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

FOURTH SECTION

CASE OF HOVHANNISYAN AND KARAPETYAN v. ARMENIA

(Application no. 67351/13)

JUDGMENT

Art 2 (substantive and procedural) • Life • Positive obligations • Failure to take measures to protect life of two conscripts killed during compulsory military service by a fellow conscript in a shooting incident • Failure to assess character and dangerousness of a conscript who had a criminal record and had been deported from the US on that account • Failure to adopt measures to maintain proper military discipline and prevent occurrence of violence believed to have triggered the shooting • Ineffective investigation
Art 13 (+ Art 2) • Lack of an effective remedy • Legal impossibility of claiming compensation for non-pecuniary damage suffered as a result of the loss of life of one's child

STRASBOURG

17 October 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Hovhannisyan and Karapetyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer, *President,*
Tim Eicke,
Faris Vehaboviÿ,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Anne Louise Bormann, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 67351/13) 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 two Armenian nationals, Mr Mikayel Hovhannisyan (“the first applicant”) and Ms Svetlana Karapetyan (“the second applicant”, together “the applicants”), on 18 October 2013;

the decision to give notice to the Armenian Government (“the Government”) of the applicants’ complaints concerning the death of their sons, the alleged inadequacy of the investigation and the impossibility of claiming compensation for non-pecuniary damage from the State and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 26 September 2023,

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

INTRODUCTION

1. The case concerns the death of the applicants’ sons as a result of a tragic shooting in the military unit where they were undergoing compulsory military service. It raises issues under Articles 2 and 13 of the Convention.

THE FACTS

2. The first applicant was born in 1967 and lives in Vanadzor, and the second applicant was born in 1957 and lives in Yerevan. The applicants, who had been granted legal aid, were represented by Mr A. Zalyan, 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. The first applicant is the father of R. Hovhannisyan, who died at the age of 19. The second applicant is the mother of A. Sargsyan, who died at the age of 21.

6. R. Hovhannisyan and A. Sargsyan were drafted into the Armenian army in 2009 and 2008 respectively. They were both assigned to military unit no. 36534 of the Nagorno-Karabakh armed forces (“the military unit”, situated in the “Republic of Nagorno-Karabakh” (the “NKR”)).

7. On 28 July 2010 at around 6 p.m. R. Hovhannisyan, A. Sargsyan and four other servicemen (Privates G.H., A.M., K.A. and platoon commander Senior Lieutenant V.T.) were found dead with gunshot injuries at post no. 147 of the military unit.

II. INVESTIGATION INTO THE APPLICANTS’ SONS’ DEATH

8. On the same date at around 8 p.m. an investigator of the Second Garrison Investigation Department of the Investigative Service of the Ministry of Defence of the Republic of Armenia (Hadrut, Nagorno-Karabakh) examined the scene of the incident and drew up a report, according to which K.A.’s body had been discovered in the trench leading from the dugout to the observation post, with a Kalashnikov hand-held machine gun next to his legs. The report then stated, among other things, that five more bodies had been discovered in front of the dugout – Senior Lieutenant V.T., A. Sargsyan and G.H. next to each other close to the pavilion of the dugout, R. Hovhannisyan a bit closer to the pavilion and A.M. under the pavilion by the entrance of the dugout. The investigator took photographs of the scene and the bodies *in situ* and seized the weapons and various items of military clothing found at the scene.

9. On the same date criminal proceedings were instituted by the Second Garrison Investigation Department of the Investigative Service under Article 104 § 2 (1) of the Criminal Code of Armenia (murder of two or more persons).

10. On the same date the investigator (see paragraph 8 above) ordered autopsies to determine, *inter alia,* the cause of death, the presence of injuries and, if there were any injuries, the time of their infliction, as well as whether there was any evidence of alcohol consumption.

11. On 29 July 2010 the investigation was taken over by the Investigation Department of Cases of Special Importance of the Investigative Service of the Ministry of Defence (Yerevan, Armenia) and assigned to senior investigator M.B. of the same department.

12. On the same date a number of servicemen were interviewed, including Lieutenant Colonel V.P., deputy commander of the military unit; Lieutenant Colonel S.G., deputy chief of staff of the military unit; Private H.P., squad

commander; Captain M.M., platoon commander; and Private D.H., squad commander.

13. Lieutenant Colonel V.P. (see paragraph 12 above) stated at his interview that at around 5 p.m. on 28 July 2010 he had gone to post no. 147 with Lieutenant Colonel S.G., where they had discovered the servicemen on duty at the observation post (Privates A. Sargsyan and K.A.) asleep. He then reprimanded the servicemen in question, ordered them not to undertake any actions at the post and told them that the issue of their disciplinary responsibility would be considered when they returned to the military unit after the shift change. He then left and was informed about thirty to forty minutes later that six bodies had been found at the post.

14. Lieutenant Colonel S.G. (see paragraph 12 above) stated, inter alia, that on 28 July 2010 he had gone to post no. 147 with Lieutenant Colonel V.P. upon the orders of Colonel F.B., the military unit commander. On arriving, he went up to the observation post with Privates G.H. and D.H., where they discovered A. Sargsyan and K.A. asleep. He did not allow Senior Lieutenant V.T., who was also there, to approach the sentries, as he suspected that he might hit them. At around 6.30 p.m. that evening he was informed that there were victims at post no. 147. He, Lieutenant Colonel V.P. and other officers returned and discovered six bodies in front of the dugout.

15. Private D.H. (see paragraph 12 above) stated, in particular, that at around 5.30 p.m. on 28 July 2010 they had received a call from the adjacent post informing them that Lieutenant Colonels V.P. and S.G. were inspecting the observation posts. He escorted them to the observation post, where Lieutenant Colonel S.G., who was the first to enter the post, discovered both sentries (Privates A. Sargsyan and K.A.) asleep.

Lieutenant Colonel V.P. arrived a bit later and, having learnt that the sentries had been asleep, ordered them not to undertake any actions while at the observation post and told them that the matter would be discussed after the shift change.

Prior to that, and in Lieutenant Colonel S.G.'s presence, Senior Lieutenant V.T. addressed A. Sargsyan and K.A. in a very rude manner and said "Because of [bastards] like these, positions are being taken".

D.H. did not see or hear anyone reprimanding Senior Lieutenant V.T. for the fact that the sentries had been found asleep. However, Senior Lieutenant V.T. was furious because of the entire situation; he called platoon commander Captain M.M. and threatened in very rude language to harm those who had been discovered sleeping if he did not report the matter and have them sent to the military unit right away.

When A. Sargsyan and K.A. returned from the observation post, Senior Lieutenant V.T. ordered them very angrily to take out their weapons. At that point D.H. was in the dugout and could hear Senior Lieutenant V.T. arguing with A. Sargsyan and K.A. outside. That happened at around 6.15 p.m. He then heard the sound of someone being hit and, looking out of the window,

saw Senior Lieutenant V.T. beating A. Sargsyan. At that point G.H. tried to pull Senior Lieutenant V.T. away, after which he heard someone shouting "[R. Hovhannisyan's short name], no, no, no!". He then heard an assault rifle being loaded and a long burst of automatic fire immediately after. After it finished, he heard someone entering the dugout and thought that it was the person who had been shooting. Frightened, he hid between the door and the refrigerator. A couple of seconds later he heard a single shot, followed by silence. He then ran from the dugout and on his way, on the stairs, discovered A.M.'s body. He then saw four other bodies lying on the ground.

16. According to the statement of Private H.P. (see paragraph 12 above), who was on duty at the observation post after A. Sargsyan and K.A., he woke up at around 5.45 p.m. in order to prepare for his shift. When he left the dugout, he saw Senior Lieutenant V.T., A.M. and R. Hovhannisyan, who was a little further down the road, next to the dugout. Prior to leaving, standing by the door, he heard Senior Lieutenant V.T. swearing at the sentries who had been found asleep. On the way to the observation post, he saw A. Sargsyan and K.A. coming back. He then took over the shift with another serviceman and about two to three minutes later they heard a long burst of continuous gunfire. Then, a single shot was heard six to seven seconds after the gunfire had stopped. Since sentries were not allowed to leave their observation post during their shift, they stayed where they were. He and the other sentry left the observation post when other officers came to replace them. They then went down towards the dugout and saw the bodies. At that point it was clear that K.A. had shot the others since his body was in the trench and it looked as if he had committed suicide, while the others were a bit further away – A. Sargsyan, Senior Lieutenant V.T. and G.H. next to each other and R. Hovhannisyan about half a metre away from them.

17. Captain M.M. (see paragraphs 12 and 15 above) described the episode of Senior Lieutenant V.T. calling him after the sentries had been discovered asleep at the observation post and threatening to harm them if not sent to the military unit. In reply, Captain M.M. said that they only had two days to leave the positions and go back to the military unit, where the sentries would be given their punishments. Around ten minutes after that conversation he heard gunfire coming from the direction of post no. 147.

18. At his subsequent interviews, H.P. (see paragraph 16 above) stated that Senior Lieutenant V.T. was very strict about service and rude. In his opinion, the incident could have been prevented had Senior Lieutenant V.T. been more tolerant towards A. Sargsyan and K.A. He believed that K.A. had shot the servicemen; in his opinion, none of the others would have done it. He also stated that, to his mind, the incident could have been prevented had Senior Lieutenant V.T. ordered A. Sargsyan and K.A. to put away their weapons after they had returned from their shift, as required by the regulations.

19. On an unspecified date the Minister of Defence of Armenia ordered an internal investigation into the incident.

20. On 3 August 2010 the investigator ordered a ballistic examination of samples taken from the bodies of Senior Lieutenant V.T., A. Sargsyan, K.A. and A.M. According to the ballistic expert report of 14 September 2010, the samples taken from the bodies of Senior Lieutenant V.T. and K.A. contained traces of gunshot residue. Taking into account the quantities of antimony metal, the traces in the samples taken from the body of Senior Lieutenant V.T. indicated contact with a weapon, or a shot fired from one, while the traces in the samples taken from the body of K.A. indicated that he had fired a shot (shots).

21. On 10 August 2010 the Minister of Defence issued an order based on the results of the internal investigation (see paragraph 19 above), the relevant parts of which read as follows:

> "On 28 July ... [K.A.] fired at his co-servicemen with the Kalashnikov hand-held machine gun assigned to him, as a result of which 5 servicemen died instantly, after which he committed suicide.
>
> ...[Lieutenant Colonel V.P.] and [Lieutenant Colonel S.G.] reprimanded [A. Sargsyan] and [K.A.] for sleeping at the observation post. At that moment ... [Senior Lieutenant V.T.] tried to hit [A. Sargsyan and K.A.] but [Lieutenant Colonels V.P. and S.G.] did not let that happen.
>
> ... after the shift, the officers came back to the dugout and [Senior Lieutenant V.T.] ... swore at those who had been sleeping ... and started beating up [A. Sargsyan]...
>
> According to the initial information [K.A.], seeing [Senior Lieutenant V.T. beating up A. Sargsyan] and realising that he would be next, took the hand-held machine gun assigned to him ... and fired ... Then, he took a loaded magazine from one of the deceased, attached it to his machine gun, entered the trench and committed suicide by firing a shot into his mouth.
>
> Back in 1992 Private [K.A.] had left for the United States with his mother, where he was convicted of numerous counts of burglary, car theft, possession of illegal firearms and drugs and escaping from a correctional facility.
>
> In 2009 [K.A.] was deported from the United States to the Republic of Armenia and drafted into the army.
>
> It has also been revealed during the internal investigation that:
>
> the incident is the consequence of a gross violation of military rules ... as well as humiliation and ill-treatment of servicemen by senior officers ...
>
> The incident would not have happened if:
>
> ...
>
> 2) the personal data concerning the conscripts and their character had been adequately examined in the military unit, and the criminal offences committed previously by the servicemen had been examined in detail ...
>
> ...

5) the command of the military unit ... had examined the circumstances of [K.A.'s] stay in the [United States], the offences committed by him, his deportation from the [United States] and the circumstances of his conscription for military service ...

6) [Lieutenant Colonel V.P.] and [Lieutenant Colonel S.G.] had taken preventive measures to obviate [Senior Lieutenant V.T.'s] violent actions ...

...

8) (c) ...the firearms had been unloaded and stored [by the servicemen who had completed their shift] in accordance with [the relevant provisions of order of the Minister of Defence no. 0250]...

9) the platoon commander [that is, Captain M.M.], having learnt that the sentries had been sleeping ... had reported to his superior and undertaken measures to calm [Senior Lieutenant V.T.'s] anger and discipline him ...

10) non-statutory, street methods, beating and humiliation of the servicemen ... had not been used for breaches of [military rules] ."

Pursuant to the order, a number of high-ranking officers, including Lieutenant Colonel V.P., were demoted, while others, including Colonel F.B., the military unit commander, and Lieutenant Colonel S.G., were transferred to the reserve.

22. By the same order, the Minister of Defence also reprimanded a number of high-ranking officers of military unit no. 42009 of the Nagorno-Karabakh armed forces, including its deputy commander responsible for working with personnel discharged from service.

23. On 30 September 2010 the results of the autopsies (see paragraph 10 above) were received, which contained the following conclusions.

24. A. Sargsyan had died of gunshot injuries to the waist, buttocks and thigh. Non-gunshot injuries were also found on his body, in the form of abrasions on his elbow and lower arm. These injuries had been inflicted by blunt objects shortly before death or when he was dying. A biochemical examination had shown the presence of 1 per mille alcohol in his blood, which corresponded to low-level alcohol intoxication.

25. R. Hovhannisyan had died of a gunshot wound to the head. Other gunshot injuries had been found on his thigh, arms and stomach. A biochemical examination had shown the presence of 2.6 per mille alcohol in his blood, which corresponded to high-level alcohol intoxication.

26. G.H. had died of gunshot injuries to the chest, stomach, thigh and legs. A biochemical examination had shown the presence of 0.74 and 0.3 per mille alcohol in his blood and urine respectively, which corresponded to low-level alcohol intoxication.

27. A.M. had died of gunshot injuries to various internal organs and elsewhere on the body. Non-gunshot injuries were also found, in the form of abrasions in the left corner of the mouth and on the back and upper limbs, and bruises on the chest, which were inflicted either shortly before death or as he was dying, with blunt objects or tools. A biochemical examination had shown

the presence of 1.43 and 0.4 per mille alcohol in his blood and urine respectively, which corresponded to low-level alcohol intoxication.

28. Senior Lieutenant V.T. had died of gunshot injuries to the neck, chest, stomach, thigh, and upper and lower limbs. A biochemical examination had shown the presence of 1.8 per mille alcohol in his blood, which corresponded to mid-level alcohol intoxication. No alcohol had been discovered in the urine sample.

29. K.A. had died of a gunshot wound to the skull, with the entry wound situated inside the mouth. A biochemical examination had shown the presence of 3.6 per mille alcohol in his blood. At the time of his death, K.A. was severely intoxicated.

30. On 6 October 2011 investigator M.B. (see paragraph 11 above) ordered a posthumous forensic psychological and psychiatric examination to determine, among other things, whether K.A. had suffered from any psychiatric disorders, what his psychological condition had been during the period before the shooting and his suicide and whether there was a causal link between the ill-treatment and humiliation by Senior Lieutenant V.T. and K.A.'s psychological condition preceding the shooting and the suicide.

31. On 24 October 2011 the relevant commission of experts delivered its report, which stated, *inter alia,* that K.A. had not suffered from a psychiatric disorder and had been fully aware of his actions. On the basis of the material provided to the experts (a statement of the facts as set out in the decision ordering the forensic examination, autopsy reports, records of interviews with witnesses and forensic experts, K.A.'s books and notebooks found in his personal belongings and so on), the commission concluded as follows:

> "... according to the notes in [K.A.'s] notebook, it can be assumed that he frequently reflected on various life issues, his past, being in the army, [hardly] bearing the two years of service and regretted his actions in the past.
>
> According to the case material, [K.A.] was described positively and performed his duties in good faith.
>
> ...
>
> In view of [K.A.'s] level of inebriation and the situation at hand [Senior Lieutenant V.T.'s behaviour], it can be presumed that [K.A.] experienced psychological tension because of the acute conflict situation, but cognitive processes are impaired to such an extent in the event of such a [high] level of inebriation that it is not possible to diagnose them (because of the absence of such methodology, especially during a posthumous forensic psychological and psychiatric examination which is being carried out based on the case material). For those reasons ... it is not possible to accurately determine [K.A.'s] psychological condition, his behaviour and psychological condition were affected by the influence of alcohol ... [K.A.'s] actions were affected by the influence of alcohol and [Senior Lieutenant V.T.'s] actions in the given situation ..."

III. TERMINATION OF THE INVESTIGATION

32. On 28 July 2012 investigator M.B. (see paragraph 11 above) decided to terminate the proceedings on the grounds that the persons who had committed offences, namely Private K.A. (murder of two or more persons) and Senior Lieutenant V.T. (aggravated abuse of authority), had died. Referring to witness statements and the results of the forensic medical, posthumous forensic psychiatric and psychological and other examinations, he found the following to have been established:

> "... on 28 July 2010 at around 6 p.m. Senior Lieutenant V.T. ... kicked [A. Sargsyan] in the chest, then punched him in the temple and, having knocked him to the ground, started kicking him in various parts of the body. Military post senior [G.H.] tried to intervene and put an end to the beating. At that point ... [K.A.] picked up from the ground the ... loaded machine gun ... assigned to him and ... opened fire at Senior Lieutenant [V.T.] and conscripts [G.H., A. Sargsyan, R. Hovhannisyan and A.M.], killing them; he then changed the empty bullet magazine, entered the trench, put the barrel of the machine gun in his mouth and committed suicide by firing a single shot.
>
> Thus, Senior Lieutenant [V.T.] ... abused his power by beating up [A. Sargsyan] for a breach of military rules by the latter and [K.A.] and, having negligently caused grave consequences, committed an offence under Article 375 § 2 of the Criminal Code [aggravated abuse of authority] ... Private [K.A.] committed an offence under Article 104 § 2 (1) of the Criminal Code [aggravated murder] ... [K.A.'s] suicide was also connected to Senior Lieutenant [V.T.'s] actions.
>
> Taking into account that Senior Lieutenant [V.T.] and [K.A.] have died since committing the offences in question, it is not possible to prosecute them ..."

33. On 20 September 2012 investigator M.B. (see paragraph 11 above) sent a letter to the applicants' representative about the decision of 28 July 2012 (see paragraph 32 above). The letter stated that the decision was enclosed. Since the enclosure was missing, the applicants' representative requested it from investigator M.B.

34. On 16 October 2012 the applicants' representative received a copy of the decision by hand.

IV. THE APPLICANTS' APPEALS

35. On 19 October 2012 the applicants appealed against the decision of 28 July 2012 (see paragraph 32 above) to the Military Prosecutor, arguing that the investigation into the incident had been inadequate. In particular, although it had been established that the deceased servicemen had been intoxicated at the time of the events in question, the investigating authority had failed to clarify at what point and how they had consumed alcohol while on military duty and to find out how they had acquired it. No explanation had been given for the non-gunshot injuries present on A.M.'s body (see paragraph 27 above). Also, having established that Senior Lieutenant V.T. had possibly come into contact with a gun or had fired one (see paragraph 20

above), the investigating authority had failed to address the issue. Furthermore, it had been essential to clarify why K.A. had killed the other servicemen in a situation where he was believed to have fired at Senior Lieutenant V.T. on seeing him use violence against A. Sargsyan. Therefore, the investigation had failed to clarify K.A.'s motive for killing the other servicemen. The applicants also argued that the investigation had inadequately addressed the issue of the lawfulness of K.A.'s conscription in view of his criminal record and whether or not the disregarding of a court order prohibiting K.A. from having access to firearms had led to the tragic events of 28 July 2010.

36. By a decision of 26 October 2012 the Military Prosecutor dismissed the applicants' appeal.

37. On 14 November 2012 the applicants disputed the decision to terminate the proceedings (see paragraph 32 above) before the Arabkir and Kanaker-Zeytun District Court of Yerevan ("the District Court"), raising similar arguments to those submitted before the Military Prosecutor (see paragraph 35 above). They also submitted that the investigating authority had failed to inform them of the termination of the criminal proceedings, send them the relevant decision and make the case material available to them.

38. In the course of the proceedings before the District Court, the applicants requested to be provided with the case material. That request was apparently granted. After studying the material, the applicants lodged a supplementary appeal.

39. On 8 January 2013 the District Court dismissed the applicants' complaint, reiterating the findings set out in the decision of 28 July 2012 (see paragraph 32 above) and stating that their arguments essentially were not supported by the case material.

40. The applicants lodged an appeal, which was dismissed by the Criminal Court of Appeal on 20 February 2013. The court restated the relevant provisions of domestic law and stated that there were no grounds to set aside the District Court's decision of 8 January 2013.

41. The applicants lodged an appeal on points of law.

42. By a decision of 18 April 2013 the Court of Cassation declared the applicants' appeal on points of law inadmissible for lack of merit. That decision was served on the applicants' representative on 23 April 2013.

V. AVAILABLE INFORMATION CONCERNING K.A.'S CONSCRIPTION AND MILITARY SERVICE

43. In 1992, at the age of three, K.A. moved from Armenia to the United States with his mother.

44. In December 2006 he was convicted by a US court of several counts of burglary, possession of burglary tools and theft. He was found to be a repeat juvenile offender in view of his past convictions and was placed in the

custody of the Division of Youth Corrections of the Colorado Department of Human Services for two years, with a mandatory minimum of one year.

45. In January 2008 K.A. was convicted of escape from custody following conviction for a felony. He was discharged from the Division of Youth Corrections in April 2008.

46. According to the applicants, a US court issued a protective order prohibiting K.A. from having access to weapons. The Government disputed that this was the case. According to the documents submitted by the applicants in support of their application, on K.A.'s first conviction in the United States for illegal possession of a weapon in 2002, when he was put on probation, the relevant decision stated that there were to be no weapons in the home.

47. In April 2009 K.A. was deported from the United States to Armenia because of his criminal record. Once in Armenia, he submitted documents to the military authorities concerning his previous convictions in the United States.

48. By a letter of 28 October 2009, the military commissar of the Arabkir District of Yerevan reported to the Ministry of Defence that K.A. had submitted documents concerning his criminal record in the United States and enquired whether he was subject to conscription. The head of the Ministry of Defence's Legal Department responded, stating that K.A.'s personal file had been transferred to the Military Prosecutor, who considered him subject to conscription, in accordance with section 11(2) of the Conscription Act (see paragraph 55 below). Taking into account the opinion of the Military Prosecutor, it had been decided to draft K.A. into the army.

49. After being drafted into the army, K.A. was included in the list of servicemen of the military unit who required enhanced supervision in view of their past criminal conviction or punishment for a breach of military discipline.

50. According to K.A.'s personal file, he was unwavering, brave, optimistic and sociable. There are brief records of the topics of eleven conversations held with K.A. in the military unit between December 2009 and July 2010, including on whether he had any issues during service, problems adapting to service or any family issues, to all of which he replied negatively.

RELEVANT LEGAL FRAMEWORK

RELEVANT DOMESTIC LAW

A. Right to compensation

51. The relevant provisions of domestic law concerning compensation of damages, as in force at the material time, are set out in the Court's judgment in the case of *Mirzoyan v. Armenia* (no. 57129/10, §§ 46-50, 23 May 2019).

B. Code of Criminal Procedure (as in force at the material time)

52. Article 59 § 1 (9) of the Code of Criminal Procedure provided at the material time that a victim had the right to study and photocopy all the material in the case file and to retrieve any information from the case file upon the completion of the investigation.

53. Article 262 § 1 provided that a copy of the investigator's decision to terminate the criminal proceedings and to discontinue prosecution would be sent to, *inter alia,* the suspect, the accused, the lawyer, as well as the victim and his or her representative. The above-mentioned persons would be informed of their right to study the case material and the procedure for lodging an appeal against the decision to terminate the criminal proceedings and to discontinue prosecution (Article 262 § 2). The above-mentioned persons had the right to study the material in the file concerning the terminated case, in accordance with the procedure set out in the Code (Article 262 § 3).

54. Article 263 § 1 provided that within seven days of receiving a copy, the suspect, the accused, the lawyer, the victim, his or her representative and the civil party could appeal against the decision to terminate the criminal proceedings or discontinue prosecution to the supervising prosecutor.

C. Conscription Act of 16 September 1998 (no longer in force)

55. Section 11(2) of the Conscription Act provided that persons who were being investigated or on trial or who had previously been sentenced to imprisonment for committing a serious crime or at least twice for an intentional crime and had served their sentence in a detention facility for no less than three years, as well as those who had committed an offence specified in the list approved by the Ministry of Defence or the Prosecutor General's Office, were not subject to conscription.

Pursuant to the Conscription Act the Minister of Defence would define the procedure for conscription or registration in the reserve of persons who had previously been sentenced to imprisonment and had served a sentence of less than three years.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

56. The applicants complained about the death of their sons during compulsory military service, and that the authorities had failed to carry out an effective investigation into the matter. They 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

57. The Government submitted that Armenia had no jurisdiction over the complaints raised by the applicants under the substantive limb of Article 2 since K.A., who had been responsible for the loss of the applicants' sons' lives, had been performing military service under the supervision of the "NKR" military authorities. They further submitted that the investigation into the incident of 28 July 2010 had been carried out by the Armenian authorities, and that the appeals against the investigator's decision to terminate the criminal proceedings had been examined by the Armenian courts. There was therefore solid evidence that Armenia had jurisdiction over the complaint raised under the procedural limb of Article 2. The Government considered that Armenia's jurisdiction in that regard should be acknowledged on the basis of the exception of "State agent authority and control", as all the acts complained of had been attributable to the Armenian authorities.

58. The applicants submitted that since their sons had been undergoing compulsory military service, any matter in relation to that was within Armenia's jurisdiction.

59. The Court notes that it has already examined in other cases the issue of Armenia's jurisdiction over the territory in question and found that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and that, therefore, complaints pertaining to events that happened in that area came within the jurisdiction of Armenia for the purposes of Article 1 of the Convention (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 169-86, ECHR 2015; *Muradyan v. Armenia,* no. 11275/07, §§ 123-27, 24 November 2016 and *Nana Muradyan v. Armenia,* no. 69517/11, §§ 86-92, 5 April 2022, specifically concerning the deaths of conscripts during compulsory military service in Nagorno-Karabakh; and compare *Mirzoyan v. Armenia,* no. 57129/10, § 56, 23 May 2019, concerning the murder of a conscript during compulsory military service in Nagorno-Karabakh).

60. In the present case, the applicants' complaints about the death of their sons fall to be examined under both the substantive and procedural aspects of Article 2 of the Convention. In so far as their complaint under the substantive limb of Article 2 is concerned, the applicants complained that the State had failed to protect their sons' right to life, referring firstly to the Armenian military authorities' decision to draft K.A. into the army and secondly to the failure of the commanding officers of the military unit – situated in Nagorno-Karabakh and administered by that entity1 – to take appropriate steps to safeguard their sons' life during compulsory military service. At the same time, in so far as their complaint under the procedural limb of Article 2 is concerned, the applicants raised a number of arguments to contest the circumstances of the death of their sons as established during the domestic investigation carried out by the Armenian authorities.

61. In this context, the Court notes that in the recent case of *Nana Muradyan* (cited above), which also concerned the death of a conscript during compulsory military service in Nagorno-Karabakh and the ensuing investigation by the Armenian authorities, it found that the jurisdictional link between Armenia and the applicant's deceased son should be established on the basis of its earlier finding in the Grand Chamber case of *Chiragov and Others* (cited above, §§ 169-86) that at the relevant time (that is, 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 for at least five years) Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and was under an obligation to secure in that area the rights and freedoms set out in the Convention (see *Nana Muradyan,* cited above, §§ 90-92, with further references).

62. The incident resulting in the death of the applicants' sons took place on 28 July 2010 in a military unit situated in the "NKR" (see paragraphs 6 and 7 above). The Court finds no particular circumstances in the instant case, which also took place prior to the end of the Nagorno-Karabakh war on 10 November 2020 (see *Nana Muradyan,* cited above, § 91), that would require it to depart from its findings in that judgment and therefore considers that the jurisdictional link between Armenia and the applicants' deceased sons in the present case should also be established on the grounds that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories at the material time.

63. For the aforementioned reasons, the Court concludes that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicants' deceased sons.

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1 See *Zalyan and Others v. Armenia,* nos. 36894/04 and 3521/07, §§ 208, 17 March 2016 as regards the legal basis for the Armenian citizens to perform regular military service in the "NKR".

2. Compliance with the six-month rule

64. The Government maintained that, in the event that the Court should find that Armenia had jurisdiction over the applicants' complaint under the substantive limb of Article 2 of the Convention, the six-month period in relation to that complaint should be calculated from 10 August 2010, the date of the order of the Minister of Defence acknowledging discrepancies in the organisation of military duty which had led to the tragic events in question (see paragraph 21 above). At the same time, if the applicants believed that K.A. had been responsible for the breach of their sons' right to life, the final domestic decision in that regard should be considered the decision of 28 July 2012 terminating the criminal proceedings on the grounds that the persons who had committed the relevant offences, that is K.A. and V.T., were no longer alive (see paragraph 32 above). The Government submitted in this connection that in their appeals before the domestic courts the applicants had not contested the authorities' conclusion that their sons had been killed by K.A., but had rather raised issues concerning certain details in relation to the incident.

65. The applicants insisted that the final domestic decision was that of the Court of Cassation of 18 April 2013 declaring their appeal on points of law inadmissible (see paragraph 42 above).

66. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant, and, where the situation is a continuing one, once that situation ends (see, among other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 259, ECHR 2014 (extracts)).

67. The Government first argued that the six-month period in respect of the applicants' complaint about the State's alleged failure to protect A. Sargsyan's and R. Hovhannisyan's lives during compulsory military service should be calculated from 10 August 2010, 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 21 above). The Court observes in this connection that it has recently examined in other cases, and in the light of similar arguments advanced by the Government, 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, in particular, *Ashot Malkhasyan v. Armenia,* no. 35814/14, §§ 69-71, 11 October 2022, and *Hovhannisyan and Nazaryan v. Armenia,* nos. 2169/12 and 29887/14, §§ 95-99, 8 November 2022). The Court has no particular reason to depart from that finding in the present case.

68. The Government then argued that, in the alternative, the six-month period in respect of the applicants' complaint about the State's alleged failure to protect their sons' lives should be calculated from 28 July 2012, the date of the investigator's decision to terminate the criminal proceedings on the grounds that the persons who had committed the relevant offences had died (see paragraph 32 above). The Court notes, however, that under domestic law the decision in question was amenable to appeal (see paragraph 54 above) a possibility which the applicants availed themselves of in order to raise their complaints concerning the effectiveness of the investigation (see paragraphs 35 and 40 above). Hence, there is no basis for the Court to find that the decision of 28 July 2012 constituted a "final decision" within the meaning of Article 35 § 1 of the Convention.

69. The Court has no reason to consider – nor has it been suggested by the Government – that the criminal proceedings regarding the circumstances of A. Sargsyan's and R. Hovhannisyan's death were an ineffective remedy in respect of the applicants' complaints under Article 2 of the Convention. It observes in this connection that the final decision in those proceedings was served on the applicants on 23 April 2013 (see paragraph 42 above), and that the applicants lodged their application on 18 October 2013, that is, in compliance with the six-month rule. The Court therefore dismisses the Government's objection as to the failure to comply with the six-month rule.

3. Other grounds for inadmissibility

70. 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 applicants

71. The applicants submitted that the State had failed to protect their sons' right to life during compulsory military service, in breach of Article 2 of the Convention.

72. Their sons, who had been under the exclusive control of the military authorities, had been killed by a conscript during compulsory military service. The authorities had initially failed to properly assess the risks associated with calling up K.A. for compulsory military service in view of his past criminal record in breach of domestic law and had then failed to protect their sons by ensuring proper military discipline in the military unit. According to the official version of events, the crime had occurred because of Senior Lieutenant V.T.'s violent behaviour on the one hand and the influence of alcohol on K.A.'s behaviour on the other, both of which were breaches of

military discipline that had not been prevented or properly addressed by those in charge of the military unit.

73. The applicants maintained that a number of crucial circumstances surrounding the incident resulting in their sons' death – including K.A.'s motive for killing his fellow servicemen, the circumstances surrounding the consumption of alcohol by the servicemen and the presence of non-gunshot injuries on A.M.'s body – had not been clarified either in the course of the investigation or in the court proceedings.

74. They argued that the investigation had not been independent since the Investigative Service was part of the structure of the Ministry of Defence. Investigator M.B., being subordinate to the Minister of Defence, could not have ignored the version of events set out in the latter's order of 10 August 2010 (a copy of which had been served on him) by following a different line of inquiry into the incident within the scope of the criminal investigation.

75. The applicants had not been granted access to the file either during the investigation or following its completion. They had only been given an opportunity to study the case material through the intervention of the District Court after they had contested M.B.'s decision to terminate the criminal proceedings.

(b) The Government

76. The Government maintained that K.A.'s drafting into the army had been in compliance with the requirements of domestic law, namely the Conscription Act in force at the material time. In particular, K.A. had not served his sentence in a detention facility for more than three years so, as eventually decided by the authorities, he had been subject to mandatory conscription. They stated that during his military service, personal conversations had been held between him and the command staff of the military unit – eleven times according to the notes in his personal file. He had been described positively as a highly disciplined serviceman who had friendly relations with his fellow conscripts. It could therefore never be assumed that he would kill his fellow servicemen.

77. The Government submitted that the investigation had been independent and impartial. The Investigative Service of the Ministry of Defence was an entity separate from its staff. There was therefore no hierarchical or institutional interconnection between the Investigative Service and the members of the armed forces. In addition, the Investigative Service had been created and its functioning could be terminated by the Government, while the head of the Investigative Service was appointed and dismissed by the President of the Republic of Armenia.

78. Referring to the fact that the applicants had been provided with the decisions to commission forensic expert opinions, informed of their rights and represented by a lawyer in the domestic proceedings, the Government

maintained that the applicants had been provided with all legal and practical opportunities to effectively participate in the investigation.

79. The Government argued that the investigation had been prompt and adequate. They gave the following response to the applicants' specific complaints.

80. As regards the issue of consumption of alcohol by the servicemen, the Government stated that during an additional examination of the scene, an empty vodka bottle and beer bottle had been found. In that connection, they submitted the report of that additional examination (carried out on 27 September 2010), according to which an empty beer bottle had been found in the rubbish next to the toilet of post no. 147 of the military unit and an empty vodka bottle had been found among other rubbish thrown in a ditch between post nos. 146 and 147.

81. As to the non-gunshot injuries on A.M.'s body, namely abrasions in the left corner of the mouth, back, upper limbs and bruises on the chest, according to autopsy report no. 36 (see paragraph 27 above) they had been sustained immediately before the death during the "agonal period" and did not have any causal link to the death. Moreover, the investigation had not revealed any evidence of A.M. having those injuries while alive.

82. As to K.A.'s alleged motives for killing his fellow servicemen, the Government relied on the conclusion of the posthumous forensic psychological and psychiatric examination, according to which K.A.'s actions had been affected by the consumption of alcohol and Senior Lieutenant V.T.'s actions.

83. Lastly, the Government pointed out that the applicants had never requested any specific investigative measures to be carried out in order to address the discrepancies which, in their opinion, had undermined the effectiveness of the investigation.

2. The Court's assessment

(a) General principles

(i) Substantive limb

84. 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).

85. 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).

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

87. 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 *Kÿlÿnç and Others v. Turkey,* no. 40145/98, § 41, 7 June 2005, and *Mosendz,* cited above, § 91).

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

89. In assessing the 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, *Nana Muradyan,* § 123, and *Hovhannisyan and Nazaryan,* § 123, both cited above).

(ii) Procedural limb

90. The obligation to protect the right to life under Article 2 of the Convention, taken in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when individuals have died in suspicious circumstances. This obligation is not confined to cases where it has been established that the death was caused by an agent of the State (see *Lari v. the Republic of Moldova,* no. 37847/13, § 34, 15 September 2015, with further references).

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

92. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue, including, *inter alia,* eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. However, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible and is liable to fall foul of the required measure of effectiveness (see *Muradyan v. Armenia,* no. 11275/07, § 135, 24 November 2016, with further references, and *Nana Muradyan,* cited above, § 126).

93. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 177, 14 April 2015).

94. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their 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). The requisite access of the public or the victim's relatives may, however, be provided for in other stages of the procedure (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 304, ECHR 2011 (extracts), and *McKerr v. the United Kingdom,* no. 28883/95, § 129, ECHR 2001-III).

95. Lastly, the question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case (see, among other authorities, *Muradyan,* § 136, with further references, and *Nana Muradyan,* § 127, both cited above).

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

(i) Substantive limb

96. The applicants' sons, R. Hovhannisyan and A. Sargsyan, were conscripts carrying out their mandatory military service under the care and responsibility of the authorities when they died as a result of a tragic shooting.

97. Although in their application form the applicants seemed to question the official finding of the domestic authorities that K.A. had been the perpetrator of the shooting (referring mainly to the inaccuracies in the investigation pointed out in their appeals summarised in paragraph 35 above), they nevertheless complained about the military authorities' decision to draft K.A. into the army and their subsequent failure to organise their sons' military service in compliance with military discipline (see paragraph 72 above). Furthermore, in their observations, despite the fact that the applicants maintained their complaint that numerous suspicious circumstances surrounding the fatal incident had not been clarified during the investigation or in the subsequent judicial proceedings, they did not advance any arguments to fundamentally challenge the investigation's conclusion that K.A. had been the one to open fire at Senior Lieutenant V.T. and his fellow servicemen (contrast *Ayvazyan v. Armenia,* no. 56717/08, § 87, 1 June 2017; *Nana Muradyan,* cited above, §129; and compare *Hovhannisyan and Nazaryan,* § 132, also cited above).

98. The Court refers to its findings below regarding serious deficiencies in the conduct of the investigation (see paragraphs 124 to 129 below). Those deficiencies resulted in a failure to elucidate a number of significant facts surrounding the fatal shooting, including, among other things, with regard to the alleged consumption of alcohol by the servicemen, the reason(s) for K.A. also killing his fellow servicemen, with whom he was believed to have had good relations, as well as the presence of unexplained injuries on A.M.'s body. That being said, given the standards adopted in its case-law (see paragraph 89 above) and the applicants' position on the matter (see

paragraph 97 above), the Court sees no cogent reason in the present case for it not to make its assessment based on the facts as established during the domestic investigation, including the internal investigation carried out by the Ministry of Defence (see paragraphs 21 and 32 above).

99. Thus, according to the official version of events, the applicants' sons, two of their fellow servicemen and Senior Lieutenant V.T. were killed by K.A. – a conscript with a criminal record for a number of offences committed in the United States whom the Armenian military authorities had found to be subject to conscription (see paragraphs 44, 45, 47 and 48 above) – who then committed suicide (see paragraph 32 above). It was established during the investigation that K.A.'s actions had been provoked by Senior Lieutenant V.T.'s violent behaviour in connection with the former and A. Sargsyan having earlier been discovered sleeping while on duty at the observation post, an incident which had also been witnessed by senior commanding officers (see paragraphs 21, 31 and 32 above).

100. The Court reiterates in this connection that the domestic authorities are required to put in place rules and to adopt practical measures aimed at effectively protecting conscripts against the dangers inherent in military life and 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 secure high professional standards among regular soldiers to protect conscripts (see the case-law quoted in paragraphs 86-88 above). In the Court's opinion, however, and for the reasons which follow, the authorities failed in their obligations in the instant case.

101. It appears from the evidence before the Court that the military authorities made a decision to draft K.A. into the army with full knowledge of his past criminal activity in the United States, including his numerous convictions which had eventually resulted in his deportation only a few months before his conscription (see paragraphs 47 and 48 above).

102. The Government maintained that the decision to draft K.A. into the army had been in compliance with the Conscription Act given that he had served a sentence in a detention facility for less than three years (see paragraph 76 above, as well as paragraph 55 above for a description of the relevant provisions of domestic law), whereas the applicants argued, without substantiating their claim, that that decision had been in breach of the law (see paragraph 72 above).

103. Regardless, there is nothing in the material before the Court to suggest that the military authorities at any point attempted to investigate K.A.'s character in more detail or considered the nature and degree of dangerousness of the offences he had committed, which had been judged sufficiently serious by the courts in the United States to place him in a juvenile correctional facility at such a young age and subsequently by the American authorities to eventually deport him from the country after he had

been living there since his early childhood (see paragraphs 43, 44 and 47 above). The Court notes in this connection that, despite its specific request when the present application was notified to the Government, the latter failed to provide any additional evidence concerning the examination by the military authorities of the question of K.A.'s conscription at the relevant time and the subsequent decision to draft him into the army. Therefore, the only available document concerning the matter is the letter from the head of the Ministry of Defence's Legal Department informing the relevant military commissar, without any further details and referring to the Conscription Act (see paragraph 55 above), that it had been decided to draft K.A. into the army based on the Military Prosecutor's opinion (see paragraph 48 above).

104. In any event, even if the decision to draft K.A. into the army was not in breach of domestic law, the military authorities appear to have taken a very formalistic approach to the matter by simply taking into account the duration of K.A.'s time in a juvenile detention facility without duly considering that he had been deported from the US on account of his criminal record, in particular without having regard to the nature of the criminal offences that he had committed in the US prior to his deportation, including the order issued by the US court back in 2002 prohibiting him from having access to weapons (see paragraph 46 above). In addition, as pointed out in the order of the Minister of Defence, none of those factors were subsequently taken into account by the command of the military unit after K.A. had already been drafted (see paragraph 21 above).

105. According to the information provided by the Government, K.A. was among the servicemen who had been included in a list in the military unit as requiring enhanced supervision (see paragraphs 49 and 76 above). They did not explain, however, what that had meant in practice in terms of his supervision and what measures that involved, if any. Nor did the Government suggest that the conversations held with K.A. during military service (see paragraph 50 above) were anything more than routine conversations which would normally be held with conscripts, regardless of whether or not they were included in the list of servicemen who required enhanced supervision. In any event, those conversations during which K.A., according to the notes in his personal file, had mentioned not having any issues adapting to military service (see paragraph 50 above), were apparently not capable of disclosing the difficulties that he was actually experiencing, as follows from the entries in his personal notebook (see paragraph 31 above).

106. As regards the day of the incident in particular, it was unequivocally established during both the internal and criminal investigations that senior command officers of the military unit, specifically Lieutenant Colonels V.P. and S.G., the deputy commander and the deputy chief of staff respectively (see paragraphs 12-14 above), were present at the observation post when Senior Lieutenant V.T. was at the point of becoming violent towards A. Sargsyan and K.A. because they had been discovered sleeping (see

paragraphs 21 and 32 above). What is more, Lieutenant Colonel S.G. himself stated that he had suspected that Senior Lieutenant V.T. would hit the conscripts, which was why he did not let him approach them (see paragraphs 13 and 14 above).

107. Hence, despite having personally witnessed Senior Lieutenant V.T.'s rage and violent attitude towards A. Sargsyan and K.A., Lieutenant Colonels V.P. and S.G. simply left the observation post without undertaking any measures to calm Senior Lieutenant V.T. down to prevent the possible violence of which there were obvious signs. Notably, the manner in which Lieutenant Colonels V.P. and S.G. handled the entire situation was criticised in the order of the Minister of Defence imposing serious disciplinary measures on them. In particular, it was stated that the incident would not have happened if, among other things, Lieutenant Colonels V.P. and S.G. "had taken preventive measures to obviate [Senior Lieutenant V.T.'s] violent actions" (see paragraph 21 above).

108. Furthermore, the failure of Lieutenant Colonels V.P. and S.G. to undertake any measures to prevent Senior Lieutenant V.T.'s violent behaviour towards the conscripts under his command was then followed by the inaction of platoon commander, Captain M.M., to whom Senior Lieutenant V.T. apparently made it clear in a subsequent telephone conversation that he intended to harm the conscripts if they were not transferred back to the military unit (see paragraph 17 above). Thus, not only did Captain M.M. not follow up on Senior Lieutenant V.T.'s request to have A. Sargsyan and K.A. transferred, he failed to report their conversation to his superiors and to undertake measures to calm Senior Lieutenant V.T.'s anger and discipline him. According to the findings of the investigation, the main and only reason K.A. started shooting was his fear of being the next to be ill-treated by Senior Lieutenant V.T. when he had witnessed him beating A. Sargsyan (see paragraphs 21 and 32 above).

109. Lastly, contrary to military rules, A. Sargsyan and K.A. had not been requested to hand in and store their weapons after their shift had ended and all the servicemen who died, including Senior Lieutenant V.T., were found to have consumed alcohol at some point, which was also against military rules and military discipline in general (see paragraphs 18 and 21 above).

110. In the light of the foregoing, the Court finds that the authorities failed in their positive obligation to protect R. Hovhannisyan's and A. Sargsyan's lives during their mandatory military service. First, they decided to call K.A. up for military service in disregard of the latter's criminal history and without any meaningful examination of his character and the risks associated with him serving in the army. They then failed to adopt any measures to maintain proper military discipline during their mandatory service and prevent the occurrence of the violence believed to have been the reason for the tragic shooting that caused the loss of several lives, including those of the applicants' sons.

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

(ii) Procedural limb

(ÿ) Promptness of the investigation

112. The Court observes at the outset that within hours of the shooting, steps were taken to secure the evidence. In particular, the investigator carried out an on-site examination, took pictures and seized the evidence, including the weapons discovered at the scene (see paragraph 8 above). Furthermore, on the same date a criminal case was opened and autopsies were ordered (see paragraphs 9 and 10 above). In addition, a number of witnesses had already been interviewed by the following day and forensic examinations were ordered within a matter of days (see, for example, paragraphs 12-17 and 20 above).

113. The investigation lasted two years (see paragraphs 9 and 32 above) and the examination of the applicants' appeals by the courts was completed in less than a year (see paragraphs 37 and 42 above).

114. In those circumstances, the Court considers that the investigation was conducted with the requisite promptness and that there was no unjustified delay.

(ÿ) Independence of the investigation

115. The applicants argued that the investigation into the death of their sons had not been independent since investigator M.B., who was subordinate to the Minister of Defence, had been bound by the version of events set out in the latter's order of 10 August 2010 (see paragraphs 21 and 74 above).

116. The Court reiterates that Article 2 does not require that the persons and bodies responsible for an investigation should enjoy absolute independence, but rather that they should be sufficiently independent of the persons and structures whose responsibility is likely to be engaged (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 343-44, ECHR 2007-II).

117. The Court has already found in another case concerning death during military service that the investigators of the former Investigative Service of the Ministry of Defence enjoyed sufficient statutory and institutional independence within the meaning of Article 2 of the Convention (see *Hovhannisyan and Nazaryan,* cited above, §§ 181-85, as well as § 87 of the same judgment for a summary of the relevant statutory regulations). To reach that finding, the Court had regard to the fact that the Investigative Service was a separate entity outside the staff of the Ministry of Defence and that its investigators were not part of the military structure based on the principles of hierarchical subordination. Furthermore, the fact that the Minister of Defence carried out the overall governance of that entity, including approval of its

salary scales and the number of employees, was not in itself sufficient to call into question the statutory or institutional independence of its investigators (ibid., § 183).

118. That being said, the Court reiterates that the independence of the investigation must be assessed *in concreto* (see *Mustafa Tunç and Fecire Tunç,* cited above, § 249).

119. The Court notes that there is nothing to suggest – nor has it been suggested otherwise by the applicants – that investigator M.B. of the Investigation Department of Cases of Special Importance of the Investigative Service (see paragraph 11 above) had any ties, hierarchical or otherwise, with the command and servicemen of the military unit (see, *mutatis mutandis, Mustafa Tunç and Fecire Tunç,* § 238, and *Hovhannisyan and Nazaryan,* § 184, both cited above). Nor is there anything to suggest that investigator M.B.'s conduct, including his failure to inform the applicants of the termination of the investigation and to give them an opportunity to examine the case material in a timely manner (see paragraphs 33, 34 and 38 above), showed tangible proof of a lack of impartiality (see, *mutatis mutandis, Hovhannisyan and Nazaryan,* § 184, and compare *Mustafa Tunç and Fecire Tunç,* § 227, including the case-law examples contained therein, both cited above).

120. In so far as the applicants argued that investigator M.B. was bound by the findings of the internal investigation set out in the order of the Minister of Defence of 10 August 2010 (see paragraphs 21 and 74 above), there is nothing to indicate that there was any statutory obligation for investigators of the Investigative Service of the Ministry of Defence to follow the versions of events established as a result of internal investigations carried out by the Ministry of Defence and, as already noted (see paragraph 117 above), those investigators enjoyed sufficient institutional independence from the Minister of Defence when carrying out investigations into fatalities during military service.

121. Against this background, the Court considers that the criminal investigation conducted in the present case by the Investigation Department of Cases of Special Importance of the Investigative Service of the Ministry of Defence was sufficiently independent.

(ÿ) Adequacy of the investigation

122. As already noted (see paragraph 112 above), the authorities took a number of investigative measures to collect evidence relating to the events in issue. Indeed, they undertook various investigative measures, including on the day of the incident in the aftermath of the shooting, swiftly interviewed the important witnesses and ordered a number of forensic expert examinations.

123. However, as reiterated above, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made,

witnesses questioned or other investigative measures taken. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements (see paragraph 92 above), which, in the Court's opinion, was not the case as regards the investigation into the circumstances surrounding the applicants' sons' death for the following
reasons.

124. K.A.'s sudden and abrupt behaviour, including the fact that, along with Senior Lieutenant V.T., he also fired at his fellow conscripts, with whom he was believed not to have had any issues whatsoever, was essentially explained by his intoxication at the time of the shooting (see paragraphs 31, 32 and 82 above). However, at no point during the investigation was it established when and how not only K.A. but all the other servicemen who died as a result of the shooting had consumed alcohol, especially considering the very short time between the change of A. Sargsyan's and K.A.'s shift, their return to the dugout and the shooting (see paragraphs 15, 16 and 32 above). Nor were any traces of alcohol consumption discovered during the examination of the scene of the incident in the aftermath of the shooting (see paragraph 8 above).

125. The Government submitted in that connection that an empty vodka bottle and beer bottle had been found during the additional examination of the scene on 27 September 2010 (see paragraph 80 above). The Court observes, however, that neither the decision to terminate the investigation nor the decisions of the domestic courts referred to the report of the additional examination of the scene in so far as the issue of consumption of alcohol by the given servicemen was concerned (see paragraphs 32 and 39 above). In any event, the discovery of two empty bottles of alcohol among communal rubbish two months after the incident can hardly be considered an adequate explanation for the intoxication of six men, including K.A. showing a severe level of intoxication (see paragraphs 24-29 above) on the day of the incident.

126. The Court notes that the sequence of events preceding the shooting as established in the domestic criminal investigation (see paragraph 32 above) did not fully correspond to the account of the main eyewitness Private D.H.
He had stated during his interview that at the point when G.H. was trying to pull Senior Lieutenant V.T. away from A. Sargsyan to stop him beating him up, he had heard someone calling R. Hovhannisyan's name, saying "No, no, no!" as if trying to stop him from doing something bad (see paragraph 15 above). However, the official version of events does not mention anything about that detail.

127. The forensic medical examination of A.M.'s body had revealed a number of non-gunshot injuries, including abrasions on different parts of the body and bruises (see paragraph 27 above). However, no explanation was provided for those injuries, it being maintained throughout the investigation that only A. Sargsyan had sustained bodily injuries as a result of his ill-treatment by Senior Lieutenant V.T. (see paragraphs 24 and 32 above).

128. The Government submitted that A.M.'s injuries, as described in the relevant autopsy report, had been sustained immediately before the death during the "agonal period" and did not have any causal link to the death (see paragraph 81 above). The Court observes, however, that the autopsy report stated that the injuries in question had been inflicted with blunt objects or tools "shortly before the death or in the dying moments" (see paragraph 27 above). The Court further observes that an identical formulation was used in the autopsy report describing A. Sargsyan's non-gunshot injuries, which were believed to have been sustained during his beating by Senior Lieutenant V.T. shortly before the shooting (see paragraph 24 above). Still, there is nothing to suggest that there were any meaningful attempts to clarify the circumstances in which A.M. sustained his bodily injuries. Although those injuries, as pointed out by the Government, were not found to have had a causal link to the death, in the Court's opinion, the clarification of when and how they were inflicted would have helped shed light on exactly what had happened before the shooting.

129. The Court observes that, apart from the command officers of the military unit, high-ranking military officers of military unit no. 42009 of the Nagorno-Karabakh armed forces were subjected to disciplinary liability based on the results of the internal investigation of the Ministry of Defence into the incident (see paragraphs 21 and 22 above). However, it remains unclear why the Minister of Defence imposed severe disciplinary liability on high-ranking military officials of another military unit in relation to the incident in military unit no. 36534. Nor is there anything in the material concerning the criminal investigation to indicate that this issue was investigated any further.

130. The applicants raised other issues in their domestic appeals and before the Court, concerning, for instance, the failure to investigate in what circumstances Senior Lieutenant V.T. had come into contact with a gun or fired one and the failure to examine the procedure for K.A.'s conscription, including the issues relating to his criminal record in the United States and so on (see paragraphs 35 and 37 above).

131. In the Court's view, however, the serious shortcomings in the investigation that have already been addressed in detail (see paragraphs 124-129 above) are sufficient for it to seriously question the adequacy of the domestic criminal investigation. Accordingly, it sees no need to examine the other issues raised by the parties (see, *mutatis mutandis, Hovhannisyan and Nazaryan,* cited above, § 170).

(ÿ) Participation of the deceased's relatives in the investigation

132. The applicants complained that they had not been informed in a timely manner of the completion of the investigation and granted access to the case file (see paragraph 75 above). The Government did not specifically address that complaint (see paragraph 78 above).

133. The Court notes that under the criminal procedural law in force at the material time, the investigator was under an obligation to send a copy of the decision to terminate the criminal proceedings to the victim, who had the right to study the entirety of the case material on completion of the investigation (see paragraphs 52 and 53 above).

134. In the present case, however, investigator M.B. informed the applicants of the decision of 28 July 2012 to terminate the proceedings almost two months after its adoption, that is, by a letter of 20 September 2012, and even then failed to enclose a copy of the decision (see paragraphs 32 and 33 above). Consequently, the applicants had to take the initiative to request a copy of the decision, and their representative had to appear in person to be provided with it (see paragraphs 33 and 34 above).

135. Furthermore, it was not until the examination of the applicants' request for a judicial review of the decision of 28 July 2012 that they were provided with an opportunity to study the case material, when the case was already before the District Court (see paragraph 38 above).

136. The Court refers to its case-law (see paragraph 94 above) and reiterates that the requisite access of the public or the victim's relatives may be provided for in other stages of the procedure (see *Giuliani and Gaggio,* cited above, § 304). In this sense, although the applicants' procedural rights guaranteed under domestic law were apparently breached in terms of not being properly informed of the completion of the investigation and being provided with an opportunity to study the case file in a timely manner, their request to study the case material was eventually granted by the District Court and they were able to lodge a supplementary appeal (see paragraph 38 above).

137. While it cannot be ruled out that the belated examination of the case material – that is, before the courts proceeded with the judicial review of the decision to end the investigation – could have placed the applicants at a disadvantage in some respect, they did not specify how that had jeopardised, if it had, their legitimate interests in the proceedings (compare, *Hovhannisyan and Nazaryan,* cited above, §§ 106 and 172-80).

138. In those circumstances, the Court does not consider that the authorities' failure to provide the applicants with access to the case material in a timely manner – albeit unfortunate and apparently in breach of domestic law – denied them effective participation in the proceedings to the extent that they were unable to safeguard their legitimate interests.

(e) Conclusion

139. In conclusion, Court considers that the investigation conducted in this case – albeit prompt, independent and involving the applicants to a degree sufficient to protect their interests (see paragraphs 114, 121 and 138 above) – was not sufficiently thorough (see paragraph 131 above), resulting in a failure to shed full light on the circumstances surrounding the fatal shooting (see paragraphs 124-129 above).

140. It follows that there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

141. The applicants complained that the domestic authorities had failed to conduct an effective investigation into their sons' 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 their loss. They 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."

142. Referring to their observations in relation to the procedural limb of Article 2 of the Convention (see paragraphs 77-83 above), the Government maintained that the investigation into the incident of 28 July 2010 had been thorough and effective and had established all the relevant circumstances surrounding the incident.

As to the applicants' 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. Therefore, the applicants should have lodged their complaint in this regard within six months from the date of the order of the Minister of Defence and the investigator's decision to terminate the criminal proceedings.

143. The applicants submitted that the decision of 28 July 2012 to terminate the criminal proceedings (see paragraph 32 above) could not be considered a final decision for their complaints under Article 13 of the Convention. They had raised a number of issues arguing that the investigation into the incident of 28 July 2010 had not been effective, but their questions had remained unanswered. In addition, even if the domestic courts had acknowledged that there had been a breach of their sons' right to life, there had been no possibility of claiming compensation for non-pecuniary damage as no such possibility had existed under domestic law.

144. 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. Since in the present case the applicants' complaint under Article 2 was found admissible (see paragraph 70 above), the complaints under Article 13 must also be declared admissible.

145. Having regard to the findings relating to the procedural aspect of Article 2 of the Convention (see paragraphs 139 and 140 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 of the Convention (see, *mutatis mutandis, Muradyan,* cited above, § 161, and *Anahit Mkrtchyan v. Armenia,* no. 3673/11, § 105, 7 May 2020).

146. As regards the applicants' complaint with regard to the lack of legal grounds under Armenian law on which to claim compensation for non-pecuniary damage suffered as a result of the death of their sons, the Court notes that it has already found that the legal impossibility at the material time of applying for compensation for non-pecuniary damage suffered as a result of the loss of life of one's child was in breach of the requirements of Article 13 of the Convention (see *Mirzoyan,* cited above, §§ 79-83). The Court sees no reasons to reach a different finding in the present case.

147. There has accordingly been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicants each claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

150. The Government considered the applicants' claims to be excessive.

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

B. Costs and expenses

152. The applicants were granted legal aid by the Court and did not seek to be reimbursed for any additional costs or expenses. Consequently, the Court makes no award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

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

5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention about the alleged failure to carry out an effective investigation into the death of the applicants' sons;

6. *Holds*

(a) that the respondent State is to pay each 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President