicating their intention to present R.S.'s conduct as lawful, it can also be seen that Azerbaijan has utilised the acknowledged and adopted conduct to further its own political goals[6]. Azerbaijan clearly took political advantage of R.S.'s acts and declared him a national hero, which is an indication by the Azerbaijani government as to the type of behaviour it seeks to reward.

Azerbaijan thus proceeded to praise R.S. as a national hero, a role model and a patriot who had defended his country's honour. Even if Azerbaijan insisted that it did not directly commend the heinous crime committed by R.S., it is evident from the actions undertaken by Azerbaijan that it has indeed tolerated, and even glorified, his acts. The formal basis for this can be seen through the reinstatement of R.S. to his military office, and indeed his promotion. R.S. therefore has the ability to carry out acts of the State, which, in the light of R.S.'s previous commission of a heinous crime, can only be rationalised by assuming that Azerbaijan views that crime as a laudable, rewardable, legal act, and one which was not flagrantly abusive or far removed from R.S.'s official status as a military officer. Were this not the case, Azerbaijan would have to condemn R.S.'s conduct and, according to its own national law, continue to enforce the punishment that R.S. had received in Hungary.

7. Azerbaijan further utilised the actions of R.S. by encouraging members of the public to congratulate and express their support for him

[5] See paragraph 170 of the judgment.
[6] See paragraph 25 of the judgment.

through a special page on the website of the President of Azerbaijan, labelled "Letters of Appreciation regarding R.S.". Consequently, a high number of letters displayed support for R.S.'s actions and thanked the President for pardoning him. As the majority themselves admit, "[w]hile it is true that the President himself had never posted anything in that section, its mere existence and the reason for it pointed to the idea that R.S. had been pardoned because his attack had been of an ethnic nature and that the granting of the pardon could be perceived as an important step in the process of legitimising and glorifying R.S.'s actions"[7].

8. The majority also opine that the "overwhelming body of evidence submitted by the applicants indicat[ed] that the various measures leading to R.S.'s virtual impunity, coupled with the glorification of his extremely cruel hate crime, had a causal link to the Armenian ethnicity of his victims"[8]. These statements demonstrate a remarkable disconnect in the majority's finding of a procedural violation of Article 2, whilst not accepting the evident substantive violation of Article 2. On the one hand the majority accept that Azerbaijan treated R.S. as an innocent or wrongfully convicted person[9] and even legitimised and glorified his actions[10], but on the other hand they refuse to declare this finding as triggering Article 11 of the ILC Draft Articles on State Responsibility. This is beyond my comprehension.

9. Indeed, the commentary on the ILC Draft Articles on State Responsibility distinguishes two ways in which a State's acknowledgement and adoption of a particular conduct as its own may be identified. Either, as in the *United States Diplomatic and Consular Staff in Tehran* case, it might be through express conduct, or, alternatively "it might be inferred from the conduct of the State in question"[11]. In a case before the International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Dragan Nikolic ("Sušica Camp"),* the Trial Chamber relied on the principles laid down in the ILC Draft Articles on State Responsibility "as general legal guidance insofar as they may be helpful for determining the issue at hand"[12]. The Tribunal had to weigh up whether SFOR and the Prosecution were to be viewed as "a mere passive beneficiary of [the defendant's] fortuitous (even irregular) rendition to Bosnia" as opposed to the "'adoption' or 'acknowledgment' of the illegal conduct 'as their own'"[13]. This distinction of being a "mere beneficiary", as opposed to an active "acknowledgement"

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[7] See paragraph 217 of the judgment.
[8] See paragraph 220 of the judgment.
[9] See paragraph 170 of the judgment.
[10] See paragraph 217 of the judgment.
[11] United Nations Legislative Series, *Materials on the Responsibility of States for Internationally Wrongful Acts,* ST/LEG/SER.B/25 at 94 (2012).
[12] *Prosecutor v. Dragan Nikolic ("Sušica Camp"),* Trial Chamber II, Decision on Defence Motion Challenging the exercise of Jurisdiction by the Tribunal on 9 October 2002 [IT-94-2-PT], § 61.
[13] Ibid, § 66.

and "adoption" of an individual's act, further clarifies the threshold which needs to be surpassed for responsibility to be engaged under Article 11 of the ILC Draft Articles on State Responsibility. In *Prosecutor v. Dragan Nikolic*, the Trial Chamber concluded that SFOR and the Prosecution had indeed acted in accordance with their international obligations to arrest and detain the person and had been a "mere beneficiary" of illegal conduct[14].

10. In contrast to this, the Azerbaijani authorities were not "mere beneficiaries" of the fortuitous rendition of RS but instead sought this rendition by all political and legal means and even promoted the rendered person to the rank of national hero. In the present case, Azerbaijan does not expressly claim to have acknowledged and adopted the acts of R.S. as its own, but it is clear from the facts that it behaved in a manner from which such acknowledgement and adoption can be inferred. But there is more to be added in terms of the respondent State's international liability.

2. Pardoning of R.S. by Azerbaijan

11. Under international law, it has long been admitted that the approval by the State of contentious private conduct may be inferred from the pardoning of the offender "when such pardon necessarily deprives the injured party of all redress"[15]. It is true that the issuance of a pardon for serious crimes, including murder, is not prohibited under international law. The use of pardons, however, may be limited in the light of other international obligations that a State may have to observe. Two relevant obligations for the present case are the obligation to prosecute and the obligation to implement a sentence.

12. In paragraph 61 of the present judgment, the majority find as follows:

> "... under Azerbaijani law, a presidential pardon is not a normative legal act, but rather a decision based on the discretionary power of the Head of State. Other than claiming that the applicants could have attempted to have their case reviewed by the Constitutional Court, the Government did not submit a single example of a domestic decision in which such a course of action had been successful. The Court therefore dismisses the Government's objection in this respect."

The majority also attentively note that no formal request for a pardon was ever made, nor was any kind of reflection process or legal procedure initiated for the delivery of the pardon[16].

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[14] Ibid., § 67.

[15] Award by the British-Colombian Mixed Commission in the *Cotesworth and Powell* Case of 5 November 1875, cited in R. Ago, 4th Report on State Responsibility, ILC Yearbook 1972, Vol. II, 101 (para. 7). See also the Award by the Italian-Venezuelan Commission in the *Poggioli Case* in Reports of International Arbitral Awards, volume X (1903), pp. 669-692, which found Venezuela responsible for damage inflicted upon the property of a foreigner where it had allowed serious offences to be committed against him personally and the offenders, although known, to go unpunished.

13. The explanation by Azerbaijan that there was an avenue through which the applicants could have had their case reviewed has therefore not convinced the majority. The majority further review the reasons for R.S.'s immediate release and find that neither the alleged unfairness of the criminal proceedings in Hungary, nor the personal history and mental difficulties of R.S. could be "sufficient to justify the failure of the Azerbaijani authorities to enforce the punishment imposed against one of their citizens for a serious hate crime committed abroad"[17]. In straightforward language, the majority even state that "the acts of Azerbaijan in effect granted R.S. impunity for the crimes committed against his Armenian victims"[18].

14. These arguments should, in my view, indicate that Azerbaijan has used the presidential power of pardon in an unlawful way. This view is further backed up by the authoritative interpretation of PACE, which issued a resolution on the Transfer Convention prior to the commission of R.S.'s acts and his ensuing transfer to Azerbaijan. The interpretation of the Transfer Convention by PACE should have been taken into account when the Azerbaijani President signed the pardon immediately following the transfer of R.S, but it was not. On the contrary, it was bluntly ignored by the Azerbaijani Head of State and his acolytes. The revocation of the punishment that was lawfully imposed on R.S. for his commission of a grave crime effectively deprived the applicants of any means of redress, to use the language of the above-mentioned *Cotesworth and Powell* case[19].

15. In fact, PACE had reiterated in its Recommendation 1527(2001), that "[f]or the reasons set out above, the Assembly recommends that the Committee of Ministers: ... state clearly that the convention is not designed to be used for the immediate release of prisoners on return to their own country" (paragraph 9.3(b)), a fact which the majority acknowledge in their finding as well[20]. Furthermore, the majority also mention PACE Resolution 2022 (2014), which concluded: "...the presidential pardon was seemingly granted as a reward for [the victim's] murder, motivated by nationalist hate. It did not imply forgiveness, but the glorification of a crime on political grounds"[21].

The PACE Recommendation of 2001 was further substantiated by a Resolution of the Parliamentary Assembly of 2014, in which it concluded that, by granting R.S. a pardon, Azerbaijan had violated the principle of

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[16] See paragraph 215 of the judgment.
[17] See paragraph 168 of the judgment.
[18] See paragraph 172 of the judgment.
[19] Cited above, footnote 14.
[20] See paragraph 162 of the judgment.
[21] Council of Europe Parliamentary Assembly (PACE), Resolution 2022 (2014) on the measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112), 18 November 2014.

good faith and the rule of law[22]. It is notable that the Parliamentary Assembly does not shy away from condemning a pardon, which, according to general international law, can be issued at the discretion of each individual State. In addition, it has sought to limit the legitimate use of pardons whenever specific international obligations – such as the principle of good faith and the upholding of the rule of law, which are fundamental features of the Council of Europe's values – may be infringed.

Likewise, the European Parliament took the standpoint that Azerbaijan had acted in bad faith when issuing a pardon to R.S. It specified that whilst granting a pardon in general was lawful, in the present case "it [ran counter] to the spirit of that international agreement"[23]. The majority similarly refer to the Parliament's Resolution when highlighting that the Azerbaijani authorities should have been cautious in providing an adequate response upon receiving R.S. in the light of the very serious ethnically based crimes he had committed[24]. Despite these findings, the majority refrain from condemning the pardon as a violation under international law.

16. Again, therefore, there appears to be a noticeable disconnect between the majority's observations and findings of a procedural violation, whilst simultaneously finding no violation of Article 2 of the Convention under its substantive limb. The majority clearly point out their dissatisfaction with Azerbaijan's behaviour in the light of its international obligation to enforce the sentence handed down by the Hungarian court, but they fail to take the final step of condemning it.

17. Taken together with the aim of the Transfer Convention to promote justice and social rehabilitation of sentenced persons, as acknowledged by the majority themselves[25], it is inconceivable to me how Azerbaijan cannot be condemned for non-compliance with its international obligations to enforce a valid, final sentence in the present case.

18. The cumulative effect of the PACE Recommendation in 2001, alongside its condemnation of the specific conduct of Azerbaijan in both the 2012 and the 2014 Resolutions, and the acknowledgement by the majority of these authoritative interpretations, lead me to conclude that Azerbaijan should be held responsible for issuing an unlawful pardon in the light of international law.

19. Lastly, I would like to return to the jurisprudence of the European Court of Human Rights ("the Court"). Many times, the Court has maintained its position that "the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective"[26]. Moreover, it has repeatedly stated that "in determining

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[22] Idem.
[23] See paragraph 42 of the judgment (point 3 of the Resolution).
[24] See paragraph 163 of the judgment.
[25] See paragraph 162 of the judgment.
[26] *Airey v. Ireland*, no. 6289/73, § 24, 9 October 1979.

Convention rights one must frequently look beyond appearances and concentrate on the realities of the situation"[27].

The current presentation of hard facts, demonstrating how Azerbaijan has actively taken steps to pardon and annul any punishment, compensate R.S. and indeed elevate his position to the pinnacle of a national hero, forms a "reality of the situation" which to my mind cannot but be seen as a State's endorsement through acknowledgement and adoption of the individual's conduct as its own. This must clearly be condemned under international law. It must therefore be concluded that the State definitively assumed and adopted the criminal conduct of R.S. as its own from the point where it nullified the effects of the sentence imposed on him. Although used in a different setting, the words of the Umpire in the *Poggioli* case can be recalled here: the Azerbaijan State authorities were "so blind to their duties" that they failed to comply with their international obligations and thus their acts were not "the acts of a well-ordered state, but rather that for the time being some of the instrumentalities of government had failed to exercise properly their functions"[28]. The seriousness of the present case results from the fact that the failing "instrumentalities of the government" in Azerbaijan were at the highest level of the State.

B. Hungary's obligation under the procedural limb of Article 2 of the Convention

20. With regard to the majority's finding of no violation of Hungary's procedural obligation under Article 2 of the Convention, I would like to submit three reasons that have led me to reach the opposite conclusion.

Firstly, Hungary was aware of the likelihood that R.S. would be granted a pardon. Prime Minister Viktor Orbán was questioned about R.S. in a press conference shortly after R.S.'s release and stated as follows:

> "There was coordination within the entire government about this ... Each ministry presented its opinion, the justice ministry about the legal side and the foreign ministry about the diplomatic consequences. ... The foreign ministry had forecast precisely what types of consequences this or the other decision may have. Nothing happened after our decision that we would not have reckoned with in advance."[29]

This is a notorious fact which should not have been ignored by the majority, in view of the Court's case-law and also having regard to

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[27] See, *inter alia*, *Dvorski v. Croatia*, no. 25703/11, § 82, ECHR 2015; *Erkapić v. Croatia*, no. 51198, §§ 80-82, 25 April 2013; and for older cases, *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 48, Series A no. 77, and *Delcourt v. Belgium*, 17 January 1970, § 31, Series A no. 11.

[28] Award by the Italian-Venezuelan Commission in the *Poggioli Case* in Reports of International Arbitral Awards, volume X (1903), p. 689.

[29] Reuters, 11 September 2012; see https://www.reuters.com/article/us-hungary-azerbaijan/hungary-handed-over-azeri-killer-aware-of-backlash-risks-pm-idUSBRE88A10020120911 (last consulted 16 March 2020).

international jurisprudence in which judges used widely known and publicly available facts for the purpose of obtaining a realistic view of the facts beyond the case file[30]. Here again, it is of the utmost importance that the Court should not turn a blind eye to reality, because President Orbán's statements are truly remarkable. Not only did he indicate his involvement in the process of the transfer of R.S., which normally involves the Ministry of Justice as the competent authority to transfer sentenced persons, he also blatantly expressed his view that Hungary was indeed not surprised at the outcome of R.S.'s transfer. This, in consequence, demonstrates that Hungary was willing to face the risks that would arise once R.S. was transferred back to Azerbaijan.

21. Secondly, even admitting for the sake of argument that Hungary was genuinely unaware of the course of events that would follow a prison transfer of R.S. to Azerbaijan, it should have been aware of the content of the Transfer Convention, which expressly stipulates the possibility of a pardon under Article 12. The mere legal possibility of a pardon for a transfer candidate such as R.S. should have triggered a duty on the part of Hungary to be extremely cautious about accepting the request from Azerbaijan regarding the transfer. This view was also expressed by the Hungarian Commissioner for Fundamental Rights who, in response to R.S.'s transfer, issued a report in which he stated:

> "In my opinion, the Hungarian Government was not sufficiently prudent when it did not require any guarantee from Azerbaijan for not granting – or not without knowledge of Hungary – the amnesty provided by article 12 of the Convention. ... In the absence of such prudence the Hungarian public may consider the decision on the approval of transfer as one made in bad faith." [31]

In coming to this conclusion, the Commissioner also took into account that the actual transfer of R.S. had been approved prior to any assurances by Azerbaijan[32]. The Hungarian Commissioner's conclusion also reflects the view of the Council of Europe Parliamentary Assembly. The latter proceeded to "recommend to States Parties to the Convention to make,

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[30] See, for example, *Avotins v. Latvia* [GC], no. 17502/07, §§ 68 and 122, 23 May 2016; *Al Hamdani v. Bosnia and Herzegovina*, no. 31098/10, § 47, 7 February 2012; and *Jabari v. Turkey*, no. 40035/98, § 44, ECHR 2000-VIII, in which the Court took "judicial notice of recent surveys of the current situation in Iran". The Inter-American Court of Human Rights employed the "notorious facts" doctrine in *Velasquez Rodriguez v. Honduras* (Merits, 1988), § 146, referring to newspapers and stating that "many of them contain public and well-known facts which, as such, do not require proof". For domestic law references, see the foundational case *Lumley v. Gye* (1853) 2 E & B 216: "Judges are not necessarily ignorant in court to what everybody else out of court are familiar with …" The test is: "when facts are so notorious that it would be an affront to the common sense of judges and the dignity of the court to require proof of them they can be judicially noticed".

[31] See Prof. Dr. Szabo Máté, Report of the Commissioner for Fundamental Rights on the case AJB-7085/2012, at 5 (07-12-2012).

[32] Ibid, at 2.

where appropriate, *ad hoc* arrangements between a sentencing and an administering State in the form of an addendum to a transfer agreement under the Convention, which would spell out mutual expectations and provide for adequate assurances by the administering State"[33].

22. Thirdly, Hungary should have been more cautious when receiving informal assurances from Azerbaijan, particularly when dealing with such a sensitive, politically-laden case as the present one. The informal assurances issued by the Deputy Minister of Justice of the Republic of Azerbaijan merely stated that R.S. would be handled under Article 9(1)(a) of the Transfer Convention, which would imply non-conversion of sentence. The formulation is the following: "in the event of the transfer of *a* prisoner convicted abroad, the enforcement of the sentence would be continued in Azerbaijan without any 'conversion' of the sentence"[34]. He then proceeded to state that the punishment of a convict serving a life sentence could only be replaced with a term of imprisonment for a specified period, and that the convict could be released on conditional parole only after serving at least 25 years of his or her prison sentence[35]. It is crucial to observe the detail of this statement. The Azerbaijani Deputy Minister of Justice did not specify that R.S. would be subject to the punishment of a convict serving a life sentence, which would only allow parole after 25 years; he merely pointed out the existence of the legislative framework and did not apply it to R.S.'s case.

23. The majority take note of this fact too and decide that there existed insufficient tangible facts to determine that Hungary did know or ought to have known about R.S.'s immediate release[36]. I believe the tangible facts were there, and one cannot turn a blind eye to them. Right after the commission of the crime in 2004, there had been statements from official persons, such as the Azerbaijani Ombudsman, the Ambassador and Permanent Representative of Azerbaijan to the Council of Europe and members of parliament who had spoken favourably of R.S. and praised his patriotism. Hungary was also aware of the tense relations between Armenia and Azerbaijan, and could therefore deduce the special meaning of R.S. for the Azerbaijani government, as the majority themselves admit[37]. Lastly, the statement of assurance by Azerbaijan should have been analysed closely. Such an abstract statement ought to have made the Hungarian government sceptical and they should have – taking into account all of the circumstances surrounding R.S.'s case – as a minimum, required diplomatic assurances

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[33] See PACE Resolution 2014, supra note 2.
[34] See paragraph 19 of the judgment (my italics).
[35] See paragraph 34 of the judgment.
[36] See paragraph 196 of the judgment: "Although the reply of the Azerbaijani authorities was admittedly incomplete and worded in general terms – which in turn could have aroused suspicion as to the manner of the execution of R.S.'s prison sentence and prompted them to further action, as concluded by the Hungarian Commissioner for Fundamental Rights".
[37] See paragraph 163 of the judgment.

from Azerbaijan. Instead, Hungary chose to wilfully ignore the signs that R.S., a murderer convicted for an "exceptionally cruel"[38] ethnically and religious-based crime, would be set free.

C. Conclusion

24. The above-mentioned arguments lead me inevitably to the conclusion that there has been a violation by Azerbaijan of Article 2 of the Convention in its substantive limb, as well as a violation by Hungary of Article 2 of the Convention in its procedural limb. In view of the extremely important and novel nature of the legal issues at stake in the present case and the high-profile nature of the facts, the pardoning of an "extremely cruel hate crime"[39], and of the people involved in them, namely the Prime Minister and Minister of Defence of Hungary and the President, Minister of Defence and Minister of Justice of Azerbaijan[40], and considering that the case "raises questions of a general character affecting the observance of the Convention"[41], I cannot but expect that this tragic case will be submitted to further reflection by the Grand Chamber. Hopefully one day full justice will be done to the applicants.

[38] See paragraph 213 of the judgment.
[39] See paragraph 220 of the judgment.
[40] See paragraph§ 19-21 of the judgment.
[41] See paragraph 72 of the judgment.