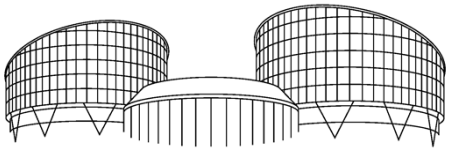

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VARYAN v. ARMENIA

(Application no. 48998/14)

JUDGMENT

Art 2 (substantive and procedural) • Positive obligations • Life • Failure to take measures to effectively protect life of conscript carrying out mandatory military service who allegedly committed suicide, against backdrop of severe humiliation, bullying and physical ill-treatment • Lack of specific measures to protect against ill-treatment during military service and to prevent suicide • Domestic authorities' failure to conduct an effective investigation into circumstances of death
Art 13 (+ Art 2) • Lack of an effective remedy • Legal impossibility of claiming compensation for non-pecuniary damage suffered as a result of the loss of life of one's child

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 June 2024

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Varyan v. Armenia,

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

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

Having regard to:

the application (no. 48998/14) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Armenian national, Mr Vano Varyan ("the applicant"), on 27 June 2014;

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

the parties' observations;

Having deliberated in private on 14 May 2024,

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

INTRODUCTION

1. The case concerns the death of the applicant's son during his military service, allegedly by suicide, and the subsequent investigation. It raises issues primarily under Articles 2 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1966 and lives in Abovyan. He was granted legal aid and was represented by Ms A. Chatinyan, a lawyer practising in Vanadzor, and Mr A. Sakunts of the Helsinki Citizens' Assembly Vanadzor Office.

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

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

I. BACKGROUND TO THE CASE

5. In 2011 the applicant's son, T. Varyan, aged 18, was conscripted into the Armenian army.

6. The applicant submitted that his son had been found fit for non-combatant service only, in view of his state of health. The Government disputed this, stating that T. Varyan had been recognised as fit for combatant service. In that connection, they submitted a copy of T. Varyan's personal file from the military commissariat, from which it can be seen that, as a result of the medical examinations carried out during the conscription procedure, he had been diagnosed with mitral valve prolapse causing mitral valve regurgitation (a heart condition where some blood flows the wrong way because the flaps in the valve between the two chambers on the left-hand side of the heart do not close smoothly or evenly as the heart contracts). The file in question contains the Central Medical Commission's decision finding him fit for combatant service.

7. T. Varyan was subsequently assigned to military unit no. 38862 of the Nagorno-Karabakh armed forces ("the military unit", situated in the "Republic of Nagorno-Karabakh" (the "NKR")).

8. On 29 February 2012 T. Varyan was found dead with a gunshot injury to his lower jaw that had been inflicted by the assault rifle assigned to him.

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

9. On 29 February 2012 the Third Garrison Investigation Department of the Investigative Service of the Ministry of Defence of the Republic of Armenia (Martakert, Nagorno-Karabakh) decided to institute criminal proceedings concerning T. Varyan's death. The decision stated, in so far as is relevant for the present case, the following:

> "[A]t around 10 a.m. on 29 February 2012 [T. Varyan], while on duty in ... the base ..., shot himself in the lower jaw with the assault rifle ... assigned to him and died instantly as a result of the ballistic trauma received ..."

10. On the same date the investigator carried out an inspection of the scene of the incident and took photos of it with the body *in situ*. According to the relevant report, T. Varyan's body had been discovered on the floor inside the command observation post of the military unit. The assault rifle was pointed at his mouth with a distance of about 2 cm between his mouth and the barrel, and the butt was resting on the floor. There was still bleeding from the mouth and ear canal, the teeth (particularly at the front) were broken, and there was coagulated blood in the nasal cavity, a vertical injury on the bridge of the nose, and wounds beneath the chin and on the front part of the crown of the head. A metal cartridge was discovered next to the assault rifle. The

investigator seized the rifle and the cartridge, engaging the safety catch on the former for safety reasons.

11. On the same date the investigator ordered an autopsy. The relevant order stated that T. Varyan had committed suicide and that it was necessary to determine, *inter alia*, the presence of any injuries on his body, the ballistic characteristics of any injuries and their number, and whether he could have inflicted it (or them) on himself.

A. Questioning of the witnesses

12. On the same date the investigator questioned Junior Sergeant E.S. and Private R.A. (both conscripts), who had been assigned to duty with T. Varyan at the base under Senior Lieutenant H.H.'s command.

13. In his statement Junior Sergeant E.S. affirmed, among other things, that at the end of December 2011, when he, Private R.A. and T. Varyan had been put on duty together, T. Varyan had dirtied the latrine, as a result of which it had become impossible to use it. Senior Lieutenant H.H. had then sworn at T. Varyan and hit him in the chest, causing him to fall on the bed. Senior Lieutenant H.H. had also made T. Varyan sign a written undertaking to dig a new hole for the latrine within a week's time. Senior Lieutenant H.H. had kept that paper and threatened to show it to the commander of the military unit if T. Varyan failed to comply. On the evening of 28 February 2012 Senior Lieutenant H.H. had again sworn at T. Varyan and hit him. Senior Lieutenant H.H. had then demanded that T. Varyan continue digging the hole for a new latrine the next day. Junior Sergeant E.S. and Private R.A. had then left T. Varyan and Senior Lieutenant H.H. for an hour to cut wood. On the morning of 29 February 2012 at around 9.10 a.m. Senior Lieutenant H.H. had gone up to the base to see T. Varyan and come back around five minutes later. E.S. had then gone to the base at around 9.50 a.m. and discovered the body. At that point Senior Lieutenant H.H. had threatened him and Private R.A. and told them not to tell anyone about the incident of the previous night.

14. Private R.A. stated that T. Varyan had had issues with Junior Sergeant E.S. and Senior Lieutenant H.H. He too stated that there had been an argument on the evening of 28 February 2012 during which Junior Sergeant E.S. had hit T. Varyan once and Senior Lieutenant H.H., who had badly insulted T. Varyan, had also tried to hit him but had been prevented by Private R.A. At around 9 p.m. Private R.A. had come back to the shelter and seen that T. Varyan was very unhappy. When asked why, T. Varyan had merely said that nothing had happened. Private R.A. had then tried to find out what had happened from Senior Lieutenant H.H., who said that nothing had happened and that everything was all right. Private R.A. also stated that T. Varyan had been on duty at the base from 8 a.m. to 10 a.m. on 29 February 2012. Senior Lieutenant H.H. had gone to the base at around 9.10 a.m. and come back about 10 minutes later. Private R.A. had then heard one shot at

around 9.30 a.m., but thought that it was just servicemen from another base training. Junior Sergeant E.S. had gone to the base at 10 a.m. and discovered the body. Before reporting the incident Private R.A., Junior Sergeant E.S. and Senior Lieutenant H.H. had signed the documents on safety rules, which had not been signed for several days. Senior Lieutenant H.H. had asked Private R.A. and Junior Sergeant E.S. to say that T. Varyan had missed his family. Private R.A. added that T. Varyan had been mocked a lot, to the point that he had preferred to be put on watch duty to be away from the servicemen who were mocking him. T. Varyan would perform active duty during the day, doing cleaning, and could take breaks only during the night – a state of affairs that would continue for several days in a row. Private R.A. also described the episode when T. Varyan had been ill-treated because of the latrine (see paragraph 13 above), and an incident in November 2011 when Senior Lieutenant H.H. had kicked T. Varyan in the head and insulted him after finding him asleep when it was time for a shift change. Lastly, Private R.A. recounted that on either 21 or 22 February 2012 Junior Sergeant G.M., an army cook, had beaten up and insulted T. Varyan for not cleaning the kitchen quickly enough.

15. In the course of the investigation a number of servicemen, including officers and conscripts, were questioned. None of them stated that T. Varyan had ever tried to harm himself or expressed any thoughts of doing so.

16. On 1 March 2012 the investigator questioned Junior Sergeant E.S. and Private R.A. again. On that occasion Junior Sergeant E.S. supplemented his earlier statement (see paragraph 13 above) to say that on 27 February 2012 he had pushed T. Varyan and had an argument with him over washing the dishes. Private R.A. also added to his statement to the effect that on 27 February 2012 Junior Sergeant E.S. had hit T. Varyan and sworn at him because of the dishes. He also added that in November 2011 Senior Lieutenant H.H. had beaten up T. Varyan because the latter had refused to give his belt to Senior Lieutenant H.H., who had wanted to cut a small piece from it. Private R.A. and Junior Sergeant E.S. had been there but had not reported that incident to any superior officers. Private R.A. disputed Junior Sergeant E.S.'s statement that in the evening of 28 February 2012 Senior Lieutenant H.H. had hit T. Varyan (see paragraph 13 above) and reiterated his earlier statement to the effect that he had prevented that from happening (see paragraph 14 above).

17. On the same date Senior Lieutenant H.H. was questioned as a witness. He stated, among other things, that T. Varyan would often be on duty instead of Junior Sergeant E.S. and Private R.A. Senior Lieutenant H.H. himself and everyone else would constantly mock T. Varyan because he was slow and naïve. Servicemen called him names, swore at him and took advantage of him because of his naivety, including by making him do the cleaning even if he was not on duty. Senior Lieutenant H.H. conceded that he too bore some responsibility for T. Varyan's suicide. As regards the day of T. Varyan's

death in particular, he stated that he had woken up at around 9.20 a.m. to be told that T. Varyan could not be found. Soon after, Junior Sergeant E.S. went to the base and returned a minute later saying that T. Varyan had committed suicide. At first he had thought that Junior Sergeant E.S. was joking, but when E.S. repeated his statement, H.H. had immediately gone to the base, where he had found T. Varyan lying on the ground, his head, neck and right shoulder covered in blood. When asked to comment on Private R.A.'s statement (see paragraph 14 above) that he had gone to the base at around 9.10 a.m. that day, Senior Lieutenant H.H. denied that he had done so, insisting that he had only gone up to the base at around 10 a.m. when he had been told that T. Varyan had committed suicide there.

18. On the same date Senior Sergeant V.N. was questioned. He stated that he had been aware of the incident in November 2011 when Senior Lieutenant H.H. had ill-treated T. Varyan because of the belt (see paragraph 16 above).

19. On 2 March 2012 the investigator ordered a forensic fingerprint and ballistic examination. The copy of the relevant order provided by the Government is illegible.

20. On 3 March 2012 the investigator questioned Senior Lieutenant H.H. as a suspect in the case. In addition to his previous statement (see paragraph 17 above), he stated that after the discovery of the body he had decided to make it appear as though T. Varyan had been on duty when he committed suicide, to avoid having to explain his presence at the base when he was supposed to have been off duty. As T. Varyan was without a helmet, belt or the magazine bag, H.H. had returned to the shelter and taken the items in question to the base. Next, he had burnt the military documents concerning hours of duty at base and drafted new ones according to which T. Varyan had been on duty in the base from 8 a.m. until 10 a.m. He had then given the documents, which included safety rules to be observed when on duty, to Private R.A. and Junior Sergeant E.S. so that they could sign their names and had himself signed in T. Varyan's stead. At around 10 a.m. he had contacted the commander of the unit by radio and reported the death.

21. On the same date Junior Sergeant E.S. was questioned again (see paragraphs 13 and 16 above) as a witness. He stated, in particular, that on the day of the incident Senior Lieutenant H.H. had gone to the base more than once and reported the death only about thirty to forty minutes after the discovery of the body. He also stated that he had lied about his and Private R.A.'s having left the base on the previous evening to cut wood (see paragraph 13 above). In reality he and Private R.A. had gone to another military base on personal business. Junior Sergeant E.S. also added that Senior Lieutenant H.H. would often have inappropriate conversations with T. Varyan during which H.H. would mock him because T. Varyan had told him that he had never been with a girl.

22. On the same date the investigator questioned Junior Sergeant G.M., the unit's cook (see paragraph 14 *in fine* above), as a witness. Junior Sergeant

G.M. stated that at some point between 15 and 20 February he had grabbed T. Varyan and hit him for not performing his duties in the kitchen properly. He also spoke about an episode one day between 25 and 27 January 2012 when he had witnessed Senior Lieutenant H.H. swearing at T. Varyan and hitting him because, when the former had asked T. Varyan to fetch his hat, the latter had responded that he could not do so at once because his hands were not clean. Senior Lieutenant H.H. had then left the kitchen and T. Varyan had cried. Junior Sergeant G.M. had not reported that incident and did not recall T. Varyan having any visible injuries as a result of it.

23. On the same date a confrontation was held between Junior Sergeant E.S. and Private R.A. during which the latter agreed that in the evening of 28 February 2012 Senior Lieutenant H.H. had also hit T. Varyan (see R.A.'s previous statements on the matter in paragraphs 14 and 16 above). Private R.A. maintained that on 27 and 28 February 2012 Junior Sergeant E.S. had hit T. Varyan several times. He also stated that at around 9 a.m. on 29 February 2012 Senior Lieutenant H.H. had gone to the base. Private R.A. had heard a shot at around 9.20 a.m. and Junior Sergeant E.S. had found the body at around 9.50 a.m.

24. On 4 March 2012 a confrontation was held between Private R.A. and Senior Lieutenant H.H. during which the latter denied that he had gone to the base at around 9 a.m. on 29 February 2012.

25. On the same date a confrontation was held between Junior Sergeant E.S. and Senior Lieutenant H.H. during which the former also maintained that in the morning of 29 February 2012 the latter had gone to the base at around 9 a.m. and returned approximately ten minutes later. In turn, Senior Lieutenant H.H. denied that T. Varyan had been beaten in December 2011 because of the latrine, or in the evening of 28 February 2012 (see paragraphs 13, 16 and 23 above).

26. On 5 March 2012 Captain A.H., an officer from the unit command, was questioned and stated, among other things, that T. Varyan was small, physically underdeveloped and even weak. He was also naïve, and his co-servicemen used to joke with him. Senior Lieutenant H.H. could not properly manage the staff and military duty was not being organised as it should have been. However, Captain A.H. did not have any specific information and as it was being reported to him that everything was fine he had not taken any measures to find out what was actually going on. He had reported Senior Lieutenant H.H.'s failure in his duties but his superior had not taken any measures in that regard. In Captain A.H.'s view the servicemen had been merely joking with T. Varyan and not mocking him.

B. The charges brought against Senior Lieutenant H.H., Junior Sergeant E.S. and Junior Sergeant G.M.

27. On 6 March 2012 Senior Lieutenant H.H. was charged with abuse of authority (Article 375 § 1 of the former Criminal Code; see paragraph 54 below) and a breach of the rules for carrying out military service (Article 365 § 1 of the former Criminal Code; see paragraph 53 below).

28. On the same date Senior Lieutenant H.H. was questioned as an accused. He admitted that in November 2011 he had beaten T. Varyan for having slept while on duty and that he had beaten him again in the same month because of the belt (see Private R.A.'s statement in that regard in paragraph 16 above). He denied having had an argument with T. Varyan in the kitchen because of the hat (see Junior Sergeant G.M.'s statement in that regard in paragraph 22 above), and having insulted and ill-treated T. Varyan because of the latter having accidentally dirtied the latrine (see paragraph 13 above). He admitted that on the evening of 28 February 2012, the day before the incident, he had sworn at T. Varyan, but denied having hit him that day.

29. On 7 March 2012 Junior Sergeant E.S. was charged with a breach of the rules of military conduct (Article 359 § 1 of the former Criminal Code; see paragraph 52 below). On the same date he was questioned as an accused and, among other things, reiterated his previous statement (see paragraph 13 above) that Senior Lieutenant H.H. had left the shelter to go to the base before the body was discovered.

30. On 12 March 2012 Junior Sergeant G.M. was charged with abuse of authority (Article 375 § 1 of the former Criminal Code; see paragraph 54 below). He was questioned as an accused on the same date and admitted that on 21 February 2012, when T. Varyan was on duty in the kitchen, he had hit him for not having finished the cleaning (see Private R.A.'s statement as summarised in paragraph 14 *in fine* above).

31. On 19 March 2012 the applicant was recognised as the deceased's legal heir in the proceedings. The same day he was acquainted with the investigator's decisions to order forensic expert examinations (see paragraphs 11 and 19 above).

C. The autopsy report and other forensic evidence

32. On 22 March 2012 the investigator ordered a forensic biochemical examination to determine whether there were any traces of blood on T. Varyan's assault rifle discovered at the scene and, if so, whether they corresponded to T. Varyan's blood type.

33. On 2 April 2012 the autopsy report (see paragraph 11 above) was received. It stated, in particular, that T. Varyan's death had been caused by functional brain failure as a result of a perforating ballistic trauma to the head with the bullet entry wound being located in the area beneath the chin and the

exit wound on the back of the head behind the forehead. A number of injuries to the skull, chin and mouth areas were attributed to ballistic trauma. The following injuries were also discovered on the body: superficial wounds on the nasal dorsum, and on the parts of the right and left eyelids close to the nose, which had been inflicted with a firm, blunt object (or objects) shortly (seconds) before death and which were not directly linked to the death.

34. On 15 August 2012 a commission of ballistic and medical forensic experts delivered a joint opinion, according to which, *inter alia*, the ballistic trauma to T. Varyan's body could have been inflicted by himself or by another person.

35. On 24 August 2012 the charges against Senior Lieutenant H.H. were amended and he was charged with aggravated abuse of authority under Article 375 § 2 of the former Criminal Code (see paragraph 55 below) and a breach of the rules for carrying out military service (Article 365 § 1 of the former Criminal Code; see paragraph 53 below).

36. On an unspecified date in September 2012 the forensic expert who had conducted the autopsy (see paragraphs 11 and 33 above) was questioned by the investigator. The expert was shown the photos taken during the examination of the scene of the incident (see paragraph 10 above) and asked, in particular, whether the non-ballistic injuries present on T. Varyan's body had been sustained before or after the shot and, if after, whether they could have originated from the shot or the movement of the rifle. In reply, the expert stated that, given the placement and the nature of the injuries, they had most probably been sustained after the shot as a result of bullet deflection.

37. On 15 November 2012 the commission of experts assigned to conduct a posthumous forensic psychiatric examination of T. Varyan delivered their opinion. The relevant parts of the experts' opinion read as follows:

> "... T. Varyan did not suffer from any psychiatric disorder. As a result of continuous humiliation, violence, insults and debasement by fellow servicemen ... at the time of [his death] he had a temporary failure of psychological functioning accompanied by despair [and] low self-esteem ... which was the reason for his committing suicide ...
>
> Conclusions:
>
> ...
>
> The dispute with [Junior Sergeant G.M.] and [G.M.'s] actions in respect of T. Varyan had depressed him but taken alone they would hardly have brought about his suicide.
>
> The dispute with [Junior Sergeant E.S.] and [E.S.'s] actions in respect of T. Varyan had depressed him but taken alone they would hardly have brought about his suicide.
>
> [Senior Lieutenant H.H.]'s remarks and violence in respect of T. Varyan could in fact have driven the latter to commit suicide.
>
> The actions of [Junior Sergeant G.M.], [Junior Sergeant E.S.] and [Senior Lieutenant H.H.] taken together drove T. Varyan to commit suicide."

D. The indictment

38. On 14 January 2013 the case was transferred to the Syunik Regional Court for examination on the merits. The relevant parts of the indictment read as follows:

> "... In November 2011 ... [Senior Lieutenant H.H.] ... had kicked Private [T. Varyan] in the head for having slept while on duty in the base ...
>
> ...
>
> Apart from that, and also in November 2011, [Senior Lieutenant H.H.] ... had an argument with [T. Varyan] because of [the latter's] non-compliance with the order to dig a hole for a latrine during which he had sworn at [T. Varyan] and punched him in the chest three times...
>
> ...
>
> As a result of those actions [T. Varyan] shot himself ...
>
> ... At around 10 a.m. on 29 February 2012 ... [Junior Sergeant E.S.] went to the base and saw Private [T. Varyan] on the ground with his head bleeding and his rifle on his chest. Having returned to the shelter, he told [Senior Lieutenant H.H.] that Private [T. Varyan] had committed suicide. [Senior Lieutenant H.H.] went to the base and after he came back he took Private [T. Varyan's] military helmet and his belt (to which the bag with reserve magazines was attached) to the base to make it seem as though [T. Varyan] had been on duty when he committed suicide ... Then [Senior Lieutenant H.H.] burnt the documents [concerning the hours of duty at] the military base and in their place drafted new documents according to which Private [T. Varyan] had been on duty from 8 a.m. until 10 a.m. [Senior Lieutenant H.H.] had [Junior Sergeant E.S.] and [Private R.A.] sign the [newly-drafted documents] and signed in [T. Varyan's] stead himself ... [Senior Lieutenant H.H.] then told ... [Junior Sergeant E.S.] and ... [Private R.A.] to tell everyone that Private [T. Varyan] had had family issues, because of which he had committed suicide ...
>
> On 27 February 2012 ... [Junior Sergeant E.S.] ... had verbally abused and punched Private [T. Varyan] in the chest ... Also, on 28 February 2012 ... [Junior Sergeant E.S.] ... had verbally abused Private [T. Varyan] and punched him in the chest without any justification.
>
> On 21 February 2012 ... [Junior Sergeant G.M.] had verbally abused Private [T. Varyan] and punched him in the chest three times ..."

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

39. On 29 February 2012, that is the day of the incident (see paragraph 8 above), the Commander of the Nagorno-Karabakh Defence Army ordered an internal investigation into T. Varyan's death. A special commission ("the internal commission") was formed for that purpose.

40. On an unspecified date the internal commission submitted a report to the Commander of the Nagorno-Karabakh Defence Army, based on the results of the internal investigation. The relevant parts of the report read as follows:

"... According to preliminary information [T. Varyan] committed suicide.

... Private [T. Varyan] is described positively ... as having been a disciplined and conscientious serviceman. He was conscripted into the army under medical articles 26(d) [cardiovascular diseases] and 17(b) [physical underdevelopment] [points 26(d) and 17(b) of annex no. 1 to order of the Minister of Defence no. 175 of 26 February 2010] ... [he] did not have any complaints during regular medical check-ups.

An investigation into the matter launched by the Third Garrison Investigation Department of the [Ministry of Defence of Armenia] is underway.

Approximately two months before the incident, Private [T. Varyan] had been reprimanded and verbally abused by [Junior Sergeant E.S.] for having slept while on duty in the base ...

Within the same time period ... [T. Varyan] had dirtied the ... latrine because of darkness, as a result of which he was humiliated by ... [Junior Sergeant E.S.]. With the active participation of the latter, and in compliance with the order of [Senior Lieutenant H.H.], ... Private [T. Varyan] started to dig a hole for a latrine in another area.

[Two days before the incident] ... [Junior Sergeant E.S.] had verbally abused [T. Varyan] for not keeping the base clean enough ... [and] had punched him in the chest and made him clean the area again.

At around 9 p.m. on 28 February ... [Senior Lieutenant H.H verbally abused T. Varyan]. In reply to the threats, Private [T. Varyan] did not say anything. Continuing with the argument [Senior Lieutenant H.H.] added that it was his [Senior Lieutenant H.H.'s] own fault that [Private T. Varyan] had not finished digging the hole for the latrine until then and demanded that he continued digging the next day ...

According to the testimony provided by [Junior Sergeant E.S.] and [Private R.A.], at around 9 a.m. on 29 February 2012, that is to say on the day of the incident, ... [Senior Lieutenant H.H.] went to the base where Private [T. Varyan] was on duty and came back to the shelter ten minutes later. Approximately ten to fifteen minutes later a shot was heard. Everybody went up to the base and discovered Private [T. Varyan's] body. Afterwards ... [Senior Lieutenant H.H.] ordered the staff not to tell anyone of the events preceding Private [T. Varyan's] suicide and say that he had committed suicide because of a girl he had liked ... According to [Senior Lieutenant H.H.'s] report, he had not gone to the base on the day of the incident ...

It was revealed that [T. Varyan] did not have any authority, and was often mocked and humiliated. [Junior Sergeant E.S.] was particularly active in [that].

...

The internal investigation has uncovered the following shortcomings:

- ... [Senior Lieutenant H.H.] failed to organise military duty, leaving it [to be arranged] without any supervision. As a result of his inactivity, criminal behaviour started to become prevalent among the servicemen; the degree of culpability on the part of [Junior Sergeant E.S.] and [Private R.A.] in [T. Varyan's] suicide is particularly significant.

- the duty schedule was often not respected, and Private [T. Varyan] was put on duty instead of ... [Junior Sergeant E.S.] and ... [Private R.A.] ...

- the command of the military unit describes [Senior Lieutenant H.H.] negatively, yet he has never been reprimanded ...

...

The following [factors] contributed to [T. Varyan's] suicide:

- being naturally weak and lacking in confidence, he had fallen under the influence of servicemen who had 'authority' in the sub-unit and became a victim of abuse ...

- the verbal abuse and reprimand by [Junior Sergeant E.S.] for having slept at the base;

- constant humiliation and being sworn at by [Junior Sergeant E.S.] ...;

- an unfair distribution of [duties] resulting in [T. Varyan] constantly being assigned to heavy physical work ...;

- the shatter[ing] of [T. Varyan's] authority [as a result of the above-mentioned factors, which] brought about the decision to end his own life ...

The incident took place as a result of ... poor supervision by the military unit command ... the servicemen are governed by the rules of the street and there are cases of humiliation and debasement of servicemen ... some types of work are considered shameful and undignified, which results in the prevalence of the law of 'the strong and the weak', [so that], as a rule, those types of work are performed by the 'weak'."

41. On 13 March 2012 the Minister of Defence of Armenia issued an order based on the results of the internal investigation (see paragraph 40 above) whereby the commander of the military unit, his deputy and the chief of the unit's artillery were reprimanded in relation to the incident. The chief of the unit's artillery was transferred to the reserve. The relevant parts of the report read as follows:

"[T. Varyan] was conscripted on the basis of points 26(d) and 17(b) [of annex no. 1 to order of the Minister of Defence no. 175 of 26 February 2010] ...

... the incident could possibly have been prevented if:

...

(3) the 'Suicide and self-mutilation prevention' ... group had carried out specific preventive work with servicemen;

...

(6) conflicts and lack of sympathy between servicemen had been prevented by the superior officer at the base and reported to the command;

...

(9) ... [T. Varyan] had not been subjected to constant abuse by co-servicemen and his direct commander ...

(10) the relevant officials had investigated in a timely manner the fact of [T. Varyan's] being physically weak, self-isolated and lacking confidence, and had taken preventive measures;

(11) there had been a proper moral environment and the servicemen had not been governed by non-statutory and street morals; there had been no episodes of humiliation and debasement of servicemen; ... and 'weak' servicemen had not been the only ones to be assigned chores ..."

IV. TRIAL

A. The first-instance trial

42. On an unspecified date, the trial of Senior Lieutenant H.H. and Junior Sergeants E.S. and G.M. commenced at the Syunik Regional Court sitting in Stepanakert, Nagorno-Karabakh ("the Regional Court").

43. In the course of the trial the prosecutor requested that the charges against Junior Sergeant G.M. (see paragraph 30 above) be reclassified under the recently adopted Article 358.1 § 2 of the former Criminal Code (see paragraph 51 below).

44. At the trial the applicant argued that the investigation into his son's death had not been effective in that the circumstances of his death had not been properly established. The applicant submitted in particular that it had not been determined that his son had indeed committed suicide rather than having been killed by another person or persons. In addition, there were significant discrepancies between the facts as established in the report following the internal investigation (see paragraph 40 above) and the version of the events described in the indictment (see paragraph 38 above).

45. On 6 August 2013 the Regional Court found Senior Lieutenant H.H. guilty as charged (see paragraph 35 above) and sentenced him to four years and six months' imprisonment. Junior Sergeants E.S. and G.M. were also found guilty as charged (see paragraphs 29 and 43 above) and both sentenced to four months' imprisonment. Senior Lieutenant H.H. and Junior Sergeants E.S. and G.M. all refused to testify during the trial. The Regional Court found the facts as described in the bill of indictment (see paragraph 38 above) to have been established. It concluded, in particular, that Senior Lieutenant H.H.'s behaviour and actions towards T. Varyan had negligently caused the latter's suicide, that Junior Sergeant E.S. had ill-treated T. Varyan both verbally and physically on 27 and 28 February 2012 and that Junior Sergeant G.M. had verbally and physically abused T. Varyan on 21 February 2012 (see paragraph 38 above).

B. The applicant's appeals

46. The applicant lodged an appeal, arguing, in particular, that the proceedings had not brought to light all the circumstances of T. Varyan's death or led to the punishment of those responsible for it, including the command staff of the military unit. The applicant argued in detail that a number of important facts pertaining to the death had not been established during the investigation such as, *inter alia*, the location of the body and the time of death. He also reiterated his argument that there were significant discrepancies between the internal investigation report and the way in which

the facts had been established during the criminal investigation (see paragraph 44 above).

47. On 28 October 2013 the Criminal Court of Appeal upheld the Regional Court's judgment. As regards the arguments raised by the applicant in his appeal, the Court of Appeal stated the following:

> "It has been established during the investigation and court examination of the criminal case that T. Varyan died as a result of suicide and not murder; all possible investigative and procedural measures have been employed in order to investigate the crime and those responsible have been held criminally liable."

48. The applicant lodged an appeal on points of law against that decision, raising similar arguments to those submitted in his previous appeal.

49. On 27 December 2013 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL CODE

50. The relevant provisions of the former Criminal Code (in force until 1 July 2022) were as follows.

51. Article 358.1 § 2 provided that beating a subordinate or carrying out other acts of violence in respect of a subordinate, or threatening to do so, in relation to the performance of duties linked to military service was punishable by restriction of advancement in military service for a period of one to three years, detention for one to three months, military confinement for a period of up to three years or a maximum of five years' imprisonment.

52. Article 359 § 1 provided that breaches of the rules of military conduct by servicemen in the absence of a subordinate relationship between them, in the form of humiliation, bullying, beating or other acts of violence, was punishable by military confinement for up to two years or a maximum of two years' imprisonment.

53. Article 365 § 1 provided that breaches of combat duty or rules for carrying out military service which were directed at the timely prevention of an unexpected attack on the Republic of Armenia or at ensuring the security of the Republic of Armenia, if such breaches had negligently caused damage or a threat thereof, were punishable by military confinement for a period of up to three years, restriction of advancement in military service for a period of one to two years or a maximum of three years' imprisonment.

54. Article 375 § 1 provided that abuse of authority or a public position, the exceeding of public authority, and omissions by a superior or public official, if such acts were committed for selfish ends, personal interest or in the interests of a group and resulted in grave damage, were punishable by imprisonment for a period of two to five years.

55. In accordance with Article 375 § 2, where the above-mentioned offence had negligently produced serious consequences, it was punishable by imprisonment for a period of three to seven years with or without confiscation of property.

II. CODE OF CRIMINAL PROCEDURE

56. The relevant provisions of the former Code of Criminal Procedure (in force until 1 July 2022) were as follows.

57. Under Article 114 § 2, an expert could be questioned with a view to clarifying his or her opinion. The record of the expert's questioning could not replace his or her opinion (Article 114 § 3).

58. Under Article 252 § 1, if the expert opinion was not sufficiently clear and contained gaps which could be filled without additional examination, or if there was a need to clarify the methods applied and terminology used, the investigator could question the expert in accordance with the rules applicable to the questioning of witnesses.

III. RIGHT TO COMPENSATION

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

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

60. The Law establishing the Internal Service Regulations of the Armed Forces of the Republic of Armenia ("the Internal Service Regulations"), which was enacted on 3 December 1996, is the principal legal instrument regulating military service in the Armenian armed forces (see also *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, § 86, 8 November 2022).

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

62. Section 11 provides that during the performance of military service, and, if necessary, also outside that service, servicemen have the right to keep, carry, deploy and use weapons. The rules for keeping, carrying, deploying

and using weapons are set out in the Internal Service Regulations. Section 11 goes on to list the specific cases when servicemen, as a matter of last resort, have the right to use weapons, including to protect the life and limb of other servicemen and civilians from an attack.

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

V. ORDER OF THE MINISTER OF DEFENCE No. 175 OF 26 FEBRUARY 2010 (*ՀՀ ՊԱՇՏՊԱՆՈՒԹՅԱՆ ՆԱԽԱՐԱՐԻ 2010Թ. ՓԵՏՐՎԱՐԻ 26-Ի ԹԻՎ 175 ՀՐԱՄԱՆԸ ԶԻՆԱՊԱՐՏՆԵՐԻ ԲԺՇԿԱԿԱՆ ԵՎ ԶԻՆՎԱՌԱՅՈՂՆԵՐԻ ՌԱԶՄԱԲԺՇԿԱԿԱՆ ՓՈՐՁԱՔՆՆՈՒԹՅԱՆ ԿԱՐԳԸ ՀԱՍՏԱՏԵԼՈՒ ՄԱՍԻՆ*)

64. This order, which has ceased to be in force since 11 June 2013, set out the procedure for, *inter alia*, medical examinations of individuals subject to mandatory conscription with a view to determining their fitness for military service. It stated, among other things, that medical and military medical commissions were to carry out the relevant examinations in accordance with the annexes to the order (point 2). The Central Medical Commission's decisions concerning conscripts were final (point 29). The Central Military Medical Commission's functions included, among other things, deciding to confirm or refuse the conclusions of subordinate examination bodies, as well as, when necessary, decisions concerning the examination of military servicemen and persons subject to conscription.

65. Annex no. 1 to this order set out an extensive list of illnesses and physical impairments with corresponding decisions to be taken by the relevant medical and military medical commissions. Point 17(b) of annex no. 1 stated that in cases of physical underdevelopment, if an individual's weight was more than 45 kg and his height was more than 150 cm, he was fit for combatant service. Point 26 of annex no. 1 to the order concerned various heart and heart-related conditions. In accordance with point 26(d), individuals who had such a condition that did not cause haemodynamic impairment were fit for non-combatant service.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

66. The applicant complained about the death of his son during compulsory military service, and asserted that the authorities had failed to

carry out an effective investigation into the matter. He relied on Article 2 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. Jurisdiction

67. The Government submitted that Armenia's jurisdiction should be acknowledged on the basis of the exception of "State agent authority and control", as all the acts complained of were attributable to the Armenian authorities. In particular, the investigation into the circumstances of T. Varyan's death, as well as the subsequent judicial proceedings, had been conducted by the Armenian authorities.

68. The applicant submitted that the matters complained of fell within Armenia's jurisdiction.

69. The Court notes that it has previously examined the issue of Armenia's jurisdiction in other cases concerning fatalities during military service in Nagorno-Karabakh and found that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and individuals who had died while performing military service in the territory in question (see *Muradyan v. Armenia*, no. 11275/07, §§ 123-27, 24 November 2016; *Nana Muradyan v. Armenia*, no. 69517/11, §§ 86-92, 5 April 2022; *Dimaksyan v. Armenia*, no. 29906/14, §§ 43 and 44, 17 October 2023; and *Hovhannisyan and Karapetyan v. Armenia*, no. 67351/13, §§ 59-63, 17 October 2023, concerning the deaths of conscripts during compulsory military service in Nagorno-Karabakh; and compare *Mirzoyan v. Armenia* no. 57129/10, §§ 55-56, 23 May 2019, concerning the murder of a conscript during compulsory military service in Nagorno-Karabakh).

70. The applicant's son died on 29 February 2012 in a military unit situated in the "NKR" (see paragraphs 7 and 8 above). The Court notes that the facts of the case took place prior to the changes in the situation on the ground as a result of the Nagorno-Karabakh war, which ended on 10 November 2020 with Azerbaijan capturing all the surrounding territories and part of the "NKR" proper and with the deployment of Russian peacekeepers in the area (see *Nana Muradyan*, cited above, § 91) and a further change in the situation on the ground in September 2023 as a consequence of the nine-month blockade of Nagorno-Karabakh, the subsequent actions of Azerbaijan and the exodus of the Armenian population of Nagorno-Karabakh. The Court therefore finds no particular circumstances in the present case that would require it to depart from its findings in the cases cited in paragraph 69 above. It therefore considers that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicant's deceased son in the present case on the ground

that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories at the material time (see, for example, *Dimaksyan*, § 44, and *Hovhannisyan and Karapetyan*, § 62, both cited above).

2. Non-exhaustion of domestic remedies and compliance with the six-month rule

71. In their further observations, dated 11 October 2017, made in reply to those of the applicant, the Government submitted that he had failed to exhaust the domestic remedies in respect of his complaints under Articles 2 and 3 of the Convention. In particular, they submitted that the applicant had failed to bring a civil claim for compensation in respect of non-pecuniary damage and that, if he had considered that that was not an effective remedy, he should have lodged his application within six months from the date of the publication of the results of the internal investigation. In that connection, the Government argued that the starting-point for the calculation of the six-month period should be 13 March 2012 (see paragraph 41 above).

72. The Court notes that, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party, in so far as the nature of the objection and the circumstances so allow, in its written or oral observations on the admissibility of the application. Any omission by the Government to raise such objections in their initial observations on the admissibility of the case may lead the Court to conclude that they are estopped from raising those objections at a later stage in the proceedings (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016).

73. In their observations of 11 April 2017 on the admissibility and merits of the present application the Government raised an objection as to non-exhaustion of domestic remedies in respect of the applicant's complaint under Article 13 of the Convention (see paragraph 138 below), whereas the question of a failure by the applicant to exhaust the domestic remedies in respect of his complaints under Articles 2 and 3 of the Convention, and of his compliance with the six-month time-limit, were raised for the first time in their further observations of 11 October 2017, which were submitted in reply to those of the applicant (see paragraph 71 above).

74. The Court notes that the Government have previously raised similar objections in other cases concerning fatalities in the army (see, for example, *Nana Muradyan*, cited above, § 101; *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, § 92, 8 November 2022; and *Hovhannisyan and Karapetyan*, cited above § 64). However, they did not explain why in the present case their objections were not raised in their first written observations on the admissibility of the application nor have they provided any explanation for the delay in raising the objections. The Court finds no exceptional circumstance capable of exempting them from their obligation to raise an objection to admissibility in a timely manner.

75. The Court reiterates that its usual practice - where a case has been communicated to the respondent government - is not to declare the application inadmissible for failure to exhaust domestic remedies unless the matter has been raised by the Government in their observations (see *Y v. Latvia*, no. 61183/08, § 40, 21 October 2014, with further references). Having regard to the fact that the Government failed to raise their preliminary objections in a timely manner (see paragraph 74 above), they are estopped from raising an objection that the applicant failed to exhaust the domestic remedies in respect of the complaints under Articles 2 and 3 of the Convention (see, mutatis mutandis, *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 195-96, ECHR 2012, and *Khlaifia and Others*, cited above, §§ 53-54). Their objection must accordingly be dismissed. On the other hand, although the Government did not raise an objection concerning the application of the six-month time-limit in the first round of observations on the admissibility and merits of the instant case (see paragraph 73 above), the Court can, and indeed must, apply – even of its own motion - the six-month rule set out in Article 35 § 1 of the Convention, as it is a public-policy one (see, *mutatis mutandis*, *Merabishvili v. Georgia* [GC], no. 72508/13, § 247, 28 November 2017, with further references). That being said, and in so far as the Government argued that the six-month period in respect of the applicant's complaints under Articles 2 and 3 of the Convention should be calculated from 13 March 2012, the date on which the order of the Minister of Defence had been adopted imposing disciplinary measures following an internal investigation into the incident in question (see paragraph 41 above), the Court observes that it has recently examined whether such orders issued by the Minister of Defence in cases involving fatalities in the army could be considered a "final decision" within the meaning of Article 35 § 1 of the Convention and concluded that they did not (see *Ashot Malkhasyan v. Armenia*, no. 35814/14, §§ 69-71, 11 October 2022; *Hovhannisyan and Nazaryan*, cited above, §§ 95-99; and *Hovhannisyan and Karapetyan*, cited above, § 67). The Court sees no reason to depart from that finding in the present case. Furthermore, it has no reason to consider that the criminal proceedings regarding the circumstances of T. Varyan's death were an ineffective remedy in respect of the applicant's complaints under Articles 2 and 3 of the Convention. The Court observes in this connection that the final decision in those proceedings was delivered by the Court of Cassation on 27 December 2013 (see paragraph 49 above), and that the applicant lodged his application on 27 June 2014, that is, in compliance with the six-month rule. The Court therefore finds that the application was not lodged out of time.

3. Other grounds for inadmissibility

76. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

77. The applicant submitted that his son had committed suicide while he was performing mandatory military service under the exclusive control of the State authorities, which, he argued, had failed to protect his right to life, in breach of Article 2 of the Convention.

78. The applicant further submitted that his son had been subjected to constant physical and psychological ill-treatment which had led to his suicide. Furthermore, there had been a lack of discipline in the military unit which had resulted in a failure to organise the performance of military duty properly and an unhealthy environment where both fellow conscripts and superior officers had taken advantage of opportunities to mock T. Varyan and humiliate him on a regular basis. In addition, although the applicant's son had been found fit for non-combat service only (see paragraph 6 above), he had been put on watch duty at the military base – often instead of his co-servicemen – and forced to do hard physical work. As a result, his son had been put under heavy physical and psychological pressure, which could have been the reason for his having fallen asleep while on duty. That had been another occasion on which he had been ill-treated.

79. As regards the investigation into the matter, the applicant argued that it had failed to clarify the real circumstances of his son's death and to lead to the identification of all those responsible. The only hypothesis that had been put forward had been that of suicide. A number of important points had been disregarded, including the fact that, despite having been found fit for non-combatant duty only, T. Varyan had been assigned heavy manual labour. As a result, those who had involved him in such activities had not been identified and held accountable.

(b) The Government

80. The Government submitted that, as had been confirmed by all the witnesses questioned during the investigation, T. Varyan had never talked about committing suicide and had never exhibited any warning signs (see paragraph 15 above). They referred to T. Varyan's medical examinations at the time of his conscription, which had not revealed any particular psychological problems, as well as reports on his personal characteristics drawn up during his military service, in which T. Varyan was described as a diligent and responsible serviceman who did not have any bad habits.

81. While, admittedly, T. Varyan's suicide had been provoked by the actions of Senior Lieutenant H.H. and Junior Sergeants E.S. and G.M., the decision to commit suicide had been rapid and instantaneous and therefore

the commanding staff of the military unit had not known and could not have known of such a risk.

82. With reference to Articles 359 § 1 and 375 § 1 of the former Criminal Code (see paragraphs 52 and 54 above) and section 6 of the Internal Service Regulations (see paragraph 61 above), the Government submitted that the relevant domestic regulations provided effective law-enforcement machinery for the prevention, suppression and punishment of any breaches of the right to life, as well as both preventive and punitive measures in order to secure the safety and protection of military servicemen.

83. Turning to the investigation into the matter, the Government submitted that it had been prompt, independent, adequate and accessible to the victim party.

84. As to the adequacy of the investigation in particular, the Government referred to the vast number of witness interviews (see, for example, paragraphs 13-18, 20-22 and 26 above) and the several confrontations that had been held in order to throw light on the discrepancies between the statements of the accused (Senior Lieutenant H.H. and Junior Sergeants E.S. and G.M.) and the main witness, Private R.A. (see paragraphs 23-25 above), as well as the various forensic expert examinations that had been carried out (see, for instance, paragraphs 19, 32 and 37 above).

85. As regards, specifically, the non-ballistic injuries discovered on T. Varyan, the Government submitted the record of the questioning of the forensic medical expert who had conducted the autopsy (see paragraph 36 above), during which he had stated that the non-ballistic injuries described in the autopsy report had been caused by the nose and the base of the skull coming into contact with the rifle.

86. Lastly, concerning the forensic ballistic and medical examination which had found that T. Varyan's ballistic trauma could have been inflicted by himself or by another person (see paragraph 34 above), the Government submitted that the investigation had established, from the entire body of the evidence gathered, that T. Varyan had committed suicide. Taking into account the location of the firearm injury and the fact that no other injuries had been discovered on the body, the Government found it quite unbelievable that someone could have shot T. Varyan at such close range without his putting up any resistance.

2. The Court's assessment

(a) General principles

(i) Substantive limb

87. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the

Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

88. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct (see *Keenan v. the United Kingdom*, no. 27229/95, § 89-90, ECHR 2001-III).

89. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are under the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009; *Mosendz v. Ukraine*, no. 52013/08, § 92, 17 January 2013; *Malik Babayev v. Azerbaijan*, no. 30500/11, § 66, 1 June 2017; *Nana Muradyan*, cited above, § 120; and *Hovhannisyan and Nazaryan*, cited above, § 117, with further references).

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

91. Furthermore, States are required to ensure high professional standards among regular soldiers, whose acts and omissions – particularly *vis-à-vis* conscripts – could, in certain circumstances, engage the State's responsibility, *inter alia* under the substantive limb of Article 2 (see, in particular, *Abdullah Yılmaz v. Turkey*, no. 21899/02, §§ 56-57, 17 June 2008, and *Nana Muradyan*, cited above, § 122; see also, *mutatis mutandis*, *Stoyanovi v. Bulgaria*, no. 42980/04, § 61, 9 November 2010).

92. In connection with this, it should be noted that not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. The Court must examine whether the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual

and, if so, whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan*, cited above, §§ 89 and 93; *Şahinkuşu v. Turkey*, no. 38287/06, § 58, 21 June 2016; and *Kurt v. Austria* [GC], no. 62903/15, § 158, 15 June 2021).

93. Concerning suicide risks in particular, the Court has previously had regard to a variety of factors in order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures. These factors commonly include: a history of mental health problems; the gravity of the mental condition; previous attempts to commit suicide or self-harm; suicidal thoughts or threats; and signs of physical or mental distress (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 115, 31 January 2019, and the references cited therein). The principles established in the above-cited *Fernandes de Oliveira* case, which concerned the suicide of a mentally ill man undergoing inpatient treatment in a State psychiatric hospital, apply equally to people in custody and, similarly, to conscripts (see *Boychenko v. Russia*, no. 8663/08, § 80, 12 October 2021, with further references, and *Hovhannisyan and Nazaryan*, cited above, § 121).

94. According to the Court's case-law, the State bears responsibility for the death of victims who are driven to suicide by bullying and ill-treatment of them by their military superiors (see *Boychenko*, cited above, § 80, and *Hovhannisyan and Nazaryan*, cited above, § 122).

95. Finally, in assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody or in the army, strong presumptions of fact will arise in respect of injuries and death occurring during that detention or service. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109-11, ECHR 2002-IV, and *Nana Muradyan*, cited above, § 123).

(ii) Procedural limb

96. The obligation to protect the right to life, as well as to duly account for its loss, requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April

2015, with further references). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The same standards also apply to investigations concerning fatalities during compulsory military service, including the suicide of conscripts (see *Malik Babayev*, cited above, § 79, and the cases cited therein, as well as *Nana Muradyan*, cited above, § 124).

97. The investigation must be effective in the sense of being capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 172). It should also be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 325, ECHR 2014, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012). A requirement of promptness and reasonable expedition is implicit in this context (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

98. The obligation to conduct an effective investigation is an obligation not as to results to be achieved but as to means to be employed: the authorities must take all reasonable measures available to them to secure evidence concerning the incident at issue, including, among other things, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of any injuries and an objective analysis of the clinical findings, including the cause of death. However, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the capacity of the investigation to establish the circumstances of the case and, where appropriate, the identity of those responsible, and is liable to fall foul of the required measure of effectiveness (see *Muradyan*, § 135, with further references, and *Nana Muradyan*, § 126, both cited above).

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

100. Lastly, the question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The nature and degree of scrutiny which satisfies the minimum threshold for effectiveness of an investigation depends on the circumstances of the particular case (see, among other

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

(b) Application of those principles to the present case

(i) Substantive limb

101. The applicant's son, T. Varyan, was a conscript carrying out his mandatory military service under the care and responsibility of the authorities when he died (see the case-law quoted in paragraph 89 above).

102. In his submissions and appeals in the domestic proceedings (see paragraphs 44 and 46 above), as well as in his application form lodged with the Court, the applicant apparently questioned the finding of the domestic authorities that his son had committed suicide. However, in his observations, despite the fact that the applicant maintained his complaint that the investigation had failed to shed light on the circumstances of his son's death and argued that the only hypothesis put forward had been that of suicide (see paragraph 79 above), he explicitly complained that his son had committed suicide while being under the exclusive control of the authorities and as a result of the continuous ill-treatment to which he had been subjected (see paragraphs 77 and 78 above) and did not advance any specific arguments to fundamentally challenge the conclusion of the investigation that his son had committed suicide (contrast *Ayvazyan v. Armenia*, no. 56717/08, § 87, 1 June 2017, and *Nana Muradyan*, cited above, § 129; and compare *Hovhannisyan and Nazaryan*, cited above, § 132).

103. The Court notes that there were some serious deficiencies in the conduct of the investigation which resulted in a failure to clarify a number of important circumstances surrounding T. Varyan's death, including, among other things, the presence of a number of unexplained non-ballistic injuries on his body, as well as the factual discrepancies between the internal investigation report and the findings of the criminal investigation as regards the description of the events on the day of the incident (see paragraphs 122-126 below).

104. Nevertheless, the material before the Court does not allow it to support "beyond reasonable doubt" (see the case-law quoted in paragraph 95 above) the hypothesis that T. Varyan's life was taken intentionally (contrast *Beker*, cited above, §§ 45-54, and *Lapshin v. Azerbaijan*, no. 13527/18, §§ 110-20, 20 May 2021; see also, *mutatis mutandis*, *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010). Thus, any allegation that T. Varyan was murdered would be purely speculative (see, *mutatis mutandis*, *Durdu v. Turkey*, no. 30677/10, §§ 59-61, 3 September 2013; *Nana Muradyan*, cited above, §§ 130-31; and *Hovhannisyan and Nazaryan*, cited above, § 134).

105. According to the findings of the investigations (both criminal and internal) and the charges brough against Senior Lieutenant H.H. and Junior Sergeants E.S. and G.M. (see paragraphs 29, 30 and 35 above), T. Varyan

had committed suicide as a consequence of continuous ill-treatment and harassment by his superior and co-servicemen (see, in particular, paragraphs 38, 40, 41 and 45 above).

106. The Government argued that, notwithstanding the findings of the domestic investigations, the authorities should not be held responsible for T. Varyan's death since he had not shown any signs that he might decide to end his life (see paragraphs 80 and 81 above).

107. The Court reiterates, however, that it has previously found in cases concerning suicides in the army that the State bears responsibility for the deaths of victims who were driven to suicide by bullying and ill-treatment during their military service (see the case-law quoted in paragraph 94 above; see also *Hovhannisyan and Nazaryan*, cited above, § 135).

108. Furthermore, the domestic authorities are required to take practical measures aimed at effectively protecting conscripts against the dangers inherent in military life and appropriate procedures for identifying the shortcomings and errors likely to be committed in that regard by those in charge at different levels. The authorities are also required to ensure high professional standards among regular soldiers to protect conscripts (see the case-law quoted in paragraphs 90 and 91 above).

109. The Court notes in this connection that the evidence gathered in the course of the domestic investigation (as well as the findings of the internal investigation) established an entire chain of recurring instances of severe humiliation, bullying and physical ill-treatment, including violence and physical exploitation, of T. Varyan by his superior and fellow conscripts, which was found to have caused him to commit suicide (see paragraphs 37, 40 and 41 above). In particular, Senior Lieutenant H.H., T. Varyan's superior, swore at him and hit him a number of times on such random pretexts as, for instance, his failure to immediately fetch H.H.'s hat or, on another occasion, to hand over his belt (see paragraphs 16, 18 and 22 above). Senior Lieutenant H.H. also humiliated T. Varyan by, among other things, forcing him to do extra work such as digging a hole for a latrine (see paragraphs 13 and 14 above) and making inappropriate jokes about his sexual life to embarrass him (see paragraph 21 above). T. Varyan was also ill-treated by Junior Sergeant G.M. (see paragraphs 14 and 22 above), another conscript, to whom T. Varyan was apparently subordinate, given the charges brought against him (see paragraphs 51 and 43 above), and on more than one occasion by Junior Sergeant E.S., who was also a conscript (see paragraphs 14 and 16 above).

110. The Court further notes that it was in dispute between the parties whether T. Varyan had been found fit for service as a combatant or a non-combatant when conscripted into the army (see paragraph 6 above). It observes in this connection that in the course of the mandatory medical examinations during the conscription procedure T. Varyan was diagnosed with a certain heart condition (mitral valve prolapse causing mitral valve regurgitation) and that his personal file, which was provided by the

Government, does contain a decision of the Central Medical Commission according to which T. Varyan was fit for combatant service (see paragraph 6 above). That being said, the applicant insisted on the fact that his son had been conscripted for non-combatant service both in his application and in his later submissions before the Court (see paragraph 78 above), whereas the documents concerning the internal investigation – namely the report of the internal commission and the order given by the Minister of Defence on 13 March 2012 – indicate that T. Varyan had been conscripted under points 26(d) and 17(b) (of annex no. 1 to order of the Minister of Defence no. 175 of 26 February 2010 – see paragraphs 40 and 41 above). The Court notes in this connection that in their further observations the Government included a reference to order no. 175 – in force at the relevant time and regulating, among other things, the procedure for the medical examination of individuals prior to conscription – of which annex no. 1 indicates, in point 26(d), that persons diagnosed with the heart condition mentioned therein are fit for non-combatant service only (see paragraph 65 above). Although the same order states that the decisions of the Central Medical Commission with respect to conscripts are final, it also states that the Central Military Medical Commission decides to confirm or refuse the conclusions of subordinate examination bodies, as well as, when necessary, decisions concerning the examination of military servicemen and persons subject to conscription (see paragraph 64 above).

111. In these circumstances, and given the absence of any clarification or explanation by the applicant, including whether there had been any appeals against the decision of the Central Medical Commission finding T. Varyan fit for combatant service, the Court is not able to conclusively establish whether the latter was indeed conscripted for non-combatant service only.

112. In any event, it is not disputed that T. Varyan was physically underdeveloped (although apparently not to the point of making him unfit for combatant service under point 17(b) of annex no. 1 to the order no. 175 of 26 February 2010; see paragraph 65 above), or that he had a heart condition which arguably made him unsuitable for combatant service. Nevertheless, and even assuming that T. Varyan was indeed called up for combatant duty, it was noted in the order given by the Minister of Defence on 13 March 2012 that the incident could possibly have been prevented if "the relevant officers had investigated in a timely manner the fact of T. Varyan being physically weak ..." (see paragraph 41 above). The Court observes in this connection that, as was established during the investigations, T. Varyan had been put on active duty for multiple shifts in place of other conscripts, had been forced to do most of the cleaning and would have very few breaks for several days in a row. In addition to such physical pressure, it was commonly admitted that servicemen, including his direct superior, Senior Lieutenant H.H., constantly bullied T. Varyan by assaulting and mocking him, calling him names and so on, to the point that he preferred to be put on watch duty repeatedly if only to

avoid those who were treating him in that way (see, in particular, paragraphs 14 and 17 above).

113. The Court notes that at least two of T. Varyan's superiors (other than Senior Lieutenant H.H., who was apparently one of the most active participants in T. Varyan's ill-treatment) were to various degrees aware of the abuse but apparently neither reported it to their superiors nor undertook any measures to address it themselves. In particular, Senior Sergeant V.N. submitted that he had been aware of the incident in November 2011 when Senior Lieutenant H.H. had beaten up T. Varyan (see paragraph 18 above), while Captain A.H. openly admitted that he had taken no measures to find out what was really happening simply because he had received reports that everything was all right and he had considered that the servicemen were merely making jokes and not mocking T. Varyan. Captain A.H. did report Senior Lieutenant H.H.'s failure to comply with his duties to his superior, who took no action on the complaint made in that regard (see paragraph 26 above).

114. As regards the day of the incident and the events of the preceding two days, the Court notes the following.

115. On 27 February 2012, that is two days prior to the incident, T. Varyan was once again ill-treated, this time by Junior Sergeant E.S., who had verbally abused and hit him (see paragraph 16 above) because of a disagreement over washing the dishes (or because of cleaning, according to the internal commission's report; see paragraph 40 above). T. Varyan was further ill-treated the night before the incident. In particular, on the evening of 28 February 2012 both Junior Sergeant E.S. and Senior Lieutenant H.H. verbally and physically abused T. Varyan yet again, which apparently left T. Varyan very unhappy according to the account of Private R.A. (see paragraph 14 above). There is nothing to indicate, at least from the available material, that anything else of significance happened between those events and the next morning, when T. Varyan was found dead.

116. To sum up, the material before the Court, including, among other things, the report of the posthumous psychiatric examination (see paragraph 37 above), the report of the internal commission and the order of the Minister of Defence of 13 March 2012 (see paragraphs 40 and 41 above), as well as the findings of the domestic criminal courts (see, in particular, paragraph 45 above), is more than sufficient to conclude that T. Varyan fell victim to severe and long-term abuse at the hands of his direct superior (Senior Lieutenant H.H.), and fellow conscripts (Junior Sergeants G.M. and E.S.), and that no measures whatsoever were taken to effectively protect him against that abuse which, as was subsequently found, resulted in his committing suicide.

117. The Government referred to section 6 of the Internal Service Regulations (see paragraph 61 above; see also paragraphs 62 and 63 above for sections 11 and 12 of the Internal Regulations) to argue that the domestic

law provided for, among other things, effective preventive measures in order to secure the safety and protection of military servicemen (see paragraph 82 above). The Court notes, however, that none of the cited provisions of the Internal Service Regulations concern specific measures of protection against ill-treatment during military service, let alone any measures aimed at the prevention of suicides, such as the availability of psychological assistance. The Court has previously found in another case concerning an alleged suicide during military service that at the relevant time there was no system of psychological assessment and assistance in the Armenian military forces, including with regard to initial and subsequent psychological screening, prevention of suicides and availability of psychological assistance (see *Hovhannisyan and Nazaryan*, cited above, §§ 139-44). The Court lastly notes in this connection that in his order of 13 March 2012 the Minister of Defence referred to a certain "Suicide and self-mutilation prevention group" (see paragraph 41 above). While there was no information in the parties' submissions as to that group's status and role within the armed forces, the Court notes that in any event the same order indicated that the group had failed to accomplish "specific preventive work with servicemen" (ibid.). In any event, there is nothing in either the Government's submissions or in the material before the Court to suggest that any psychological support had been made available to T. Varyan, who was, in the words of the military authorities, "physically weak, self-isolated and lacking confidence" and, therefore, in a vulnerable position (see paragraphs 40 and 41 above; and see, *mutatis mutandis*, *Hovhannisyan and Nazaryan*, cited above, § 144).

118. In the light of all these considerations, the Court concludes that the authorities in the instant case failed to comply with their positive obligation to protect T. Varyan's right to life while he was under their control.

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

(ii) Procedural limb

120. The Court notes at the outset that the Investigative Service of the Ministry of Defence opened an investigation of its own motion on the day of the incident, that is, on 29 February 2012 (see paragraphs 8 and 9 above). The criminal investigation, which led to the prosecution and conviction of T. Varyan's superior, Senior Lieutenant H.H., and Junior Sergeants G.M. and E.S., was completed very swiftly, less than a year from the date of the incident, that is, around January 2013 (see paragraphs 9 and 38 above), and the trial ended in August 2013 (see paragraph 45 above), that is, less than seven months after the indictment. The Court accordingly finds that the investigation was conducted with the requisite diligence and that there was no unjustified delay in the investigation.

121. That being said, the Court reiterates that such investigations should be thorough, which means that the authorities must always make a serious

attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see the case-law quoted in paragraph 97 above).

122. The Court observes that, despite all the investigative measures that were undertaken and mentioned by the Government (see, in particular, paragraph 84 above), the investigation failed to elucidate several important circumstances surrounding T. Varyan's death.

123. In particular, no adequate explanation was ever provided with regard to the nature and origin of a number of non-ballistic injuries that were detected during the autopsy and were visible in the photos taken during the examination of the scene of the incident (see paragraphs 10, 33 and 36 above), including wounds on the bridge of the nose and both eyelids. According to the autopsy report, those injuries had been inflicted by a firm, blunt object (or objects) shortly before T. Varyan's death, and were not directly linked to the cause of the death (see paragraph 33 above). The Government referred in that connection to the statement given by the forensic medical expert who had conducted the autopsy when questioned after the delivery of the autopsy report, on which occasion he had essentially retracted his conclusion therein that the non-ballistic injuries in question had been inflicted shortly before the death (see paragraph 36 above). The Court firstly observes that, under the criminal procedure law in force at the material time, a forensic expert could be questioned only in order to clarify his or her opinion or clarify the methods applied or the terminology used. However, the record of the expert's questioning could not replace his or her opinion (see paragraphs 57 and 58 above). Secondly, the forensic expert in question had personally performed the autopsy, recorded the relevant injuries and expressed an official opinion that they had been inflicted before the death. In those circumstances, the expression by the same expert of a radically different opinion approximately five months after the delivery of his report and on the basis of photographs shown to him by the investigator (see paragraphs 33 and 36 above) can hardly be considered an adequate explanation for the non-ballistic injuries which had been present on the body when it was found.

124. Furthermore, according to the account of the events of the morning of 29 February 2012 given by Junior Sergeant E.S. and Private R.A. (see, *inter alia*, paragraphs 13, 14 and 21 above), an account which they both maintained during their respective confrontations with Senior Lieutenant H.H. (see paragraphs 24 and 25 above), H.H. had gone to the base shortly before T. Varyan's body was discovered there, a fact that he alone denied throughout the investigation and during the internal investigation as well (see paragraphs 17 and 40 above). However, not only did the investigating authority not make any effort to clarify the matter but this important element was completely left out of the description of the events set out in the indictment (see paragraph 38 above).

125. In addition, although it appears that the report of the internal investigation, which contained a number of factual findings in relation to the circumstances surrounding T. Varyan's death, the events preceding it and an overall assessment of the unhealthy environment and non-statutory relations among servicemen (see paragraph 40 above), was included in the file concerning the criminal case, there were a number of crucial discrepancies between the version of events established by the investigating authorities and that established by the internal commission which were neither explained nor even addressed in the bill of indictment (see paragraph 38 above). For example, according to the report of the internal commission, some episodes of T. Varyan's ill-treatment, including in relation to his sleeping while on duty and being forced to dig a hole for the latrine, were attributed to Junior Sergeant E.S. (see paragraph 40 above), whereas the same episodes were attributed to Senior Lieutenant H.H. during the criminal investigation (see paragraph 38 above), without any specific explanations. Furthermore, according to the report of the internal commission, when a shot was heard, everyone (presumably the three servicemen in question) had gone to the base and discovered the body (see paragraph 40 above), whereas according to the indictment, Junior Sergeant E.S. had discovered the body, after which Senior Lieutenant had gone up to the base, and there is no mention whatsoever in the bill of indictment of a shot being heard (see paragraph 38 above), even though Private R.A. had mentioned this in his statement of 29 February 2012 (see paragraph 14 above).

126. Lastly, the Court observes that in their joint expert opinion of 15 August 2012, the commission of ballistic and medical forensic experts indicated that T. Varyan's gunshot wound could also have been inflicted by another person (see paragraph 34 above). However, there was apparently no meaningful follow-up of that hypothesis during the investigation.

127. The Court reiterates in this connection that the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all the relevant elements (see the case-law quoted in paragraph 98 above), which, as has been shown in paragraphs 122 to 126 above, was not the case as regards the investigation into the circumstances of T. Varyan's death.

128. Against this background, the Court has serious doubts as to the adequacy of the domestic criminal investigation. It thus finds that the investigation conducted in this case was not sufficiently thorough, resulting in a failure to shed full light on the circumstances surrounding the T. Varyan's death.

129. In view of its above finding that the investigation into the circumstances of T. Varyan's death was not sufficiently thorough, the Court

concludes that the domestic authorities in the present case failed to conduct an effective investigation.

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

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

132. The applicant complained that his son had been ill-treated both physically and psychologically by his superior and co-servicemen while performing mandatory military service. He relied on Article 3 of the Convention, which reads as follows:

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

133. The Government submitted that the applicant's complaint under Article 3 of the Convention was essentially a reiteration of that under Article 2. In any event, the treatment complained of should be considered in the light of the particularities of life in the army – a context in which the threshold of treatment contrary to Article 3 of the Convention was, in the Government's view, comparatively higher. The applicant's son had been the same age as Junior Sergeants E.S. and G.M. and they had all enjoyed good relations with each other.

134. The applicant maintained his complaint that his son had fallen victim to periodic ill-treatment and humiliation while performing military service.

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

136. Having regard to the findings relating to Article 2 of the Convention (see paragraphs 109, 112 and 116 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 3 of the Convention (see, *mutatis mutandis*, *Muradyan*, cited above, § 161, with further references).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

138. The Government maintained that the investigation into the incident of 29 February 2012 had been thorough and effective and had led to the identification and punishment of those responsible for T. Varyan's death.

As to the applicant's complaint concerning the impossibility of claiming compensation for non-pecuniary damage, the Government submitted that at the relevant time the law had not provided for compensation for non-pecuniary damage. That being said, the applicant had failed to claim any type of damages during the domestic proceedings and/or to apply to the Constitutional Court to challenge the constitutionality of the relevant civil-law provisions in force at the material time. He had therefore failed to exhaust the domestic remedies in relation to that complaint.

139. The applicant maintained his complaint that the investigation into the circumstances surrounding the death of his son had not been effective and that there had been no possibility of claiming compensation for non-pecuniary damage as no such possibility had existed under domestic law at the material time.

140. The Court considers that the Government's objection of non-exhaustion of domestic remedies (see paragraph 138 above) is closely linked to the merits of the applicant's complaint under Article 13 of the Convention that there had been no possibility under domestic law of claiming compensation from the State for the non-pecuniary damage suffered as a result of the loss of his son. It therefore considers that the Government's objection should be joined to the merits of the applicant's complaint under the same provision.

141. The Court notes that the applicant's complaints under Article 13 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

142. The Court reiterates that Article 13 has no independent existence; it merely complements the other substantive clauses of the Convention and its Protocols (see *Zavoloka v. Latvia*, no. 58447/00, § 35 (a), 7 July 2009). It can only be applied in combination with, or in the light of, one or more Articles of the Convention or the Protocols thereto of which a violation has been alleged. To rely on Article 13, an applicant must also have an arguable claim under another Convention provision (see, for instance, *Walter v. Italy* (dec.), no. 18059/06, 11 July 2006).

143. Having regard to its findings in relation to the procedural aspect of Article 2 of the Convention (see paragraphs 128-130 above), the Court considers that it is not necessary in this case to examine whether there has also been a violation of Article 13 of the Convention on account of the alleged ineffectiveness of the investigation into the death of the applicant's son (see,

mutatis mutandis, *Muradyan*, § 161, and *Anahit Mkrtchyan*, § 105, both cited above).

144. As regards the applicant's complaint that Armenian law provided no means of claiming compensation for the non-pecuniary damage suffered as a result of the death of his son (see the relevant domestic regulations in force at the material time, referred to in paragraph 59 above), the Court notes that it has previously found that the lack of legal provisions making it possible to apply at the material time for compensation for the non-pecuniary damage suffered as a result of the loss of life of one's child was in breach of the requirements of Article 13 of the Convention (see *Mirzoyan*, cited above, §§ 79-83, and *Hovhannisyan and Karapetyan*, cited above, § 146). The Court sees no reason to reach a different finding in the present case.

145. As to the Government's argument that the applicant had failed to claim any type of damages in the course of the domestic proceedings (see paragraph 138 above), the Court observes that the applicant specifically complained of the absence at the relevant time of any domestic legal provisions that would allow him to claim compensation for non-pecuniary damage from the State for the loss he had suffered as a result of the breach of his son's right to life (see paragraphs 137 and 139 above). In view of the lack of legal provisions making it possible to seek compensation for non-pecuniary damage at the material time (see paragraph 144 above), it is not clear what result, if any, the applicant could have achieved had he nevertheless applied for compensation of non-pecuniary damage within the framework of the domestic proceedings.

As for the argument that the applicant could have applied to the Constitutional Court to challenge the constitutionality of the relevant civil-law provisions in force at the material time (see paragraph 138 above), the Court has previously held that the constitutional remedy is generally not considered as a domestic remedy to be exhausted due to the specificities of the judicial role of the Armenian Constitutional Court (see *Volodya Avetisyan v. Armenia*, no. 39087/15, § 33, 3 May 2022 and the case-law cited therein).

146. In view of the above considerations, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies and finds that there has been a violation of Article 13 of the Convention on account of the lack of a legal possibility, for the applicant, of claiming compensation for the non-pecuniary damage suffered as a result of the breach of his son's right to life.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

149. The Government considered the applicant's claim to be ill-founded and excessive.

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

B. Costs and expenses

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Joins to the merits* the Government's objection that the applicant did not exhaust domestic remedies in respect of his complaint under Article 13 and *rejects* it;

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

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

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of a legal possibility, for the applicant, of claiming compensation for the non-pecuniary damage suffered as a result of the breach of his son's right to life;

6. *Holds* that there is no need to examine whether there has been a violation of Article 3 of the Convention on account of the ill-treatment of the applicant's son;

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

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

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

Done in English, and notified in writing on 4 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President