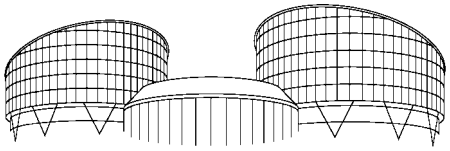

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HARUTYUN KARAPETYAN v. ARMENIA

(Application no. 53081/14)

JUDGMENT

Art 2 (procedural) • Effective investigation • Effective criminal proceedings into the death of the applicant's wife, allegedly as a result of medical negligence • Despite initial shortcomings during inquiry stage of investigation, domestic authorities eventually responded adequately to applicant's allegation and clarified events surrounding his wife's death

Prepared by the Registry. Does not bind the Court.

STRASBOURG

29 October 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 Harutyun Karapetyan 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 Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 53081/14) 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 Harutyun Karapetyan ("the applicant"), on 15 July 2014;

the decision to give notice to the Armenian Government ("the Government") of the complaint concerning the alleged lack of an effective investigation into the circumstances surrounding the death of the applicant's wife and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 11 June and 17 September 2024,

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

INTRODUCTION

1. The case concerns the alleged lack of an effective investigation into the death of the applicant's wife, allegedly as a result of medical negligence. It raises an issue under Article 2 of the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Abovyan. He was represented by Mr T. Abgaryan, who was granted permission to represent him in the proceedings before the Court (Rule 36 § 2 of the Rules of Court).

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. DEATH OF THE APPLICANT'S WIFE AND PRECEDING EVENTS

5. On an unspecified date in March 2011 the applicant and his 53-year-old wife, T. Simonyan, visited the Mother and Child Healthcare Centre in Yerevan ("the hospital") because she was experiencing uterine problems. At the hospital Ms Simonyan was diagnosed with a uterine myoma.

6. The same day they met with Doctor G.O., who recommended that she undergo surgery without delay. According to the applicant, they had enquired about the level of complexity of the proposed intervention. In reply, G.O. had reassured them that the surgery was not considered to be complex, but should not be delayed. Having discussed the financial aspect of the proposed medical intervention, they agreed to the surgery and G.O. asked them to provide Ms Simonyan's medical records from her local clinic.

7. About one or two weeks later Ms Simonyan provided her medical records to the hospital. They contained an entry from 2007 concerning, *inter alia*, thrombophlebitis, as well as entries from 2010 concerning varicose veins in the lower extremities and the results of a Doppler ultrasound which had revealed venous insufficiency.

8. On 22 March 2011 Ms Simonyan underwent a hysterectomy (surgical removal of the uterus) at the hospital.

9. On 23 March 2011 at around 8 a.m. Ms Simonyan called the applicant, complaining of acute pain. The applicant immediately went to the hospital. At around midday he was informed that she had died.

II. ENSUING CRIMINAL PROCEEDINGS

10. The hospital informed the police about Ms Simonyan's death on the same date (23 March 2011).

11. On the same day the police ordered an autopsy, requesting the forensic experts to determine, among other things, the time and cause of the death, any illnesses that T. Simonyan had suffered from and their connection to the death, the adequacy of the medical care she had received, whether she had been given any injections before, during or after the surgery and whether it could have been possible to avoid the fatal outcome.

12. The autopsy was performed on 24 March 2011.

13. On the same date the forensic medical expert who performed the autopsy delivered a medical certificate attesting the death, according to which T. Simonyan had died as a result of pulmonary thromboembolism which had come about because of the varicose veins on her legs and thrombosis in the shank vessels.

14. On different dates in March and April 2011 the investigator took statements (*ցուցմունքություն*) from the medical staff of the hospital. The relevant medical professionals were asked to give their account about the events without them having the formal procedural status of witnesses.

15. In particular, on 28 March 2011 the investigator took a statement (see paragraph 14 above) from S.K., the head of the gynaecology department at the hospital. S.K. stated, in particular, that prior to the surgery T. Simonyan had been examined by herself and an anaesthetist. No contraindications to the surgery had been detected. It had been decided to wrap the lower extremities in elastic bandages before the surgery to compress the veins.

16. On 29 March 2011 the investigator took a statement (see paragraph 14 above) from S.E., an intensive care anaesthetist at the hospital who confirmed, *inter alia*, that she had taken part in the examination of T. Simonyan the day before the surgery (see paragraph 15 above). In accordance with the established practice, it had been decided to give her an injection of an anticoagulant medication (Fraxiparine) and to wrap the legs in elastic bandages prior to the surgery. S.E. had then administered T. Simonyan's anaesthesia on the day of the surgery, that is on 22 March 2011.

17. On 15 April 2011 the investigator took a statement (see paragraph 14 above) from S.Ba., the head of the department for anaesthesia and intensive care. He mentioned that he remembered T. Simonyan from 23 March 2011, when she was being taken to the department for operative gynaecology. She had stated that she did not feel well, after which she was immediately taken back to the intensive care room. After some time, T. Simonyan had started to have trouble breathing; an intensive care doctor and a cardiac emergency crew had been called in. S.Ba. then described the resuscitation actions that had been taken, which were ultimately unsuccessful. He further stated that prophylactic measures had been taken before the surgery – specifically, the patient's legs had been wrapped in elastic bandages and she had been given medication to lower blood coagulation. That medicine had been Fraxiparine, if he was not mistaken.

18. On 27 April 2011 the autopsy report was received. It stated that the cause of T. Simonyan's death had been pulmonary thromboembolism, which had resulted from the varicose veins on her legs and venous phlebothrombosis, both of which she had suffered from while still alive and which were directly linked to her death. The biochemical examination had not shown the presence of any drugs or alcohol in her blood, liver or kidneys. The report lastly stated that questions concerning any possible medical negligence, injections given to T. Simonyan and the possibility that her life could have been saved were outside the scope of the autopsy.

19. On 3 June 2011 the investigator ordered a forensic medical examination by an expert commission, to be based on an examination of the medical documents it had been provided with. Those included T. Simonyan's medical records from her local clinic (see paragraphs 6 and 7 above), her medical records from the hospital, and the autopsy report (see paragraph 18 above). The expert commission was requested to determine,

inter alia, whether the pre-operative examinations had been complete, whether T. Simonyan had been given any injections before or after the surgery, and whether there had been any prophylactic measures which should have been taken in order to prevent pulmonary thromboembolism.

20. On an unspecified date the expert commission issued a report, the relevant parts of which read as follows:

> "...
>
> Question: Was T. Simonyan given any injections before, during or after the surgery...?
>
> Answer: Prior to the surgery, during it and in the post-operative period T. Simonyan was given the necessary injections, including natrium chloride ... antibiotics ... as well as Fraxiparine for prophylactic purposes so as to prevent thromboembolism.
>
> ...
>
> Question: In the case at hand, would it have been possible to avoid the fatal outcome and, if so, who [among the medical team] could have done so and by taking what actions ...?
>
> Answer: The risk of the development of phlebothrombosis and ... thromboembolism were correctly assessed during the pre-operative phase. It should be noted that none of the currently existing preventive measures [guarantees] absolute safety. Pulmonary thromboembolism, which T. Simonyan developed, has a very high mortality rate and often ends with the patient's death.
>
> ...
>
> Question: Did the scope of the surgery ... correspond to the diagnosis?
>
> Answer: ... considering the [patient's] age – 53 years, the pain [she had been experiencing and the] regular bloody discharges coupled with hypochromic anaemia, [a hysterectomy] was justified and indicated.
>
> ...
>
> Question: ... was it possible to detect the varicose veins in T. Simonyan's lower extremities and venous phlebothrombosis during her examinations [in her local clinic] and to decide against the surgery at the stage of the pre-operative examination in [the hospital] or to inform T. Simonyan and her relatives beforehand about the possible complication or to undertake corresponding comprehensive prophylactic measures to avoid thromboembolism ...?
>
> Answer: ... According to the patient's medical records, varicose veins in the lower extremities were diagnosed for the first time on 3.08.2010. Before the surgery a contract was signed whereby the patient was informed in writing about possible complications, including death.
>
> Question: Did the pre-operative examinations in the [hospital] show the presence of varicose veins in the lower extremities and phlebothrombosis ...?
>
> Answer: According to [the hospital] medical records, T. Simonyan was diagnosed with varicose veins in the lower extremities during the pre-operative medical examinations, but there were no signs capable of raising suspicions of venous phlebothrombosis; therefore no omissions have been discovered during T. Simonyan's examination and treatment."

21. By decision of 5 August 2011 the investigator refused to open criminal proceedings on the ground that no elements of a crime had been discovered in the course of the inquiry (*հյութերի նախապատրաստում*) into the matter.

22. On 23 August 2011 the applicant appealed against the investigator's decision to the Prosecutor General.

23. On 6 September 2011 the Yerevan prosecutor's office annulled the decision of 5 August 2011 (see paragraph 21 above) and decided to institute criminal proceedings. The relevant parts of the prosecutor's decision read as follows:

> "... it has been revealed that in the course of the inquiry the circumstances of [T. Simonyan's] death were not fully and objectively examined ...
>
> In her statement [S.E.], an intensive care anaesthetist at the [hospital], stated that on 21 March 2011 she had examined [T. Simonyan] before her surgery and discovered visible varicosity of the veins on the lower left leg. Since the biochemical blood analysis had not shown any abnormalities in [blood] coagulation level, it was decided to give [T. Simonyan] an injection of Fraxiparine anticoagulant medication and to wrap her legs in an elastic bandage.
>
> Unlike [S.E.], the head of [the hospital's] gynaecology department, [S.K.], did not mention an injection of anticoagulant [medication] being given to [T. Simonyan]. [S.K.] stated, in particular, that during her examination of [T. Simonyan] with the intensive care anaesthetist [S.E.] on 21 March 2011 varicose veins had been discovered on her legs but, given that no contraindications to the surgery had been detected, it had been decided to wrap the legs in elastic bandages before surgery in order to compress the veins.
>
> ... an examination of the medical documents has revealed that there were conflicting data about whether the anticoagulant medication Fraxiparine had been prescribed and administered to [T. Simonyan] prior to the surgery.
>
> [The examination of] the medical documents [revealed that] the entry about the use of the medication was made on 22 March 2011 [and that] notably ... the colour of the ink of the entry is obviously different from other entries.
>
> ...
>
> The record of prescriptions [in T. Simonyan's hospital records] does not contain any entries according to which [T. Simonyan] was prescribed Fraxiparine medication on 21 and 22 March 2011, although the same record contains a handwritten entry about the use of the medication in question.
>
> ...
>
> The above-mentioned facts lead to the conclusion that Fraxiparine was not prescribed and administered to [T. Simonyan] at the [hospital] and that the entries concerning its administration were made later.
>
> In order to clarify whether the entries ... were made later, the members of the medical staff who made entries in the [T. Simonyan's hospital] records should be questioned again and a forensic document examination should be ordered.
>
> ...

The body of inquiry had put a question to the commission of experts about the necessity and suitability of performing [a hysterectomy] on [T. Simonyan] in the light of the varicose veins on her legs; however the expert conclusion did not in fact address that question ...

... it follows that the members of the [hospital's] medical staff have not properly fulfilled their duties and there are grounds to institute criminal proceedings under Article 130 § 2 of the [former] Criminal Code ..."

24. Following the opening of criminal proceedings, the applicant was recognised as the victim's legal heir on 3 October 2011.

25. On 14 October 2011 the investigator ordered a forensic document examination of T. Simonyan's hospital records, and in particular the section "Stages of anaesthesia", which comprised a list of anaesthetics. The aim of the examination was to determine whether the entry about Fraxiparine in that section, which came at the end of the list, had been made in a different ink as compared to the entries about the other anaesthetics, and what had been the sequence in which the entries had been made. According to the ensuing expert report dated 10 November 2011, the entries from 22 March 2011 concerning medications in the section "Stages of anaesthesia" were probably made by the same pen; the temporal sequence of the given entries could not be established.

26. On 19 October 2011 an additional forensic medical examination (see paragraph 20 above) by an expert commission was ordered. The relevant parts of the resulting expert report issued by an expert commission headed by Doctor G.B., which was received on 24 November 2011, read as follows:

"...

Question: Why did [T. Simonyan] develop pulmonary thromboembolism?

Answer: ... pulmonary thromboembolism was brought about as a consequence of long-term chronic venous insufficiency as a result of varicose veins.

...

Question: Were prophylactic measures taken to prevent thromboembolism?

Answer: According to the [hospital] medical records, prophylactic measures in respect of thromboembolism were taken.

Question: In this specific case ... were the prophylactic measures ... necessary and sufficient?

Answer: According to the [hospital] medical records, prophylactic measures in respect of thromboembolism, that is compression therapy and use of anticoagulants, were indicated and implemented in full.

Question: Did the discovery of varicose veins in the lower extremities not indicate the possible existence of venous phlebothrombosis?

Answer: Varicose veins in the lower extremities [do not necessarily lead to] thrombosis and thromboembolism.

Question: Did the biochemical examination of [T. Simonyan's] blood show any abnormalities in blood coagulation level?

Answer: ... the results of the biochemical examination of the blood were within the norm ...”

27. On 19 October 2011, S.Ba., the head of the department for anaesthesia and intensive care, was questioned again (see paragraph 17 above). He stated, in particular, that prior to the surgery an injection of Fraxiparine medication had been given to T. Simonyan. Before the surgery the intensive care Anaesthetist S.E. had approached him asking for advice as to whether or not to give an injection of Fraxiparine to T. Simonyan, to which he had replied the following:

“... Fraxiparine could be injected or not since the results of the tests were within the norm. But I said that there was no harm in doing it.

... it can be seen from the ... register of anaesthetic medication that [Fraxiparine] was administered to T. Simonyan twice, [once] on 22 [March 2011], that is before the surgery, and [again] the next day.

...”

28. On 25 October 2011 the intensive care Anaesthetist S.E. was also questioned again (see paragraph 16 above). She stated, in particular, that she had examined T. Simonyan on 21 March 2011 and had indicated in the relevant record that her legs should be wrapped in an elastic bandage and that she should receive an injection of Fraxiparine. According to S.E., she had consulted about the injection with the head of the department, S.Ba., on the day of the surgery, before it was performed. Because that had happened on the day of the surgery and in S.Ba.’s office, it was possible that the entry about Fraxiparine had been made with a different pen.

29. On 20 March 2012 the investigator ordered another forensic document examination (see paragraph 25 above) to clarify whether there had been any alterations to T. Simonyan’s hospital medical records as regards the use of the anticoagulant medication in question (Fraxiparine). According to the ensuing expert report dated 16 April 2012, the entries from 22 March 2011 concerning medications in the section “Stages of anaesthesia” could possibly have been made by the same pen, or by different pens with the same consistency ink, and it had not been possible to establish the temporal sequence of the given handwritten entries because of the absence of the relevant capability at the forensic expert centre.

30. In May 2012 the investigator questioned S.B., a nurse anaesthetist, who stated that the register of anaesthetic medication contained her signatures in the entry for 22 March 2011; the doctor had prescribed two doses of anticoagulant medication (Fraxiparine) to T. Simonyan and she had administered those. She stated that she did not remember the details, but added that if her signature was in the register she had definitely given the injections.

31. On 25 June 2012 another additional forensic medical examination (see paragraphs 20 and 26 above) by an expert commission was ordered, which also included questions submitted by the applicant.

32. On 17 July 2012 the expert commission, headed by Doctor V.R., issued its report, the relevant parts of which read as follows:

> "...
>
> According to [T. Simonyan's hospital medical records, she] was given injections which fully corresponded to the nature and scope of the surgery.
>
> ...
>
> According to the [information contained in the T. Simonyan's hospital medical records], prior to the surgery an injection of Fraxiparine had been administered [for the] prevention of thrombosis ... [However,] the administration of anticoagulants could not completely negate the possibility of thrombotic complications.
>
> ...
>
> Being aged over 40, the [fact of undergoing] surgery, as well as the [presence of] varicose veins are [all] considered risk factors for thrombosis, which is why a prophylactic injection of anticoagulants was given prior to the surgery, but it is not always possible to avoid possible complications ...
>
> [T. Simonyan] had been diagnosed with a myoma the size of a foetus at fifteen weeks. Considering her age ... the surgical removal of the uterus was recommended, which was done in the present case in accordance with the diagnosis.
>
> [T. Simonyan] had suffered from varicose veins for years, whereas the venous phlebothrombosis occurred after surgery. Since the varicose veins were not coupled with phlebothrombosis prior to the surgery, there was no contraindication for the given surgery.
>
> In the light of the result of the lab tests, and having regard to [the level of blood] coagulation, an injection of Fraxiparine was given, which brought about the desired result ...
>
> As to the questions ... lodged by the victim's heir ... the sharp deterioration in the patient's state of health was mainly due to cardiovascular and pulmonary complications ..."

33. On 1 October 2012 the investigator ordered a further (see paragraphs 25 and 29 above) forensic document examination of various pages of T. Simonyan's hospital medical records containing entries about the anticoagulant medication (Fraxiparine), and of the register of anaesthetic medication.

In the ensuing report of 9 November 2012 the expert indicated that one entry in T. Simonyan's medical records concerning the anticoagulant medication (Fraxiparine) had been made with a different pen than the other entries within the same column. Furthermore, there had been an alteration to the page indicating the daily medication consumption in the register of anaesthetic medication, in that the initial figure "1" had been written over and changed to a "2".

34. In November 2012 Nurse S.B. (see paragraph 30 above) was questioned again. She stated, *inter alia*, the following:

> "... I made the 22 March [2011] entries on the page concerning the daily consumption of medication in the register of anaesthetic medication. Those entries concerned [T. Simonyan]. It can be seen from that entry that I received one ampoule of Fraxiparine ... from Senior Nurse [L.G.] ...
>
> The first injection was given by Nurse-Anaesthetist [A.K.], not me. On 23 March 2011 I gave one injection [to T. Simonyan] on [S.Ba.'s] instructions ...
>
> ...
>
> When I was on duty on 22 March [2011], I had indicated one dose of Fraxiparine in the register of anaesthetic medication but, since on 23 March [2011] another dose was prescribed, I then changed the initial indication of one dose to two, in order to show the real consumption of the medication ... I have done nothing that was intentionally wrong. I simply showed the actual quantity that had been used ..."

35. Around the same time, that is in November 2012, the investigator questioned Nurse-Anaesthetist A.K. (see paragraph 34 above), who stated that on 22 March 2011 she had personally given an injection of one dose of anticoagulant medication (Fraxiparine) to T. Simonyan on S.E.'s instructions prior to the surgery. That fact was attested by the relevant entry in T. Simonyan's medical records, which contained A.K.'s signature.

36. On 23 November 2012 the investigator questioned the intensive care Anaesthetist S.E. again (see paragraphs 16 and 28 above) who stated, among other things, that on her instructions Nurse A.K. (see paragraph 35 above) had given T. Simonyan an injection of one dose of Fraxiparine on 22 March 2011 before the surgery. She was aware that on 23 March 2011, when T. Simonyan's condition had worsened, the latter had been given a second injection of the same medication by Nurse S.B. (see paragraphs 30 and 34 above). S.E. added that a follow-up dose of Fraxiparine was supposed to have been administered twelve hours after the first one but that that had not been done because it had not been considered necessary given the results of the blood coagulation level test performed late in the evening of 22 March 2011.

37. In December 2012 A.S., another nurse anaesthetist, was questioned. She stated, in particular, the following:

> "... seeing what is written on page ... of the register of anaesthetic medication ... I can say that ... [T. Simonyan] was given one dose of Fraxiparine [on 22 March] and then [she] was given another dose of Fraxiparine on 23 March 2011. That is to say, the overall consumption was two [units]. I put my signature on the given page as I was the day shift nurse ... [S.B.] was not issued any medication ...
>
> ... it is my responsibility to receive all the medication at the beginning of the day and then hand it over to the nurse on duty at the end of the day ...
>
> ... on 22 and 23 March [2011] I was at work and I can say that on those days two doses of Fraxiparine were issued for [T. Simonyan]: one dose on each day ...
>
> ... Senior Nurse [L.G.] issues the medication in our department ..."

38. On an unspecified date in January 2013 a confrontation was held between Doctor V.R. (see paragraph 32 above) and the applicant. The relevant parts of the record of the confrontation read as follows:

> "[Applicant]: You claim that Simonyan's thrombus formed after surgery ... whereas the commissions of the first and second forensic examinations did not mention anything about that.
>
> [V.R.'s] reply: Since according to the results of the examination the woman suffered from varicose veins on her legs without symptoms of thrombosis, it can be assumed that the thrombus was formed either during surgery or at the early post-operative stage and moved [through the bloodstream to become] an embolism, which was the cause of death."

39. On 5 February 2013 an interview with Doctor G.B. (see paragraph 26 above), during which he was asked questions on various issues concerning healthcare, was published in a newspaper. The relevant part of the interview reads as follows:

> "To what extent are the doctors responsible when death occurs as a result of varicose veins following uterine myoma surgery?
>
> ... I consider [operating in such situations] to be an error ... at all events varicose veins should be treated first and only then an operation be performed ..."

The applicant submitted that interview to the investigator.

40. On 7 February 2013 the investigator questioned Doctor G.B., who reiterated the overall conclusion of the expert report of 24 November 2011 (see paragraph 26 above). When asked about the opinion he had expressed during the interview published on 5 February 2013 (see paragraph 39 above), Doctor G.B. stated that he had mentioned in general terms that complications linked to varicose veins, if there were any, should be treated first, and only then surgery performed. However, that did not concern T. Simonyan because no complications to do with varicose veins (swelling, fever, redness) had been noticed prior to her surgery, which was clear from her medical documents. There was therefore no contradiction between his statements during the interview and his earlier conclusion as a forensic expert.

41. On 4 March 2013 the investigator decided to terminate the criminal proceedings, finding that it had not been established that there had been any medical errors in T. Simonyan's treatment at the hospital or that her medical records had been altered. That decision reads as follows:

> "...
>
> On 23 March 2011 a report was received ... about [T. Simonyan's] death in [the hospital] ...
>
> During the inquiry ... [the applicant], [T. Simonyan's] son and a relative ... made statements ...
>
> In the course of the inquiry it was discovered that ... [T. Simonyan] was treated and operated on by [S.K.], [S.E.], [other gynaecologists], [G.O.] and [S.Ba.], all of whom

made similar statements according to which T. Simonyan had been provided with the requisite medical care and that her surgery had been carried out properly. T. Simonyan's condition had sharply deteriorated only the day after the surgery, [at which point] they had undertaken the necessary resuscitation measures, which had, however, not made it possible to save her life.

In the course of the inquiry statements were also obtained from [the doctors who had participated in the resuscitation measures].

[Citation of parts of the autopsy report – see paragraph 18 above].

[Citation of parts of the report issued by the first medical expert commission – see paragraph 20 above].

On 5.08.2011 a decision was taken to refuse to open criminal proceedings ...

On 6.09.2011 that decision was set aside by [the Yerevan prosecutor's office] and criminal proceedings were instituted under Article 130 § 2 of [the former Criminal Code] ...

During the investigation [the applicant] was recognised as the victim's legal heir and made a statement ... his son ... made a similar statement.

[S.K.], [S.E.], [2 other gynaecologists] and [S.Ba.] all made similar statements to the effect that T. Simonyan had been provided with the requisite medical care and that her surgery had been carried out properly. T. Simonyan's condition had sharply deteriorated only the day after the surgery, [at which point] they had undertaken the necessary resuscitation measures, which had, however, not made it possible to save her life.

In the course of the investigation a forensic document examination was ordered in order to clarify certain entries in T. Simonyan's medical records, [particular in terms of] the colour of the ink and their timing; additional forensic medical examinations were also ordered to clarify the cause of T. Simonyan's death and ... [uncover any] possible medical errors.

[The applicant] requested that certain questions be included in [the above-mentioned forensic examinations], which has been done within the framework of the additional forensic medical examination...

[Citation from the expert report resulting from the forensic document examination – see paragraph 25 above].

[Citation of parts of the report issued by the second medical expert commission – see paragraph 26 above].

[The applicant] stated that his wife had not signed the contract with [the hospital] ...

To clarify that point, a forensic document examination was assigned which confirmed that T. Simonyan had signed the contract ...

[Citation from the expert report resulting from the additional forensic document examination – see paragraph 29 above].

[Citation of parts of the report issued by the third medical expert commission – see paragraph 32 above].

The [hospital's register of anaesthetic medication] was seized and an additional forensic document examination was ordered. According to the ensuing report ... [citation from the expert report resulting from the additional forensic document

examination – see paragraph 33 above]. In connection with that report [S.E.], [S.B.], [A.K.], [A.S.] were questioned and stated that T. Simonyan had received an injection of Fraxiparine medication. The register contained entries attesting to that.

... [G.B.] and [V.R.] were both questioned and confirmed their expert conclusions ... The varicose veins in the lower extremities in the case at hand had not been a contraindication for the surgery.

A confrontation was held between [the applicant] and [V.R.] ...

That is to say that the investigation substantiated that ... there were no errors in T. Simonyan's medical treatment ...

As regards the falsification and alteration of T. Simonyan's medical records, it was clarified and substantiated that ... there had been no alterations to the entries concerning Fraxiparine in the medical documents, which is to say that no falsification of medical documents has occurred and that was confirmed by the results of forensic document examinations.

[References to various articles of the former Code of Criminal Procedure].

It was discovered and substantiated that [the employees of the hospital] have properly carried out their professional duties [and that] their actions thus lack the elements of a crime laid out in Article 130 § 2 of [the former Criminal Code].

As regards the falsification and alteration of T. Simonyan's medical records by [the employees of the hospital], it was also substantiated that that has not occurred and that their actions thus lack the elements of a crime ... [reference to the relevant article of the former Criminal Code]."

42. On 26 March 2013 the applicant contested that decision with the Kentron and Nork-Marash District Court of Yerevan ("the District Court"). The applicant stated in his complaint that he had not had an opportunity to study the case file after the investigation had been completed. Therefore, in order to respect the time-limits for challenging the decision, he had been obliged to submit his complaint on that date with a view to submitting his arguments later, after he had had a chance to familiarise himself with the case file.

43. The representative of the investigative authority argued in the District Court that it had been established in the course of the criminal proceedings that no medical errors had been committed and that the surgery in question had not been contraindicated for T. Simonyan. The applicant argued, *inter alia*, that the investigation had failed to clarify the circumstances surrounding the death of his wife. He requested the District Court to examine Doctor G.B., whose public statement (see paragraph 39 above) had not been adequately addressed during the investigation. That request was refused.

44. On 12 September 2013 the District Court rejected the applicant's complaint, relying on the results of the forensic medical examinations and the fact that all the medical personnel who had been involved in T. Simonyan's treatment had been questioned. As for the public statement of Doctor G.B. (see paragraph 39 above), the District Court noted that he had

been questioned during the investigation and had confirmed his conclusion that no medical errors had taken place during T. Simonyan's treatment, and that he had stated specifically that in the given case varicose veins had not been a contraindication to the surgery (see paragraph 40 above).

45. The applicant lodged an appeal against that decision, arguing, in particular, that the conclusions of the forensic medical examinations had been contradictory with regard to the timing of the appearance of the thrombus and on the question whether his wife should have been operated on given her varicose veins.

46. On 11 November 2013 the Criminal Court of Appeal upheld the District Court's decision. In doing so it stated, in particular, that there were no contradictions between the three forensic medical conclusions of the various commissions of experts (see paragraphs 20, 26 and 32 above) and that they supplemented each other. Although the investigative authority had decided to order additional forensic medical examinations, those had in fact been supplementary examinations in order to clarify the issues raised by the applicant during the proceedings. Those issues had been clarified in full.

47. The applicant lodged an appeal on points of law against that decision. He argued, in particular, that the additional forensic medical examinations had been ordered only as a result of his persistence in trying to oblige the experts to provide clear answers to questions that had been avoided in the previous examinations. The doctors, he argued, had failed to conclusively answer the question whether the surgical intervention had provoked phlebothrombosis. He reiterated his arguments with regard to the failure to address G.B.'s public statement – which had clearly contradicted his expert opinion and his subsequent witness statement – (see paragraphs 39 and 40 above), and other arguments he had raised previously.

48. On 16 January 2014 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL CODE

49. Article 130 § 2 of the former Criminal Code (in force from 1 August 2003 until 1 July 2022) provided that failure to perform or the improper performance of professional duties by medical and support personnel, as a result of negligence or bad faith, which had negligently caused the death of the patient undergoing treatment, was punishable by imprisonment from two to six years, with or without deprivation of the right to hold certain positions or practise certain activities for a maximum of three years.

II. CIVIL CODE

50. The relevant provisions of the Civil Code, as in force at the material time, provide as follows.

51. Under Article 17 § 1, a person whose rights have been violated may claim full compensation for the damage suffered, unless the relevant law or contract provides for a lower amount of compensation.

52. Under Article 17 § 2, damages are the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights, loss of his property or damage to it (material damage), including lost income.

53. Article 1058 § 1 provides that damage caused to a person or to his or her property, as well as damage caused to the property of a legal entity, is amenable to compensation in full by the person who has caused such damage. A person who was not responsible for causing the damage may also be obliged to provide compensation where stated by law.

54. Under Article 1058 § 2, a person who has caused damage is exempted from providing compensation if it is established that the damage was caused without guilt on that person's part.

55. Since 1 November 2014 Article 17 § 2 (see paragraph 52 above) has included non-pecuniary damage in the list of types of civil damage for which compensation can be claimed in civil proceedings. As a result, the Civil Code was supplemented by the new Articles 162.1 and 1087.2, which regulate the procedure for claiming compensation for non-pecuniary damage from the State for the violation of certain rights guaranteed by the Armenian Constitution and the Convention (a complete summary of the domestic law provisions in question is provided in *Botoyan v. Armenia*, no. 5766/17, §§ 52 and 57-58, 8 February 2022).

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

56. The applicant complained that the authorities had failed to carry out an effective investigation into his wife's death. 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

57. The Court notes that the application 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

58. The applicant maintained that his wife's medical condition had not necessitated an urgent surgical intervention. She should have been operated on only after having received treatment for her varicose veins. In the course of the entire investigation he had tried to find out at which point his wife had developed thromboembolism. The first two forensic medical examinations (see paragraphs 20 and 26 above) had failed to answer that question whereas the head of the third expert commission, Doctor V.R., had claimed – based only on assumptions – that thromboembolism had developed after the surgery (see paragraph 38 above). The investigation had failed to clarify the discrepancy between the conclusion of the second forensic medical examination (see paragraph 26 above) and the opinion subsequently expressed publicly by the doctor that had led it, G.B., that it was wrong to perform a uterine surgery on patients who had varicose veins before treating the latter issue (see paragraph 39 above).

59. Admittedly, on several occasions the applicant had been given an opportunity to put questions to the experts. However, he had not obtained clear and satisfying answers to his questions. The investigation had ultimately failed to conclusively establish when thromboembolism had occurred and what had provoked it; in other words, it had failed to reveal the real cause of his wife's death.

60. While it was true that an investigation did not have to necessarily result in prosecution, it had to be effective, which, the applicant claimed, had not been the case with the investigation into the circumstances of his wife's death.

(b) The Government

61. The Government submitted that, in order to eliminate any possible shortcomings in the initial stages of the inquiry, the Yerevan prosecutor's office had annulled the decision of 5 August 2011 whereby the investigator had refused to institute criminal proceedings (see paragraph 21 above), and had opened a criminal investigation into the matter (see paragraph 23 above). However, even before that all the persons directly involved or otherwise connected with T. Simonyan's medical treatment had already been questioned (see paragraphs 15-17 above), and both an autopsy and a forensic medical examination had been ordered (see paragraphs 11 and 18-20 above).

62. Several further forensic medical examinations had been ordered, all of which had established that no medical errors had been committed during T. Simonyan's medical treatment. The relevant medical experts had

confirmed that the necessary preventive measures had been taken, including that T. Simonyan had received the necessary injections. They had also confirmed that T. Simonyan had suffered from varicose veins in her lower limbs for years and that phlebothrombosis of the veins had developed after the surgery; since the varicose veins had not been associated with phlebothrombosis, there had been no contraindication for the surgery.

63. Furthermore, forensic document examinations had been ordered to confirm that the medication Fraxiparine had been administered; the results had confirmed that the relevant entries had not been added subsequently.

64. The Government referred to the several forensic expert examinations that had been carried out during the investigation (see paragraphs 20, 25, 26, 29, 32 and 33 above), as well as to the vast number of witness interviews that had been carried out (see, for example, paragraphs 15-17, 27-28, 30, 34-37 above), including the questioning of experts (see paragraph 40 above) and the applicant's having been given an opportunity to cross-examine Doctor V.R., who had led the third forensic medical examination (see paragraph 38 above), to argue that the authorities had taken all necessary and sufficient measures to ensure an adequate examination of the case.

65. The Government further argued that the investigation had been prompt and that, given the vast number of investigative measures that had been undertaken, its length was reasonable. Furthermore, the investigation overall had been accessible to the victim party. After a criminal case had been initiated the applicant had been granted the status of the victim's legal heir in the proceedings (see paragraph 24 above) and had actively participated in the investigation.

2. The Court's assessment

(a) Preliminary remarks

66. The Court observes that the applicant did not allege or imply that his wife's death had been caused intentionally. Nor did he allege or imply that his wife had been denied access to medical treatment in general or to emergency medical treatment in particular. There is nothing in the present case to suggest that there existed, at the material time, any systemic or structural dysfunction in hospital services (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 190-92, 19 December 2017). While the applicant submitted that his wife had lost her life as a result of a hasty medical decision to operate on her before she had had a chance to have her varicose veins treated (see paragraph 58 above), his complaint concerned mainly the alleged failure of the investigation to properly address the causal link between the – in his opinion – ill-considered decision to operate on her and the subsequent post-operative complication – thromboembolism – which eventually caused her death (see paragraph 59 above). The Court will accordingly carry out its analysis in the present case from the point of view

of the availability of an effective procedure to determine the cause of death of patients in the care of the medical profession (see the relevant case-law principles cited in paragraphs 68 and 69 below). That is to say it must determine whether, in the concrete circumstances of the case, given the fundamental importance of the right to life guaranteed under Article 2 of the Convention and the particular weight the Court has attached to the procedural requirement under that provision, the legal system as a whole dealt adequately with the case at hand (see *Lopes de Sousa Fernandes*, cited above, § 225, with further references).

(b) General principles

67. The applicable general principles concerning the State's procedural obligation under Article 2 of the Convention in the context of healthcare have been summarised in *Lopes de Sousa Fernandes* (cited above, §§ 214-21; see also, in the context of the procedural obligation under Article 8 of the Convention, *Botoyan v. Armenia*, no. 5766/17, §§ 90-95, 8 February 2022).

68. In particular, the Court has interpreted the procedural obligation of Article 2 in the context of healthcare as requiring States to set up an effective and independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible held accountable (see, among other authorities, *Šilih v. Slovenia* [GC], no. 71463/01, § 192, 9 April 2009, and the cases cited therein).

69. The choice of means for ensuring that the positive obligations under the Convention are fulfilled is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues for ensuring that Convention rights are respected, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means. However, for this obligation to be satisfied, such proceedings must not only exist in theory but also operate effectively in practice (see *Lopes de Sousa Fernandes*, cited above, § 216, with further references).

70. Unlike in cases concerning the lethal use of force by State agents, where the competent authorities must of their own motion initiate investigations, in cases concerning medical negligence where the death is caused unintentionally, the States' procedural obligations may come into play upon the institution of proceedings by the deceased's relatives (ibid., § 220).

71. The procedural obligation under Article 2 in the context of healthcare requires that the domestic proceedings be effective (ibid., § 226). In order to be "effective" as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be

adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II).

72. The compliance with the procedural requirement of Article 2 is to be assessed on the basis of several essential parameters. These elements are inter-related and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the requirements for a fair trial under Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019). In the context of investigations into allegations of medical negligence (see, by way of recent examples from the case-law, *Kornicka-Ziobro v. Poland*, no. 23037/16, § 69, 20 October 2022, concerning an investigation into the death of the applicant's husband following a series of medical interventions, and *Hubert Nowak v. Poland*, no. 57916/16, § 90, 16 February 2023, concerning the allegedly deficient medical assistance provided to the applicant at the scene of a car accident) those essential parameters have been stated to include the following:

(a) the investigation must be thorough, which means that the authorities must take all reasonable steps available to them to secure the evidence concerning the incident, always make a serious attempt to find out what happened and not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions;

(b) even where there may be obstacles or difficulties preventing progress in an investigation, a prompt response by the authorities is vital for public safety and in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in, or tolerance of, unlawful acts. The proceedings must also be completed within a reasonable time;

(c) it is generally necessary that the domestic system set up to determine the cause of death or serious physical injury be independent. This means not only a lack of hierarchical or institutional connection but also a practical independence implying that all persons tasked with conducting an assessment in the proceedings for determining the cause of death or physical injury enjoy formal and *de facto* independence from those implicated in the events.

73. This procedural obligation is not an obligation of result but of means only. Thus, the mere fact that proceedings concerning medical negligence have ended unfavourably for the person concerned does not in itself mean that the respondent State has failed in its positive obligation under Article 2 of the Convention (see *Lopes de Sousa Fernandes*, cited above, § 221, with further references).

74. Moreover, the procedural obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities (see, in relation to Article 4 of the Convention, *J. and Others v.*

Austria, no. 58216/12, § 107, 17 January 2017). Article 2 does not entail the right to have third parties prosecuted – or convicted – for a criminal offence. Rather, the Court's task, having regard to the proceedings as a whole, is to review whether and to what extent the domestic authorities subjected the case to the careful scrutiny required by Article 2 of the Convention (see *Sarishvili-Bolkvadze v. Georgia*, no. 58240/08, § 84, 19 July 2018). Nonetheless, in order to meet the procedural obligation any investigation must meet certain minimum requirements (see *Zashevi v. Bulgaria*, no. 19406/05, § 57, 2 December 2010) two of which, as noted in paragraphs 71 and 72 above, are for it to be adequate and thorough.

75. Lastly, the Court would add that the nature and degree of scrutiny which satisfies the minimum threshold of effectiveness depends on the circumstances of each particular case. Each case must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, with further references).

(c) Application of these principles to the present case

76. The Court observes that the applicant's wife, who suffered from varicose veins in her lower extremities and attendant venous insufficiency (see paragraph 7 above) but was otherwise in good health, died a day after she underwent a uterine surgery at the hospital because of pulmonary thromboembolism resulting from the presence of varicose veins (see paragraph 18 above). In view of this sequence of events, the Court considers that the applicant had arguable grounds to suspect that his wife's death could have been the result of medical negligence. The respondent State's duty to ensure compliance with the procedural obligations arising under Article 2 of the Convention, in the proceedings instituted in connection with his wife's death, is therefore engaged in the present case (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, cited above, § 222).

77. As already stated in paragraph 66 above, the applicant did not allege that the death of his wife had been caused intentionally. Nor do the facts of the case suggest that that was the case. Therefore, Article 2 of the Convention did not necessarily require a criminal-law remedy (see *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII, and *Lopes de Sousa Fernandes*, cited above, § 232).

78. In that connection, the Court observes that it has found previously that there were no effective civil or administrative/disciplinary remedies in the Armenian legal system in respect of complaints concerning alleged medical negligence (see *Botoyan*, cited above, §§ 116-31, which concerned events that took place after the introduction of the possibility to lodge claims seeking compensation for non-pecuniary damage from the State for

violations of certain Convention rights – see paragraph 55 above). There is nothing in the present case which would prompt the Court to find otherwise, especially given that it concerns events which took place before the introduction of the aforementioned legislative amendments (see paragraphs 52-55 above).

79. In the case at hand, in so far as the criminal-law remedy was provided and the applicant availed himself of it (see paragraphs 10, 22 and 24 above; see also *Botoyan*, cited above, § 110), such proceedings would by themselves be capable of satisfying the procedural obligation of Article 2, if deemed effective (see *Lopes de Sousa Fernandes*, cited above, § 232, and *Scripnic v. the Republic of Moldova*, no. 63789/13, §§ 31 and 35, 13 April 2021). The Court must accordingly examine, in the concrete circumstances of the case, the manner in which the criminal proceedings were conducted, bearing in mind that the criminal-law remedy was essentially the only remedy available to the applicant in relation to his allegations of medical malpractice with regard to the medical treatment of his wife (see paragraph 78 above; and compare *Kornicka-Ziobro*, cited above, §§ 82 and 83).

80. The Court observes at the outset that the applicant did not put forward any specific arguments to contest the independence and impartiality of the domestic authorities or experts who participated in the criminal proceedings (see paragraphs 58-60 above).

81. The Court further observes that the police carried out an inquiry (*նյութերի նախապատրաստում*) that started on the day T. Simonyan died – 23 March 2011 – when they were informed of the death by the hospital (see paragraph 10 above) and lasted until 5 August 2011, when the investigator decided to refuse to open criminal proceedings (see paragraph 21 above). During that inquiry an autopsy and a forensic medical examination were ordered and the medical staff of the hospital were asked to give their account about the events (*բացատրություն*) without having the formal status of witnesses (see paragraphs 11, 14-17 and 19 above; see also, *mutatis mutandis*, *Movsesyan v. Armenia*, no. 27524/09, § 66, 16 November 2017).

82. Thus, even though at first no criminal proceedings, as such, were instituted in relation to the death of the applicant's wife (see, in this connection, the prosecutor's subsequent decision to institute criminal proceedings cited in paragraph 23 above), the law-enforcement authorities can by no means be considered as not having reacted promptly to the report concerning T. Simonyan's death (see, in particular, paragraphs 10-20 above).

83. Additionally, there is nothing to suggest that there were any unjustified delays in the investigation. Indeed, despite a number of investigative measures that were carried out, including, *inter alia*, an autopsy, three forensic medical examinations by expert commissions and several forensic document examinations (see paragraphs 18, 20, 25, 26, 29, 32 and 33 above), the proceedings lasted until 4 March 2013, when they

were discontinued by the investigator's decision of the same date (see paragraph 41 above); the judicial review of that decision was then completed by 16 January 2014 (see paragraph 48 above), which was less than three years from the start of the inquiry (see paragraph 81 above). The Court thus finds that the law-enforcement authorities provided a timely response consonant with the State's obligation of promptness under Article 2 of the Convention.

84. As regards the possibility for the applicant to participate effectively in the criminal proceedings, the Court observes that in the absence of formally instituted criminal proceedings (see paragraph 81 above) the applicant did not have any procedural status allowing him to exercise his rights as the victim party during a period of more than five months. In particular, it was not until after the prosecutor's decision to institute criminal proceedings (see paragraph 23 above) that the applicant was recognised as the victim's legal heir in the instituted proceedings and even then the decision to grant him such status was taken only on 3 October 2011 (see paragraph 24 above), that is a month after the prosecutor's decision of 6 September 2011 to institute the proceedings.

85. As a result, the applicant was unable to participate in the investigation for a period of more than six months following the death of his wife, which occurred on 23 March 2011 (see paragraph 9 above). Indeed, as the Government stated in their submissions (see paragraph 65 above), the investigation became accessible to the applicant only after the initiation of a criminal case.

86. While it cannot be ruled out that the applicant's lack of involvement until 3 October 2011 (see paragraph 24 above) – that is more than six months after the death of his wife, which had occurred on 23 March 2011 (see paragraph 9 above) – could have somehow hindered his effective participation in the proceedings, the applicant did not specify how that had jeopardised, if indeed it had, his legitimate interests (see, *a contrario*, *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, §§ 106 and 172-80, 8 November 2022). In these circumstances, the Court does not have any basis to find that the applicant's involvement in the procedure was not ensured to such an extent as was necessary to safeguard his legitimate interests (see, *mutatis mutandis*, *Hovhannisyan and Karapetyan v. Armenia*, no. 67351/13, § 138, 17 October 2023).

87. It remains for the Court to examine the main issue arising in the present case, which is the adequacy and thoroughness of the criminal proceedings into the circumstances surrounding the death of the applicant's wife (see also paragraph 66 *in fine* above).

88. The Government argued that the decision of the Yerevan prosecutor's office dated 6 September 2011, whereby the latter had set aside the investigator's initial decision to refuse to institute criminal proceedings, had compensated the shortcomings, if any, of the preliminary inquiry into

the circumstances of the death of the applicant's wife (see paragraph 61 above).

89. The Court observes that in its decision of 6 September 2011 the Yerevan prosecutor's office identified a number of discrepancies in the investigator's conclusions based on the findings of the preliminary inquiry and gave detailed instructions with regard to the issues that needed to be clarified. Those issues included, in particular, the determination of the necessity and suitability of the surgery, as well as the controversy around the administration of an anticoagulant medication named Fraxiparine and the related issue of the suspected alteration of medical records by the medical staff at the hospital (see paragraph 23 above).

90. In the course of the subsequently initiated criminal investigation a number of investigative measures were undertaken, including additional forensic medical examinations, forensic document examinations and further questioning of witnesses to clarify those issues.

91. Thus, within the framework of the investigation following the opening of criminal proceedings (see paragraph 23 above) two additional forensic medical examinations by expert commissions were ordered, both of which confirmed that the surgery had not been contraindicated for T. Simonyan (see paragraphs 26 and 32 above). In particular, the medical expert commission headed by Doctor G.B. stated that varicose veins in the lower extremities did not necessarily lead to thrombosis and thromboembolism (see paragraph 26 above), the latter of which was believed to have been the cause of T. Simonyan's death (see the conclusion of the autopsy report cited in paragraph 18 above), while the medical expert commission headed by Doctor V.R. stated that there had been no contraindication for the given surgery considering that the varicose veins were not coupled with phlebothrombosis (see paragraph 32 above). Those two forensic medical examinations, in addition to the initial one (see paragraph 20 above), also found that the necessary prophylactic measures to prevent the thrombosis had been taken prior to the surgery, namely compression of the veins using an elastic bandage and the injection of an anticoagulant medication.

92. Lastly, in so far as medical expert opinions were concerned, the Court observes that while the criminal proceedings in the present case were still pending and a little more than a year after the delivery of the expert report of the second forensic medical examination (see paragraph 26 above) Doctor G.B., who had been the head of the relevant medical expert commission, gave an interview during which he stated that he considered it to be an error to operate on patients suffering from varicose veins before they had been treated (see paragraph 39 above). That publicly expressed medical opinion could only have exacerbated the applicant's existing suspicions of there having been a medical error in his wife's medical treatment (see paragraph 76 above). Indeed, the applicant submitted the

interview to the investigator right away (see paragraph 39 above). It should be noted, however, that within days the investigator questioned Doctor G.B. in relation to that interview and the latter explained that his general statement that complications linked to varicose veins should be treated before any surgery did not concern T. Simonyan's case because prior to her surgery no complications to do with varicose veins, such as swelling, fever or redness, had been noticed when she was examined at the hospital (see paragraph 40 above).

93. As to the controversy around the question of the administration of the anticoagulant medication, the Court observes the following.

94. As noted in the decision of 6 September 2011 (see paragraph 23 above), there was an inconsistency between the statements of S.K., the head of the gynaecology department, and S.E., the intensive care anaesthetist (see paragraphs 15 and 16 above), who had together carried out a joint examination of T. Simonyan on 21 March 2011, the day before the surgery, as to whether an injection of an anticoagulant medication (Fraxiparine) had been prescribed to the latter. While it is true that S.K. was not questioned again after the initiation of the criminal proceedings, the Court observes that S.E. was questioned again twice and confirmed that the relevant injections had been given to T. Simonyan (see paragraphs 28 and 36 above).

95. The Court also notes that certain investigative measures were undertaken in order to clarify the inconsistencies between the statements of the nurses responsible for record-keeping and those responsible for the administration of medication with regard to the injection(s) of the anticoagulant medication Fraxiparine given to T. Simonyan. In particular, after the receipt of the expert report confirming the alteration in the register of anaesthetic medication (see paragraph 33 above), Nurse S.B. was further questioned (see paragraph 34 above). The investigator additionally questioned other witnesses in that connection as well, including Nurse-Anaesthetist A.K. and Nurse-Anaesthetist A.S., both of whom confirmed the administration of the given medication to T. Simonyan (see paragraphs 35 and 37 above).

96. It is true that the questioning of the witnesses mentioned in paragraph 95 above revealed some inconsistencies concerning when and on whose instruction the injections in question were given to T. Simonyan. However, the national authorities are best placed to evaluate the credibility of witnesses and establish the facts. The Court reiterates in this connection that where domestic proceedings have taken place, it is not its task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see among other authorities, *Tanlı*

v. Turkey, no. 26129/95, § 110, ECHR 2001-III (extracts)). The Court does not find any such elements in the present case.

97. The Court lastly notes that in the course of the investigation the applicant was provided with an opportunity to put questions to the forensic medical experts (see, in particular, paragraph 31 above) and also to personally question Doctor V.R., who had been the head of the medical expert commission which had delivered the expert report of 17 July 2012 (see paragraphs 32 and 38 above). In addition, as stated in paragraph 92 above, upon receipt from the applicant of information concerning Doctor G.B.'s interview of 5 February 2013, the investigator swiftly questioned the latter in relation to that interview (see paragraphs 39 and 40 above).

98. The Court would stress that medical negligence cases often entail complex medical diagnoses and decisions that might have been taken under pressure or possibly in situations where no course of action would be free from some adverse side effects or would guarantee full recovery. In such instances, the investigative bodies and ultimately the courts, tasked with the responsibility of giving *ex post* legal qualification to previous medical decisions and courses of treatment, cannot assume the position of medical experts with first-hand experience. This is why medical expert opinions are very likely to carry a crucial weight in the courts' assessment of highly complex issues of medical negligence. Consequently, given the importance of medical expert opinions, the procedural aspects of obtaining such opinions are essential. Those aspects concern, *inter alia*, the competence and independence of the experts, ensuring that the questions posed to the experts cover all the medically relevant aspects of the case, and that the expert opinions themselves are sufficiently reasoned (see *Rõigas v. Estonia*, no. 49045/13, § 115, 12 September 2017).

99. The Court reiterates that it is not for it to speculate, on the basis of the medical information submitted to it, as to whether the conclusions of the medical experts on which domestic court decisions were founded were correct (see *Lopes de Sousa Fernandes*, cited above, § 171, with further references). Furthermore, except in cases of manifest arbitrariness or error, it is not the Court's function to call into question the findings of fact made by the domestic authorities, particularly when it comes to scientific expert assessments, which by definition call for specific and detailed knowledge of the subject (see *Počkajevs v. Latvia* (dec.), no. 76774/01, 21 October 2004).

100. Taking into account the submitted material, including several medical opinions confirming that no medical error had occurred during the medical treatment of the applicant's wife (see paragraphs 20, 26 and 32 above), and the numerous investigative measures that were undertaken to shed light on the course of the events in question (see paragraphs 90-96 above), the Court does not find sufficient grounds to conclude that the criminal proceedings in the respondent State were inadequate or not sufficiently thorough. Although the forensic medical opinions might not

have addressed the questions that the applicant considered important to a degree that would have satisfied him, the national prosecution authorities should be allowed a certain discretion when deciding which questions are relevant in establishing criminal liability (see, *mutatis mutandis*, *Rõigas*, cited above, § 116). The same considerations apply regarding the prosecuting authorities' decision concerning the issue of the possible falsification of the medical documents.

101. In view of the above, the Court considers that the criminal proceedings were prompt, independent, thorough and concluded within a reasonable time. Despite the initial shortcomings during the inquiry stage of the investigation, the domestic authorities eventually responded adequately to the applicant's allegation that medical malpractice had occurred and clarified the events surrounding the death of his wife. It cannot therefore be said that the criminal-law remedy used by the applicant was applied ineffectively in the present case.

102. Accordingly, there has been no violation of Article 2 of the Convention under its procedural limb.

FOR THESE REASONS, THE COURT,

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

2. *Holds*, by four votes to three, that there has been no violation of Article 2 of the Convention under its procedural limb.

Done in English, and notified in writing on 29 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Gabriele Kucsko-Stadlmayer
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Harutyunyan, Guerra Martins and Răduleţu is annexed to this judgment.

G.K.S.
S.P.

JOINT DISSENTING OPINION OF JUDGES HARUTYUNYAN, GUERRA MARTINS AND RĂDULEȚU

We respectfully disagree with the majority's finding that there has been no violation of Article 2 of the Convention in its procedural limb as regards the investigation into the circumstances surrounding the death of the applicant's wife, T. Simonyan, at the age of 53, one day after she underwent routine surgery in a private hospital in Yerevan.

It was undisputed between the parties that the cause of T. Simonyan's death was pulmonary thromboembolism resulting from varicose veins in the lower extremities, a condition which was known to the hospital's medical staff.

The applicant asserted that his wife had died as a result of a precipitous decision to operate before she had had a chance to have her varicose veins treated, a treatment which had not even been discussed prior to surgery, the financial aspect of which had been the exclusive focus of discussions with the relevant doctor.

As stated in paragraph 66 of the judgment (citing *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 225, 19 December 2017), the Court was called upon to determine whether, in the concrete circumstances of the present case, given the fundamental importance of the right to life guaranteed under Article 2 of the Convention and the particular weight the Court has attached to the procedural requirement under that provision, the legal system as a whole had dealt adequately with the case at hand.

Our disagreement with the majority lies firstly with the manner in which the general principles concerning the procedural requirements of Article 2 in the context of healthcare were interpreted in the light of the circumstances of the present case. We believe that the proper application of those principles would have led to a finding of a violation of Article 2 of the Convention.

It is a well-established principle in the Court's case-law that the procedural obligation under Article 2 requires that the domestic proceedings be effective (see *Lopes de Sousa Fernandes*, cited above, § 225) and, to that end, that any investigation should meet certain minimum requirements (see *Zashevi v. Bulgaria*, no. 19406/05, § 57, 2 December 2010), including those of adequacy and thoroughness. The nature and degree of scrutiny which satisfy that minimum threshold of effectiveness will depend on the circumstances of each particular case (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, with further references).

We note that the Court has previously found that there were no effective civil-law or administrative-law (disciplinary) remedies available in the Armenian legal system in respect of complaints of medical negligence (see *Botoyan v. Armenia*, no. 5766/17, §§ 116-31, 8 February 2022). In consequence, the criminal-law route was essentially the only remedy

available to the applicant in respect of his complaint of medical malpractice in his wife's treatment.

In view of that particular context and legal reality at the domestic level, the degree of scrutiny of the investigation ought to have been higher in the present case in comparison to similar cases concerning States which offer more than one remedy in respect of medical negligence claims (compare, for example, *Kornicka-Ziobro v. Poland*, no. 23037/16, §§ 82-83, 20 October 2022).

In our view, the investigation in the present case failed to respond adequately to the applicant's allegation that medical malpractice had occurred in that it did not provide him with answers based on an in-depth assessment and did not sufficiently clarify the events surrounding the death of his wife.

On the face of it, the domestic authorities took a number of investigative measures, including numerous witness interviews and at least three forensic medical expert examinations.

Even accepting that the question as to whether there had been a medical error was rather difficult – if not impossible – to answer, the impugned decision to terminate the investigation (cited in paragraph 41 of the judgment) failed to address the various inconsistencies in the statements given by the doctors and nurses responsible for record-keeping and administering medication, and the issue of the possible falsification of medical records. The same decision summarily dismissed the applicant's main allegation as to the possible causal link between the – in his view – ill-considered (hasty) decision to operate on his wife and the thromboembolism which caused her death.

Our disagreement with the majority lies, secondly, in our opinion that there has been a breach of the State's duty under Article 2 to enact adequate legislation to enable victims to seek redress. In this connection, it is regrettable that the Armenian legal system lacks civil-law or administrative-law (disciplinary) remedies in cases of medical negligence resulting in the death of the patient.

Such a lack, combined with an unsatisfactory criminal investigation, left the applicant without any effective remedy at the national level for the violation of the rights enshrined in Article 2.

On the basis of the above considerations, we are unable to conclude that the domestic authorities carried out an adequate investigation into the circumstances of T. Simonyan's death.