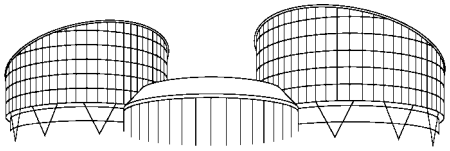

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PETROSYAN v. ARMENIA

(Application no. 51448/15)

JUDGMENT

Art 37 • Striking out applications • Unilateral declaration not containing an undertaking to reopen the investigation concerning the death in detention of the applicant's son who had mental health issues • Amount of compensation proposed not consistent with the amount the Court would award for just satisfaction in a similar case • Respect for human rights requiring examination to be continued
Art 2 (procedural and substantive) • Life • Insufficient and inadequate investigation into circumstances of death and into any potential responsibility on the part of particular individuals or authorities • Failure to provide satisfactory and convincing explanation for death
Art 13 (+ Art 2) • Lack of an effective remedy • Court unable to conclusively establish the existence of an effective mechanism for establishing any institutional liability on the part of State bodies for a breach of Art 2 if the relevant domestic proceedings did not end in prosecution and/or a conviction • Even if such a procedure existed, amount of potential compensation, in view of monetary ceiling under the domestic law in respect of an award of non-pecuniary damage suffered as a result of a breach of the right to life, would constitute insufficient redress

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 January 2025

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 Petrosyan v. Armenia,

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

Mattias Guyomar, *President*,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
Gilberto Felici,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy, *judges*,
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 51448/15) 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, Ms Heghine Petrosyan ("the applicant"), on 2 October 2015;

the decision to give notice of the application to the Armenian Government ("the Government");

the parties' observations;

Having deliberated in private on 3 December 2024,

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

INTRODUCTION

1. The case concerns the death of the applicant's son while being held in custody, and the ensuing investigation. It raises issues under Articles 2 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1972 and lives in Hrazdan. The applicant, who had been granted legal aid, was 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 Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case, as can be seen from the application and the material submitted before the Court by the applicant (see paragraph 107 below), may be summarised as follows.

5. The applicant is the mother of H. Movsisyan, who was found dead during the night of 28 November 2012 in a detention centre (see paragraph 27 below) in the unrecognised "Nagorno-Karabakh Republic" (the "NKR").

I. H. MOVSISYAN'S CONSCRIPTION

6. In June 2011 H. Movsisyan, being 18 of age, was drafted into the Armenian army. According to the applicant, her son had health issues incompatible with military service, but he was nevertheless found fit for combatant service and conscripted.

7. It is indicated in the results of the general medical examination conducted prior to H. Movsisyan's conscription that he had complained of suffering from "cold wrists during the winter months" and had stated that "for several years he had already considered himself to be ill". The final diagnosis reached in the relevant document (which is not fully legible) mentions some sort of condition from which H. Movsisyan was suffering relating to his upper extremities and blood circulation (apparently not of such a degree as to be considered to constitute a serious health concern).

8. H. Movsisyan was eventually assigned to military unit no. 49971 of the Nagorno-Karabakh armed forces ("the military unit"), situated in the "NKR".

II. H. MOVSISYAN'S MILITARY SERVICE

9. From the first days of service H. Movsisyan showed misconduct; he refused to wear military gear, carry out the duties assigned to him and so on.

10. On 27 June 2011 H. Movsisyan left his military unit by jumping over the fence. He was then by chance discovered by Lieutenant Colonel A.A., the deputy commander of the military unit, who took him back to the military unit. Lieutenant Colonel H.S., head of the battalion, then had a conversation with H. Movsisyan in his office. During that conversation H. Movsisyan cut his own left forearm with a razor blade.

11. After that incident H. Movsisyan was taken to the medical service of the military unit and then to the military hospital for medical treatment for the wound.

12. On 25 July 2011 H. Movsisyan underwent a military-medical examination and was diagnosed with "an organic psychopathic-like disorder [and] non-adaptive decompensation with attempted suicide".

13. By its decision of 2 August 2011 the Central Military Commission of the Ministry of Defence of Armenia found H. Movsisyan unfit for military service in peacetime. According to that decision H. Movsisyan was fit for non-combatant service in time of war. The decision further stated that the disorder in question (see paragraph 12 above) could not have been discovered during the conscription process and that it was not linked to H. Movsisyan's military service.

14. On 17 September 2011 the Minister of Defence issued an order for H. Movsisyan to be discharged from military service on health grounds (see paragraphs 12 and 13 above).

15. On 28 September 2011 H. Movsisyan was discharged from military service.

III. CRIMINAL PROCEEDINGS AGAINST H. MOVSISYAN AND HIS DETENTION

16. In the meantime, on 7 July 2011 the Third Garrison Investigation Department of the Investigative Service of the Ministry of Defence of Armenia (Martakert, Nagorno-Karabakh) took the decision to institute criminal proceedings against H. Movsisyan for evasion of military service.

17. On 3 August 2011 charges were brought against H. Movsisyan for evasion of military service and he was ordered not to leave his place of residence (he gave a written undertaking not to do so.)

18. On 14 September 2011 the charges against H. Movsisyan were dropped on account of the absence of *corpus delicti* in his actions.

19. On 29 November 2011 it was decided to press new charges against H. Movsisyan. On the same date he was charged with self-mutilation in order to evade military service (aggravated evasion of military service).

20. On 6 December 2011 the bill of indictment was finalised. It contained summaries of witness statements, including that given by Lieutenant Colonel H.S. (see paragraph 10 above) and other servicemen.

According to the summary of Lieutenant Colonel H.S.'s statement, on the very first day of his service H. Movsisyan had stated that he did not want to serve in the military and that he was even ready to be convicted for refusing to serve. H. Movsisyan had refused to wear military uniform but, after several conversations with military personnel, had eventually agreed to do so; thereafter there had been a general impression that he would serve his time as he should. On 27 June 2011 Lieutenant Colonel H.S. was informed that H. Movsisyan had been discovered in the city of Martakert (Nagorno-Karabakh). During a follow-up conversation in Lieutenant Colonel H.S.'s office H. Movsisyan had stated once again that he did not wish to serve in the military, for which reason he had abandoned the military unit. When Lieutenant Colonel H.S. had tried to find out in more detail the reason for H. Movsisyan not wanting to serve in the military, the latter had cut himself in his left forearm with a razor blade. H. Movsisyan had been taken to the military medical unit, where he had received necessary medical assistance; he had then been transferred to the military hospital. Lieutenant Colonel H.S. had asserted that nobody had ever hurt H. Movsisyan during his military service; he asserted that the latter had committed the above-mentioned acts in order to evade military service.

According to the summary of Junior Sergeant A.Ar.'s statement, at around 2 p.m. on 27 June 2011 he had wanted to speak to the head of the battalion (Lieutenant Colonel H.S.) and went to the latter's office. The door had been open and he had seen that Lieutenant Colonel H.S. was having a

conversation with a conscript, who he had later discovered had been H. Movsisyan. When Junior Sergeant A.Ar. had been about to enter the office, he had seen how H. Movsisyan had injured himself with a razor blade and, becoming hysterical, had started to make chaotic movements and scream. Junior Sergeant A.Ar. had then helped to take the razor blade from H. Movsisyan and had taken him to the military medical unit.

According to the summary of Lieutenant Colonel A.A.'s statement (see paragraph 10 above), in the afternoon of 27 June 2011 he had seen a soldier on the road while driving in his car. The soldier had first lied to him (telling him that he was not a military serviceman) but had then admitted that he was a conscript. On the way back to the military unit H. Movsisyan had told him that he could not bear the difficulties of military service, was unable to adapt and did not wish to serve in the military; moreover, he missed his family and wanted to go home. A short while later A.A. had learnt from Lieutenant Colonel H.S. that the same soldier had injured himself during a conversation with H.S.

The indictment further referred to the conclusions of a forensic expert concerning the injury on H. Movsisyan's left forearm and the conclusion of a forensic medical expert commission that had found that H. Movsisyan had not suffered and was not suffering from any psychiatric illness and that his diagnosis of "an organic psychopathic-like disorder, decompensation phase" had not impacted him to such an extent that he could not account for his actions.

21. On 7 December 2011 the case against H. Movsisyan was sent to the Syunik Regional Court ("the Regional Court") for examination on the merits.

22. On 31 January 2012 the Regional Court authorised H. Movsisyan's detention, stayed the examination of the case and declared a search for him.

23. On 20 July 2012 H. Movsisyan was arrested at the airport in Yerevan and taken to Nubarashen Detention Centre (Armenia).

24. On 26 July 2012 the Regional Court resumed the examination of the case and discontinued the search for H. Movsisyan.

25. On 10 September 2012 H. Movsisyan was transferred from Nubarashen Detention Centre (see paragraph 23 above) to the investigative isolation unit of a police-run detention facility in Shushi, Nagorno-Karabakh ("Shushi Detention Centre").

26. On 20 November 2012 the Regional Court found H. Movsisyan guilty as charged and sentenced him to three years' imprisonment. The Regional Court's judgment contains a description of the following evidence, to which it referred in reaching a judgment:

H. Movsisyan's pre-trial statement (he had refused to testify during the trial) that from the very first days he had had difficulty adapting to military service: the morning call, stand-at-ease, army food, doing drills in the heat and everything connected with military service were odd to him. He had

told his fellow servicemen that he was suffering from nervous exhaustion and preferred to be convicted for evading military service rather than continue serving in the military. After he had been discovered (after he had run away) and brought back to the military unit, Lieutenant Colonel H.S. had had a conversation with him during which he had become very agitated and had lost his self-control; in order to calm himself down he had taken a razor blade from his pocket and cut himself in the left forearm. He had received medical assistance right away and been transferred to military hospital in Stepanakert (Nagorno-Karabakh), after which he had been admitted for inpatient treatment in the psychiatric unit of the garrison military hospital in Yerevan. He had not refused to serve in the military but his nervous system had been unable to handle it. At any moment he could have lost his self-control and without fully realising it do things that could have had grave consequences.

Statements given by Lieutenant Colonel H.S., Lieutenant Colonel A.A. and Junior Sergeant A.Ar. who essentially reiterated their pre-trial statements (see paragraph 20 above) and the statements given by other servicemen who had affirmed that H. Movsisyan had had issues with military service from the very first days after he had been drafted into the army.

The conclusions reached by a forensics expert of the Central Military Commission of the Ministry of Defence according to which H. Movsisyan had "an organic psychopathic-like disorder [and] non-adaptive decompensation with attempted suicide" (see paragraph 13 above). The disorder had arisen during his military service, within the context of his non-adaptation to the external environment and events, and his personal characteristics. H. Movsisyan was not fit for military service in peacetime but was fit for non-combatant military service during time of war.

The conclusion of an expert commission appointed by the Ministry of Health to the effect that H. Movsisyan had not suffered and did not suffer from any psychiatric illness. He had "an organic psychopathic-like disorder, decompensation phase". He could account for his actions.

IV. H. MOVSISYAN'S DEATH AND THE ENSUING INVESTIGATIONS

27. On 28 November 2012 H. Movsisyan died in Shushi Detention Centre (see paragraph 25 above). According to the official version (see paragraphs 28 and 40 below), at around 1 a.m. that day H. Movsisyan's body was found hanging by his bedsheet from a pole that protruded from the window bars of his cell (no. 8).

A. First set of criminal proceedings

28. On the same date – that is, on 28 November 2012 – the "NKR" General Prosecutor's Office instituted criminal proceedings (case no. 122007.12) on account of H. Movsisyan's death (alleged incitement to suicide). The decision stated, in particular, the following:

> "On 28 November 2012 between 00.50 a.m. and 1 a.m. ... a detainee [held in] cell number 8 of the investigative isolation unit of the Prison Department of [the 'NKR'] police ..., [H. Movsisyan], hanged himself with his whitish bedsheet from a pole protruding from the window bars of that same cell and died..."

29. On the same date the "NKR" police ordered a forensic medical expert examination (that is, an autopsy) seeking to determine whether there were any injuries on H. Movsisyan's body, the time and cause of his death, whether he had suffered from any illnesses while still alive and any possible causal link to H. Movsisyan's death, the presence of any toxins or alcohol in his body and whether it was possible that the mark on his neck had been inflicted by H. Movsisyan's bedsheet, which had been provided to the forensic medical expert.

30. According to the ensuing autopsy report delivered on 1 December 2012, there were no visible injuries on the body other than a ligature mark on the neck and scratches and ecchymoses around and along the ligature mark. The autopsy was performed at 3 p.m. on 28 November 2012. Judging by the changes that had occurred to H. Movsisyan's body following his death, it could be assumed that the death had occurred some fourteen or fifteen hours before the autopsy. The cause of H. Movsisyan's death had been mechanical asphyxiation as a result of hanging. No alcohol had been detected in the blood samples taken from the body. It could not be ruled out that the mark on H. Movsisyan's neck had been inflicted by the bedsheet that had been submitted.

31. On the same date – that is, on 1 December 2012 – the "NKR" General Prosecutor's Office ordered an additional forensic medical examination to be conducted by an expert commission. The relevant decision stated, in particular, that it had become necessary to seek an additional forensic medical examination in order to ensure the full and objective examination of the criminal case. The experts were asked to determine whether the autopsy had been performed correctly and whether the findings reflected in the autopsy report of 1 December 2012 (see paragraph 30 above) had been well-founded. They were also asked to determine the cause of H. Movsisyan's death, whether there had been any injuries on his body (and whether those had been inflicted while he had been still alive), any illnesses from which he had suffered and whether prior to his death H. Movsisyan had used any alcohol or drugs.

32. On 11 March 2013 the report of the medical forensic expert commission was received. The date on which the expert commission

examined the body was not indicated. The relevant parts of that report read as follows:

> "...
>
> Additional external and internal examination of the body
>
> ... There is an irregular reddish scratch on the back surface of the right forearm ...
>
> Conclusions
>
> The expert report ... dated [1 December 2012] is correct and well-founded.
>
> The following bodily injury was discovered in the course of [H. Movsisyan's] additional forensic medical expert examination – a scratch on the back surface of the right upper forearm ... that was inflicted while he was still alive; [it was inflicted] with a blunt object prior to his death – it [is not considered] to have caused minor damage to health and is not linked to the death ...; the ligature mark on the ... neck and the ecchymoses in the inner tissues underneath it resulted from the pressure on the neck organs [deriving from H. Movsisyan's] body weight as a consequence of ... the hanging.
>
> The cause of [H. Movsisyan's] death was mechanical asphyxiation as a consequence of ... hanging ...
>
> ... [H. Movsisyan] was generally healthy.
>
> No [traces of] alcohol or drug [consumption] were detected ..."

33. It appears from the summaries of pre-trial witness statements referred to in the subsequent decision to terminate the proceedings (see paragraph 40 below) that during the investigation guards serving at Shushi Detention Centre and H. Movsisyan's cell-mates were questioned.

34. In particular, senior guard M.G. stated that at 9 p.m. on 27 November 2012 he had, together with guards A.V. and S.A., begun his duty shift. The shift had proceeded smoothly and without any incidents. Around midnight – when A.V.'s two-hour break period had begun – M.G. had taken over from A.V. Passing by cells 8-15, he had observed the occupants of those cells through the door hatch of each cell every ten to fifteen minutes in order to check that nothing suspicious was happening but had not noticed anything unusual. According to M.G., he had looked into cell no. 8 at around 12.50 a.m. and had then moved along to other cells. Six or seven minutes after that he had looked inside cell no. 8 through the door hatch and had seen that one of the detainees, H. Movsisyan, was hanging by a bedsheet from where the cell window closed (*պատուհանը փակվելու ամրացման տեղ*). At first he did not believe what he had seen, but after he had looked through the food hatch to make sure, he had (because it was not allowed to enter a cell alone, and guards did not carry the keys to the cells) started shouting in an effort to wake up H. Movsisyan's cell-mates so that they could help him. M.G. had then gone downstairs to the first floor to pick up the keys to cell no. 8, and had instructed S.A. to report what had happened to the officer in charge (J.H. – see paragraph 37 below). They had

then entered cell no. 8 with A.D., a senior inspector (see paragraph 35 below), and P.M., a junior inspector (see paragraph 36 below), freed H. Movsisyan from the bedsheet by cutting it, and taken him outside the cell to the corridor (where they administered first aid). After about fifteen to twenty minutes an emergency crew had arrived and announced that H. Movsisyan was dead. They had then tried to find out what had happened, but the other detainees of cell no. 8 had stated that they had no idea; they said that they had been asleep but that they had been woken by the shouting and seen that H. Movsisyan had hanged himself.

35. According to a summary of senior inspector A.D.'s statement, he had been in his office when at 1 a.m. M.G. had rushed into his office and reported that a person had hung himself in cell no. 8. They had immediately gone up to the second floor, opened the door and seen that H. Movsisyan was hanging by a bedsheet from the window bars while the other detainees were screaming in panic on the other side of the cell. M.G. and A.D. had together cut H. Movsisyan down and taken him outside to the corridor, where they had splashed water on him; having arrived to provide assistance, P.M. (see paragraph 36 below) had started to administer mouth-to-mouth resuscitation and had massaged H. Movsisyan's heart, but it had not been possible to save his life.

36. According to a summary of junior inspector P.M.'s statement, on 27 November 2012, he had taken over as assistant to the duty officer at 9 p.m. At 1 a.m. on 28 November 2012 guard S.A. (see paragraph 34 above) had telephoned him, saying that somebody had hung himself. He had reported the matter to Major J.H., the duty officer (see paragraph 37 below), and, since P.M. was also a paramedic by profession, he had gone to help and had seen that a young man (whose name, as he had later found out, was H. Movsisyan) was hanging from the window bars of cell no. 8. by a bedsheet. Two detainees had been holding the body while M.G. (see paragraph 34 above) had been trying to cut the bedsheet. They had helped M.G. and, having freed H. Movsisyan's body, had taken him out into the corridor. P.M. had checked H. Movsisyan's pulse and, having found that it was still beating, he had applied mouth-to-mouth resuscitation and massaged his heart for about ten minutes, after which P.M. had seen that H. Movsisyan's eyes had opened wide, he had urinated and his abdomen had become bloated. He had then realised that H. Movsisyan was dead and had ceased his intervention.

37. According to the summary of the statement given by the duty officer, Major J.H., when guard S.A. (see paragraph 34 above) had informed him at 1 a.m. of the incident, J.H. had immediately called an ambulance and reported the matter to his superiors. Thereafter J.H. and his superiors had inspected cell no. 8 with police officers who had arrived in the meantime. They had found only some written poems and a copy of the Regional Court's judgment (see paragraph 26 above) in H. Movsisyan's personal

belongings. Prior to his death, H. Movsisyan had been housed in the same cell as eight other detainees – all of whom had stated that they had heard nothing, had been asleep and had woken up only because the guard had started screaming and banging on the door.

38. According to the summary of the statement given by Captain Sa.A., the governor of Shushi Detention Centre, H. Movsisyan had been admitted to the Detention Centre on 10 September 2012. The next day he had met H. Movsisyan in his office and explained to him his rights and obligations and the procedure for submitting complaints and suggestions. From 9 November 2012 H. Movsisyan had been kept in cell no. 8. Immediately after the incident he and another officer had made enquiries in an attempt to discover the reasons for H. Movsisyan hanging himself. It had been discovered that after his trial H. Movsisyan had been angry and had constantly complained about the prosecutor who had sought his conviction and the judge who had convicted him, alleging that they had done so unlawfully (H. Movsisyan had argued that he had been discharged from military service). In order to reassure him, H. Movsisyan had been advised to request a meeting with Sa.A. on 28 November 2012 in order to appeal against his conviction, to which Sa.A. had agreed. During his stay at the detention centre between 10 September and 27 November 2012 H. Movsisyan had not requested medical assistance or complained of health issues, had been calm and had not socialised much with other detainees, so neither Sa.A. nor the other detention centre guards had spotted anything negative or risky in relation to H. Movsisyan; for that reason the latter had not been placed under specific surveillance. According to Sa.A., H. Movsisyan had been subjected to no pressure or ill-treatment by other detainees or by the detention centre staff.

39. According to the summary of the statement made by S.H. (a fellow occupant of cell no. 8), H. Movsisyan had kept himself apart and had been behaving oddly. He had told his cellmates only that he had been treated in a psychiatric hospital and discharged from military service, but that he had been unlawfully detained and convicted for evasion of military service. H. Movsisyan had often refused to eat, saying that he had no appetite. He had spent his days leaning against the wall, sleeping on a chair, being alone with his thoughts or complaining that he had been convicted unlawfully. On 27 November 2012 H. Movsisyan had neither taken breakfast nor lunch (saying that he did not want to eat) and had slept until 6 p.m. However, he had then had dinner with everyone else, after which they had played cards. When they had been ordered to get ready for sleep at 9.30 p.m., the others had continued playing cards; however, H. Movsisyan had lain down on his bed (the upper bunk above S.H.'s). At 10 p.m. everyone had gone to bed. About twenty minutes later H. Movsisyan had climbed down to have a drink of water and then had gone back up to sleep. S.H. did not remember how long he had slept but he had woken up by the noise being made by M.G.

(see paragraph 34 above) and by the door opening, when he had seen H. Movsisyan hanging from the window – at which he and the other detainees had been scared and had started screaming.

40. On 18 March 2013 the "NKR" General Prosecutor's Office decided to terminate the criminal proceedings concerning criminal case no. 122007.12 (see paragraph 28 above) and the prosecution of the staff and detainees of Shushi Detention Centre on the grounds that their actions had not constituted a crime. The relevant parts of that decision read as follows:

> "...
>
> On 28 November 2012 at around [00.50-1 a.m.] [H. Movsisyan] died in cell no. 8 in [Shushi Detention Centre] as a result of hanging himself from the window bar by a bedsheet.
>
> The above-mentioned circumstances have been established by the statements [given by] ... guards [and] detainees of [Shushi] Detention Centre, material evidence, the record of an examination of [H. Movsisyan's] personal file, the conclusions of an additional forensic medical examination ..., documents received from [the Regional Court] ... and other evidence contained in the case-file material.
>
> [Summary of M.G.'s statement – see paragraph 34 above].
>
> Guards ... [S.A. and A.V. – see paragraph 34 above] have given similar accounts of the events ...
>
> [Summary of A.D.'s statement – see paragraph 35 above].
>
> [Summary of P.M.'s statement – see paragraph 36 above].
>
> [Summary of J.H.'s statement – see paragraph 37 above].
>
> [Summary of Sa.A.'s statement – see paragraph 38 above].
>
> Similar statements have been given by [the officer who went with Sa.A. to make enquiries after the incident – see paragraph 38 above].
>
> [Summary of S.H.'s statement – see paragraph 39 above].
>
> Similar statements have been given by [seven other] detainees of [Shushi Detention Centre] ...
>
> [Summary of the statement of the emergency doctor who attended the scene and recorded H. Movsisyan's death].
>
> [Reference to the results of the additional forensic medical examination – see paragraphs 31 and 32 above].
>
> ... [H. Movsisyan] was generally healthy.
>
> According to the record of the examination of the scene of the incident, cell no. 8 of [Shushi Detention Centre] is on the second floor of the building; its size is 6 metres by 4 metres; there are five double-bunk beds therein, of which four are attached to each other. The cell has two windows ... with metal bars. [H. Movsisyan] had hanged himself from the bars of the window, which is situated in the left side of the entrance behind [H. Movsisyan's] bed ... No [suicide] notes were discovered during the examination [of the scene].

The examination of the ... corpse did not reveal any other bodily injuries, apart from the ligature mark on the neck.

According to the conclusion of the internal investigation into the matter carried out by the ['NKR'] police internal security service, no breaches had been discovered on the part of the officers of [the Prison Department of the ['NKR'] police].

[References to the medical opinions received from the Regional Court – see paragraph 26 *in fine* above]

[Reference to the Regional Court's judgment – see paragraph 26 above]

Thus, the investigation established that [H. Movsisyan] had not been subjected to any threats, cruel treatment, psychological pressure or violence, [or] abused by the [officers] of the Prison Department of the ['NKR'] police or detainees [of Shushi Detention Centre] in order to incite him to commit suicide; therefore, the criminal proceedings in so far as the [officers of the Prison Department of the 'NKR' police] and detainees [of Shushi Detention Centre] are concerned should be terminated ...

At the same time, it was established that, having been suffering from 'an organic psychopathic-like disorder [and] non-adaptive decompensation with attempted suicide' and been sentenced by [the Regional Court] ... to three years of imprisonment, at around 0.50-1 a.m. during the night of 27-28 November 2012 – that is, seven days following his conviction – [H. Movsisyan], aiming to commit suicide, hanged himself by a bedsheet from the window bars in cell no. 8 of [Shushi Detention Centre] and died.

... "

41. On 29 May 2013 the applicant lodged an application with the General Prosecutor of Armenia (i) stating that, further to her complaints and applications concerning her son's death, she had discovered that criminal case no. 122007.12 (see paragraph 28 above) had been instituted, and (ii) seeking to be involved in those proceedings as the victim's legal heir and be provided with a copy of the decision to institute them. The applicant also submitted that she had no information concerning the investigation into her son's death and that neither she nor any other member of the family had been granted victim status in the proceedings.

B. Second set of criminal proceedings and combining the investigations in respect of both criminal cases

42. In the meantime, on 28 March 2013 the Special Investigative Service of Armenia ("the SIS") instituted criminal proceedings (case no. 62202513) under Article 315 § 2 of the former Criminal Code (official negligence – see paragraph 72 below) on the basis of the evidence gathered by the "NKR" authorities within the framework of criminal proceedings in respect of case no. 122007.12 (see paragraphs 28-40 above).

43. On the same date the SIS took over the investigation in respect of case no. 122007.12 (see paragraphs 28 and 40 above) and decided to combine that investigation with the investigation in respect of case no.

62202513 (see paragraph 42 above) – forming a joint investigation under the latter number. The relevant parts of that decision state as follows:

> "It has been revealed as a result of the examination of the material [relating to] case [no 122007.12] that [H. Movsisyan] had been suffering from 'organic psychotic disorder ... with attempted suicide', which was confirmed by the conclusion of the [Central Medical Commission of the Ministry of Defence] and on the basis of which he was recognised as unfit for military service in peacetime...
>
> Nevertheless, the investigating authority – that is, the Third Garrison Investigation Department of the Ministry of Defence – ... brought charges against him for evasion of military service; ... the [Regional Court] convicted him ... and sentenced him to three years' imprisonment. Seven days later ... [H. Movsisyan] committed suicide ...
>
> Having regard to the fact that the material pertaining to case no. 122007.12 points to elements of official negligence on the part of the officials in charge of the criminal case concerning [H. Movsisyan] that gave rise to grave consequences, a new case was instituted by [the SIS] on 28 March 2013 under Article 315 § 2 of the [former] Criminal Code.
>
> Having regard to the fact that criminal cases nos. 122007.12 and 62202513 concern the same incident ... I decide to join criminal case no. 122007.12 concerning [H. Movsisyan's] suicide and case no. 62202513 concerning official negligence on the part of the authorities engaged in the examination of the criminal case against [H. Movsisyan] into a single set of proceedings (under number 62202513) and to continue with the investigation ..."

44. On 5 June 2013 the SIS took the decision to postpone the examination of the applicant's application to be granted the status of the victim's legal heir in case no. 122007.12 and to dismiss her application (see paragraph 41 above) to be provided with a copy of the decision to institute criminal case no. 122007.12 (see paragraph 28 above). The decision stated, *inter alia*, that it had not been substantiated that H. Movsisyan had committed suicide as a result of ill-treatment, pressure or harassment; he therefore could not be considered to have been a victim of the offence of incitement to suicide, and so the applicant could not be recognised his legal heir in the proceedings. Neither could the applicant be granted the status of the victim's legal heir in criminal case no. 62202513 (see paragraph 42 above), since it had not yet been established that the officials involved in the criminal case concerning her son had committed an offence under Article 315 § 2 of the former Criminal Code (see paragraph 72 below). Lastly, as regards the applicant's request to be provided with a copy of the decision to institute criminal case no. 122007.12 (see paragraphs 28 and 41 above), she was not entitled to receive a copy, since she had not been involved in those proceedings.

45. On 27 June 2013 the applicant lodged a complaint against the decision of 5 June 2013 (see paragraph 44 above) with the Kentron and Nork-Marash District Court of Yerevan ("the District Court").

46. By a decision of 16 July 2013 the District Court rejected the applicant's complaint on the grounds that she had failed to first appeal against the decision in question (see paragraph 44 above) to a prosecutor.

47. On 17 July 2013 the applicant lodged an application with the SIS requesting to be granted victim status in criminal proceedings no. 62202513 (see paragraphs 42 and 43 *in fine* above). With reference to, *inter alia*, Articles 58 and 80 of the former Code of Criminal Procedure (see paragraphs 74 and 75 below), the applicant argued that her son should be recognised as the victim in those proceedings (which she claimed were not effective and not accessible to the victim's family) and that she should be granted the status of the victim's legal heir in respect of them.

48. On 23 July 2013 the SIS sent a letter to the applicant stating that it had already examined the similar application lodged by her on 29 May 2013 and had taken a decision in its respect on 5 June 2013 (see paragraphs 41 and 44 above). The investigating authority would therefore not examine the application of 17 July 2013 (see paragraph 47 above), since she had not submitted any new arguments.

49. The applicant lodged a complaint with the General Prosecutor of Armenia, requesting to be involved in the proceedings.

50. In a letter of 22 August 2013 responding to the applicant's complaint, the General Prosecutor's Office of Armenia stated that it was not possible to lodge an appeal with a prosecutor in respect of decisions refusing to recognise someone as a party to criminal proceedings.

51. On 18 December 2013 the applicant once again lodged an application with the SIS, requesting to be recognised as a party to the proceedings. In reply, she was informed that her application had not been examined since, by a decision issued by the SIS on 10 December 2013, criminal proceedings no. 62202513 (see paragraph 42 above) had been terminated.

52. On 28 December 2013 the applicant asked the SIS to provide her with copies of the decision of 10 December 2013 and of the material adduced in respect of the case.

53. In a letter of 20 January 2014 the SIS stated that the applicant was not entitled to be provided with copies of the requested documents, since she had not been party to the proceedings in question.

54. On 20 February 2014 the applicant lodged an application with the District Court seeking to have her son recognised as the victim and herself as the victim's legal heir in the proceedings concerning criminal case no. 62202513 (see paragraph 42 above), and to oblige the SIS to provide her with copies of the decision of 10 December 2013 (see paragraph 51 above) and the material in the case file. She argued, among other things, that her son had been prosecuted and convicted by the authorities of the Republic of Armenia, which had led to his subsequent death in a detention facility in Nagorno-Karabakh that had been under the authority of the Republic of

Armenia; the victim's family had had no possibility whatsoever to participate in the ensuing proceedings. The applicant argued that the proceedings instituted in respect of the matter had not been effective and that she had been completely deprived of the possibility to participate in them (including the possibility to appeal against the decision of 10 December 2013 – see paragraph 51 above).

55. On 30 April 2014 the District Court provided the applicant with a copy of the decision of 10 December 2013 (see paragraph 51 above). The relevant parts thereof read as follows:

> "... During the night of 27 to 28 November 2012 [H. Movsisyan] committed suicide in cell no. 8 of [Shushi Detention Centre].
>
> The evidence gathered by the special investigative service of the ['NKR'] General Prosecutor's Office established that [H. Movsisyan] had not been subjected to any threats, cruel treatment, psychological pressure or violence, [or been] abused by the [officers] of the Prison Department of the ['NKR'] police or detainees [of Shushi Detention Centre] ...
>
> ...
>
> Case no. 122007.12 was joined to case no. 62202513 and the investigation continued under the latter number.
>
> ...
>
> [The Regional Court], having fully and objectively examined the ... evidence, having verified the statements of the accused and witnesses, having examined the conclusions of forensic medical, military-medical and forensic psychiatric examinations and other factual findings ... found that ... it had been established that [H. Movsisyan] had committed an offence ... The participants in the proceedings did not lodge any appeals against the trial court's judgment and it became final.
>
> ...
>
> By the decision of the Court of Cassation dated 18 October 2013 ... [H. Movsisyan's] prosecution was terminated ... in the light of his death.
>
> ...
>
> In the course of the investigation the persons in charge of the investigation in respect of the criminal case against [H. Movsisyan], the prosecutor who had supervised the investigation in respect of that case, the judge, the members of the Central Medical Commission of the Ministry of Defence and the members of the forensic psychiatric expert commissions appointed by the Ministry of Health – as well as [H. Movsisyan's] parents – were questioned as witnesses, and necessary investigative and procedural activities were carried out.
>
> It has not been established, on the basis of the evidence collected in the course of the investigation in respect of the case, that [H. Movsisyan] was incited to commit suicide as a result of threats, cruel treatment or regular harassment or that somebody prompted [H. Movsisyan] to commit suicide by means of encouragement [or] trickery or by other means.
>
> In addition, the assessment of the evidence collected in the course of the investigation in respect of the case, the examination of the circumstances of the offence committed by [H. Movsisyan] and the examination of the material and the

judicial decisions concerning the criminal case against him have ascertained that no official negligence, offence against public service and justice [*պետական ծառայության դեմ հանցագործություն*] or any other offence was committed by the officials who conducted the investigation in respect of the criminal case against [H. Movsisyan], [or by] the officials who carried out judicial and prosecutorial supervision over that case, pursued the charges and conducted the judicial proceedings.

Thus, no evidence of the commission of a crime has been found as a result of the investigation; ... the criminal proceedings concerning the present case should [thus] be terminated for the absence of a crime.

..."

V. PARALLEL DEVELOPMENTS IN RELATION TO THE CRIMINAL CASE AGAINST H. MOVSISYAN

56. On 11 April 2013 the General Prosecutor of Armenia lodged an appeal against the Regional Court's judgment of 20 November 2012 (see paragraph 26 above), seeking H. Movsisyan's acquittal. It was argued that the Regional Court's judgment of 20 November 2012 was "manifestly unlawful and unfair". In particular, only an acting military serviceman (that is, a person fit for and performing military service) could commit the offence of evasion of military service, whereas at the initial stage of the investigation H. Movsisyan had already been found unfit for military service on health grounds. That is to say H. Movsisyan had been discharged from military service not because of the above-mentioned self-mutilation but because of the "organic psychopathic-like disorder" that had been the cause of that self-mutilation. Nevertheless, the investigating authority had unlawfully brought charges against H. Movsisyan and the Regional Court had delivered an unfair judgment; several days later H. Movsisyan had committed suicide.

57. By a decision of 16 April 2013 the Criminal Court of Appeal allowed the appeal lodged by the General Prosecutor of Armenia and acquitted H. Movsisyan. That decision stated, *inter alia*, that the investigating authority and the supervising prosecutor had both ignored (i) H. Movsisyan's early discharge from military service because of a medical condition rendering him unfit for military service, and (ii) the fact that from the beginning of his military service he had been suffering from that disorder; instead of terminating his prosecution the investigating authority and the supervising prosecutor had brought even graver charges against H. Movsisyan (see paragraph 19 above). Thus, instead of being acquitted either at the pre-trial stage or in the proceedings before the trial court, the proceedings against H. Movsisyan had continued, and eventually he had been convicted.

58. On 16 May 2013 the General Prosecutor's Office of Armenia lodged an appeal on points of law with the Court of Cassation against the judgment

of 16 April 2013 (see paragraph 57 above) disputing the manner in which the Court of Appeal had interpreted the relevant criminal-law provisions concerning criminal liability for evasion of military service – including the interpretation of the term "military serviceman" (that is, the category of persons who could be held criminally liable under those provisions).

59. On 18 October 2013 the Court of Cassation overturned the Regional Court's judgment of 20 November 2012 and the Court of Appeal's judgment of 16 April 2013 (see paragraphs 26 and 57 above) and terminated the proceedings on the grounds of H. Movsisyan's death. In doing so, the Court of Cassation stated that the Regional Court's judgment had not been appealed against and had entered into force. Thereafter H. Movsisyan had died; with its appeal on points of law the General Prosecutor's Office had not sought to remedy any breaches of H. Movsisyan's rights but had been guided by the public interest. Given those circumstances, the proceedings should be terminated and H. Movsisyan's prosecution terminated on the grounds of his death.

VI. THE APPLICANT'S APPEALS

60. The applicant lodged an appeal with the General Prosecutor of Armenia against the decision of 10 December 2013 (see paragraph 55 above), which was dismissed by the latter's decision of 14 July 2014.

61. On 25 July 2014 the applicant contested the decision of 10 December 2013 (see paragraphs 55 above) before the District Court. She argued that she should be entitled to appeal against that decision even though the investigating authority had refused to allow her participation in the proceedings. The applicant claimed that the investigation into the circumstances of her son's death had not been effective, given that it had failed to provide a convincing explanation for his death, which had occurred while he had been under the full control of the authorities. Furthermore, the investigation had not been accessible to the victim's family which she claimed had pursued the purpose of concealing the commission of a crime. The applicant had raised a number of issues which the investigation had failed to clarify, including, among other things, whether it had been possible that H. Movsisyan had managed to complete the process of hanging himself from the window bars within the space of six to seven minutes, whether H. Movsisyan (who had apparently been still alive when taken out of the cell) had been provided with appropriate first-aid medical assistance, whether H. Movsisyan had been provided with psychological assistance while in detention, a possible causal link between his suicide attempt during his military service and his suicide in detention, the origin of the injury on his right forearm (indicated in the expert commission's report, which had been based on the results of the additional forensic medical expert examination – see paragraph 32 above), and so on. She also submitted that

the investigation had failed to establish any possible liability on the part of the forensic medical experts who had diagnosed her son and/or had delivered conclusions regarding whether or not he was suffering from a mental disorder, and the persons who had overseen his prosecution and conviction.

62. At a hearing on 26 August 2014 before the District Court the applicant requested judge M.M., the presiding judge, to oblige the SIS to submit the case-file material to the court. Judge M.M. granted her request and adjourned the hearing until 9 September 2014.

63. At the hearing of 9 September 2014 Judge M.M. read out a list of the documents that had been provided by the SIS (the decision to terminate the criminal proceedings, the General Prosecutor's decision to dismiss the applicant's appeal (see paragraphs 55 and 60 above), the decision to order a forensic medical examination, two forensic medical expert reports, the decision to order an additional forensic medical examination and the Court of Cassation's decision dated 18 October 2013 (see paragraph 59 above)). The applicant pointed out that the investigating authority had failed to submit the evidence that had served as a basis for the termination of the proceedings and requested that the SIS be obliged to submit the complete case file. The presiding judge (M.M.) refused her request and proceeded with the examination of her appeal without having the relevant material to hand.

64. On the same date the District Court (presided by Judge M.M.) dismissed the applicant's appeal and upheld the decision of 10 December 2013 (see paragraphs 55 and 61 above) stating, in particular, that the applicant's disagreement with the investigation's assessment of the circumstances established by it did not constitute grounds to set it aside.

65. On 20 September 2014 the applicant lodged an application with the Council of Justice seeking to subject Judge M.M. to disciplinary liability. She argued, in particular, that the judge had examined her complaint against the decision to terminate the criminal proceedings without having at his disposal the entirety of the material that had constituted the basis for that decision. Given those circumstances she argued that Judge M.M. could not have objectively determined whether or not the disputed decision (dated 10 December 2013 – see paragraph 55 above) had violated her rights as a victim.

66. By a decision of 13 October 2014 the Council of Justice refused to institute disciplinary proceedings against Judge M.M. on the grounds that he had not committed gross and undisputable violations of procedural law.

67. In the meantime, on 25 September 2014 the applicant lodged an appeal against the District Court's decision of 9 September 2014 (see paragraph 64 above). In addition to her previous arguments (see paragraph 61 above), the applicant argued in her appeal that the District Court had failed to conduct a proper judicial review of the decision of 10 December

2013 since it had not had at its disposal the evidence on which the impugned decision to terminate the proceedings had been based (see paragraphs 55 and 63 above). The prosecution did not lodge a response to her appeal.

68. It appears that the Criminal Court of Appeal in its turn attempted to obtain the case-file material from the SIS and adjourned the hearing of 31 October 2014 until such time as it received the requested documents. It further appears that the SIS submitted to the Court of Appeal the documents that had already been submitted to the District Court (see paragraph 63 above).

69. The applicant submitted that at the hearing of 1 December 2014 the presiding judge at the Court of Appeal had stated that according to the letter from the General Prosecutor's Office of Armenia, the prosecution could not provide any other material. On the same date the applicant requested the Court of Appeal to make a further attempt to obtain the relevant material. Her request was refused on the grounds that all possible means of obtaining the material in question had been exhausted.

70. By a decision of the same date (that is, 1 December 2014) the Court of Appeal dismissed the applicant's appeal (see paragraph 66 above). In so doing, the Court of Appeal stated, among other things, that the District Court had rightly found that the investigation had not revealed that H. Movsisyan had been subjected to any ill-treatment that had pushed him into committing suicide; neither had it revealed that the persons involved in the criminal proceedings against H. Movsisyan had been negligent in fulfilling their official duties, or had committed any "offence against public service and justice" or any other offence in the performance of their duties. Furthermore, the responsible authorities had carried out an official investigation that had revealed the fact that H. Movsisyan's death had been due to suicide. No evidence had been found to suggest that anyone had been at fault for his suicide. The Court of Appeal also found that the District Court had rightly found that the assertions made by the applicant (see paragraph 61 above) had been refuted by the investigation. In particular, it had been determined that H. Movsisyan had not agreed with his conviction, and that he had complained about the military commissar, the judge and the prosecutor for having convicted him unlawfully (H. Movsisyan had argued that he had been relieved of his duty to perform military). Given those circumstances, the applicant's arguments were not sufficient for the District Court's decision to be overturned (see paragraph 64 above).

71. By a decision of 20 March 2015 (of which the applicant was notified on 2 April 2015), the Court of Cassation refused the applicant leave to appeal.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Criminal Code

72. Article 315 § 2 of the former Criminal Code (in force until 1 July 2022) provided that an official's failure to perform (or to perform properly) his duties on account of bad faith or negligence that caused a person's death or had other grave consequences was punishable by up to five years' imprisonment.

B. Code of criminal procedure

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

74. Article 58 provided that victim status should be given to a person who had directly suffered moral, physical or property damage from an act forbidden by the Criminal Code.

75. Article 80 § 1 provided that one of a victim's next-of-kin who expressed a desire to exercise the rights and obligations of a deceased or incapacitated victim in the criminal proceedings should be recognised as the victim's legal heir.

76. Under Article 100, any person not involved as a participant in the proceedings had the right to demand to be recognised as a victim if the grounds set out by the Code applied.

77. Article 262 § 1 provided that a copy of an investigator's decision to terminate criminal proceedings and to discontinue the prosecution should be sent to, *inter alia*, the suspect, the accused, the lawyer and the victim (and his or her representative).

The above-mentioned persons would be informed of their right to study the case-file material and of the procedure for lodging an appeal against a decision to terminate criminal proceedings and to discontinue the 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 by the Code (Article 262 § 3).

C. Civil code

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

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

Damage is the expenses borne or to be borne by the person whose rights have been violated, in connection with restoring the violated rights, loss of property or damage to it (material damage), including loss of income, as well as non-pecuniary damage (Article 17 § 2).

Under Article 17 § 4, non-pecuniary damage may only be compensated in the cases provided for by the Civil Code (see paragraph 80 below).

80. Article 162.1 § 2 provides that a person has the right to claim compensation for non-pecuniary damage from the State if it has been established by the prosecuting authority or a court that, as a result of a decision, action or omission of a State or local governance body or one of its officials, a person's fundamental rights (as guaranteed by the Constitution and the Convention – including the right to life) have been violated.

81. Article 1087.2 §§ 3 and 4 provide that non-pecuniary damage suffered as a result of a violation of fundamental rights is to be compensated, irrespective of whether there is any fault on the part of a State official. Non-pecuniary damage is compensated from the State budget. If the fundamental right included in Article 162.1 (see paragraph 80 above) has been violated by a local governance body or one of its officials, non-pecuniary damage is compensated from the relevant local budget.

82. The amount of compensation for non-pecuniary damage suffered as a result of the violation of a person's right to life cannot exceed three thousand times the minimum salary (approximately 6,000 euros (EUR)) (Article 1087.2 § 7 (1)). The amount of compensation for non-pecuniary damage may, in exceptional cases, exceed that limit if the damage has led to serious consequences (Article 1087.2 § 8).

83. A claim for compensation for non-pecuniary damage can be lodged with a court together with a claim seeking to establish a breach of the rights set out in Article 162.1 – see paragraph 80 above), within one year of the person concerned becoming aware of that breach or within six months of the date on which the judicial decision establishing the breach of the right in question had come into force. If the breach has been established by a law-enforcement body, a claim for compensation for non-pecuniary damage can be lodged no earlier than two months – but no later than one year – after the date on which the person concerned became aware of the breach (Article 1087.2 § 9).

84. Since 1 November 2014 (following the Constitutional Court's decision – see paragraph 85 below), Article 17 § 2 (see paragraph 79 above) has included non-pecuniary damage in the list of types of damage for which compensation can be claimed in civil proceedings.

As a result, the Civil Code was supplemented by new Articles, Articles 162.1 and 1087.2 (see paragraphs 80 and 81-83 above), which regulate the procedure for claiming compensation for non-pecuniary damage from the State for a violation of certain rights guaranteed by the Armenian Constitution and the Convention.

II. DOMESTIC PRACTICE

Decision of the Constitutional Court of 5 November 2013 on the conformity of Article 17 § 2 of the Civil Code with the Constitution

85. In its decision of 5 November 2013 the Constitutional Court found that Article 17 § 2 of the Civil Code, as worded until 1 November 2014 (see paragraph 79 above), was incompatible with the Constitution in so far as it did not specify that non-pecuniary damage was a type of civil damage and did not provide for the possibility of obtaining compensation for non-pecuniary damage, thereby impeding the effective exercise of the right of access to a court and the right to a fair trial, and simultaneously hindering the Republic of Armenia's due compliance with its international obligations.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. The applicant complained of the death of her son in a detention facility in the "NKR", and that the authorities had failed to carry out an effective investigation into the matter. She 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. The Government's request to have the application struck out under Article 37 § 1 of the Convention

87. The Government submitted a unilateral declaration requesting the Court to strike the application out of its list of cases, pursuant to Article 37 § 1 of the Convention.

88. The applicant disagreed with the terms of the unilateral declaration.

89. It may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 of the Convention on the basis of a unilateral declaration by the respondent Government – even in the event that the applicant wishes the examination of the case to continue. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for

human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*; see, *inter alia*, *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, § 75, ECHR 2003-VI). Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government within the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of those measures on the case at issue (ibid., § 76).

90. The foregoing factors are not intended to constitute an exhaustive list of relevant factors. Depending on the particular facts of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 of the Convention (ibid., § 77).

91. To this end, the Court has examined the declaration by the Government in the present case in the light of the principles emerging from its case-law, and in particular from the *Tahsin Acar* judgment (see paragraphs 89 and 90 above; see also *Jeronovičs v. Latvia* [GC], no. 44898/10, § 64, 5 July 2016).

92. The Court notes that the subject matter of the present application concerns, firstly, the respondent State's obligation under Article 2 of the Convention to account for the loss of life within the context of deprivation of liberty (see, in particular, *Vardanyan and Khalafyan v. Armenia*, no. 2265/12, § 96, 8 November 2022; see also, within the context of deaths during military service, *Muradyan v. Armenia*, no. 11275/07, § 133, 24 November 2016, and *Ohanjanyan v. Armenia*, no. 70665/11, §§ 158-60, 25 April 2023). Secondly, the case concerns the obligation under Article 2 of the Convention to carry out an effective investigation when there is reason to believe that an individual has died in suspicious circumstances (see, among other authorities, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015, and *Muradyan*, cited above, § 134).

93. The Court would stress at this juncture that the unilateral declaration procedure is an exceptional one. As such, when it comes to breaches of the most fundamental rights contained in the Convention, a unilateral declaration is not intended to allow the Government to escape their responsibility for such breaches (see *Jeronovičs*, cited above, § 117, and *Taşdemir and Others v. Turkey* (dec.), no. 52538/09, § 28, 28 April 2020).

94. The Court observes that the unilateral declaration submitted by the respondent Government does not contain an undertaking to reopen the investigation concerning the death of the applicant's son (see *Mishina v. Russia*, no. 30204/08, §§ 27-30, 3 October 2017). At the same time, the Government did not suggest that in the present case there existed a situation of it being *de jure* or *de facto* impossible to reopen the criminal

investigation into the incident that gave rise to the application (see *Taşdemir and Others*, cited above, §§ 21 and 25).

95. In addition, the Court is not satisfied that the amount of compensation proposed by the Government is consistent with the amount that it would award in respect of just satisfaction in a similar case (see *Ohanjanyan*, cited above, §§ 118 and 165).

96. In view of the foregoing considerations, the Court considers that the unilateral declaration submitted by the Government does not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*). Hence, the Court rejects the Government's request for the application to be struck out, and will accordingly pursue its examination of the admissibility and merits of the case.

B. Admissibility

1. Jurisdiction

97. The Government did not contest Armenia's jurisdiction over the events in question, which took place in the "NKR" (see paragraphs 25 and 27 above). Nonetheless, the Court finds it appropriate to address the matter of its own motion (see *Muradyan*, cited above, § 123, and, more recently, *Dimaksyan v. Armenia*, no. 29906/14, § 42, 17 October 2023).

98. The Court has previously examined the issue of Armenia's jurisdiction in other cases and has found 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 (see *Nana Muradyan v. Armenia*, no. 69517/11, § 91, 5 April 2022), and a further change in the situation on the ground in September 2023 as a consequence of the nine-month long blockade of Nagorno-Karabakh, the subsequent actions of Azerbaijan and the exodus of the Armenian population of Nagorno-Karabakh – Armenia had jurisdiction over the territory in question. Those cases concerned, among other things, the detention and conviction of a Jehovah's Witness for conscientious objection in the "NKR" (see *Avanesyan v. Armenia*, no. 12999/15, §§ 31-38, 20 July 2021, with further references) and fatalities involving individuals who had died while performing military service in the territory in question (see *Muradyan*, cited above, §§ 123-27; *Nana Muradyan*, cited above, §§ 86-92; *Dimaksyan*, cited above, §§ 43 and 44; *Hovhannisyan and Karapetyan v. Armenia*, no. 67351/13, §§ 59-63, 17 October 2023; and *Varyan v. Armenia*, no. 48998/14, §§ 69 and 70, 4 June 2024, concerning the deaths of conscripts during compulsory military service in Nagorno-Karabakh; also compare *Mirzoyan v. Armenia*, no. 57129/10, §§ 55-56, 23

May 2019, concerning the murder of a conscript while he had been performing his compulsory military service in Nagorno-Karabakh).

99. In the present case, the applicant's son died on 28 November 2012 in a detention facility situated in the "NKR", where he had been placed within the framework of the criminal proceedings initiated against him by the authorities of Armenia on account of evasion of military service (see paragraphs 8, 16, 19, 25 and 27 above).

100. As stated in paragraph 98 above, the Court has already found that Armenia had jurisdiction in relation to the detention and conviction of a Jehovah's Witness for conscientious objection in the "NKR" (see *Avanesyan*, cited above, §§ 31-38, with further references).

101. It is well-established in the Court's case-law that persons in custody and persons undergoing military service are similarly considered to be under the exclusive control of the authorities of the State (see, for example, *Boychenko v. Russia*, no. 8663/08, § 77, 12 October 2021, with further references). Accordingly, the Court's findings as to the existence of a jurisdictional link for the purposes of Article 1 of the Convention in the cases cited in paragraph 98 above are fully applicable to the circumstances of the present case.

102. The case at hand relates to the death of the applicant's son in 2012 (see paragraph 27 above). The Court finds no particular circumstances in the instant case – which similarly took place prior to the events described in paragraph 98 above – that would require it to depart from its findings in the judgments cited therein; it therefore concludes that there was a jurisdictional link for the purposes of Article 1 of the Convention between Armenia and the applicant's deceased son on the grounds that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories at the material time (see, for example, the above-cited cases of *Dimaksyan*, § 44; *Hovhannisyan and Karapetyan*, § 62; and *Varyan*, § 70).

2. Other grounds for inadmissibility

103. The Court notes that the Government did not submit observations on the admissibility of the application. It further 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.

C. Merits

1. The parties' submissions

(a) The applicant

104. The applicant's arguments, as submitted in her application, can be summarised as follows.

105. The authorities had failed to take the necessary measures to protect her son's right to life when he had been within their exclusive control. From the moment when her son had been conscripted, the authorities had been aware of his mental health issues. Nevertheless, he had been drafted into the army and then unjustifiably convicted for evasion of military service – despite his early discharge from military service on account of a mental disorder rendering him unfit for military service. Her son had then been placed in an ordinary detention facility in a small cell with seven other detainees and without being placed under any specific surveillance (including any psychological or psychiatric support) – even though the authorities (including the administration of the detention facility) had been clearly aware of his mental disorder (including his past suicide attempt).

106. The respondent State had failed to elucidate the circumstances surrounding the death of her son. The investigation into the matter had been inadequate, in that it had failed to clarify how it had been possible for her son to commit suicide (i) within a period of six to eight minutes at a time when there had been complete silence, and (ii) in the presence of seven other detainees (inside a cell measuring 8 square metres) without them or the guards noticing anything. Furthermore, the investigation had been absolutely inaccessible to her, depriving her of an opportunity to study the relevant documents, submit requests, contest the actions and decisions of the investigating authorities and so on. Neither had she been provided with any case material after the completion of the investigation.

(b) The Government

107. The Government did not submit any observations on the application. Neither did they provide the Court with the documents that had been requested from them upon their being given notice of the application – including documents concerning the criminal proceedings in respect of H. Movsisyan's death that the applicant had unsuccessfully sought to obtain (see paragraphs 62, 63, 68 and 69 above).

2. The Court's assessment

(a) General principles

108. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody – an obligation that is particularly stringent when an individual dies (see *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII). As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no.

57671/00, § 27, ECHR 2004-IX (extracts), and *Karsakova v. Russia*, no. 1157/10, § 48, 27 November 2014).

109. As regards mentally ill persons in particular, the Court has considered them to be particularly vulnerable. Where the authorities decide to place and keep in detention a person suffering from a mental illness, they should demonstrate special care in guaranteeing such conditions as correspond to the person's special needs resulting from his or her disability (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 113, 31 January 2019, with further references).

110. In assessing evidence, the Court has generally applied 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 detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among other authorities, *Lapshin v. Azerbaijan*, no. 13527/18, § 94, 20 May 2021).

111. In all cases where the Court is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. If the authorities then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017).

112. The Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, and its thoroughness and consistency (ibid., § 586). The conduct of the parties when seeking evidence may be taken into account (see *Wolf-Sorg v. Turkey*, no. 6458/03, § 63, 8 June 2010).

113. Additionally, in any case in which a detained person dies in suspicious circumstances and in circumstances potentially engaging the responsibility of the State, there should be an effective official investigation capable of establishing the cause of the death and identifying those responsible with a view to their punishment (see *De Donder and De Clippel v. Belgium*, no. 8595/06, § 85, 6 December 2011). That is, an investigation

must firstly be adequate. The obligation to conduct an effective investigation is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation that undermines its ability to identify the perpetrator or perpetrators will risk falling foul of this standard (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II).

114. Accordingly, where a positive obligation to safeguard the life of persons in custody is at stake, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. Thereby, the relevant authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations that would be capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved (see *Trubnikov v. Russia*, no. 49790/99, § 88, 5 July 2005; and *Karsakova*, cited above, § 55).

115. The investigation should also be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 325, ECHR 2014 (extracts), and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012). A requirement of promptness and reasonable expedition is implicit in this context (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

116. In relation to cases where a person dies while in the custody of the authorities the Court has stressed that there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. Although the degree of public scrutiny required may vary from case to case, the next-of-kin of the victim must in all cases be involved in the procedure to the extent necessary to safeguard their legitimate interests (see *Slimani*, cited above, § 32). In this connection, it is important to stress that, in accordance with their procedural obligation, the authorities must act of their own motion once the matter has come to their attention. In particular, they cannot leave it to the initiative of the victim to take responsibility for the conduct of any investigatory procedures (see *S.M. v. Croatia* [GC], no. 60561/14, § 314, 25 June 2020).

117. While compliance with the procedural requirements of Article 2 is assessed on the basis of several essential parameters (including those mentioned above), these elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, when taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *Lapshin*, cited above, § 100).

(b) Application of these principles to the present case

118. The Court clarifies at the outset that it has limited material at its disposal concerning the investigations into the circumstances of H. Movsisyan's death. The available material consists of the few documents that the applicant was able to obtain at the domestic level and submit to the Court, including, *inter alia*, the decisions to institute and terminate the relevant proceedings (see paragraphs 28, 40, 42, 43 and 55 above), two forensic medical expert reports (see paragraphs 29-32 above) and the relevant decisions taken in respect of her own appeals (see, for example, 61, 64, 66, 70 and 71 above); the Government failed to submit any additional documents, despite the Court's specific request in that respect (see paragraph 107 above).

119. That being said, the material that has been made available to the Court shows – and indeed it is undisputed between the parties – that H. Movsisyan died during his detention in Shushi Detention Centre in the "NKR", where he had been placed within the framework of criminal proceedings against him for evading military service (see paragraphs 19 and 23-25 above).

120. In line with the case-law principles cited in paragraphs 108 and 110-113 above, the Court considers it appropriate to first examine the investigation into the circumstances of H. Movsisyan's death carried out by the domestic authorities, before turning to the question of whether the State can be held responsible for the death (see, *mutatis mutandis*, *Muradyan*, cited above, § 137; *Ayvazyan v. Armenia*, no. 56717/08, § 77, 1 June 2017; and *Ohanjanyan*, cited above, § 139).

(i) Procedural limb

121. It can be seen from the available material that three investigations (two criminal and one internal) were carried out in relation to H. Movsisyan's death. Specifically, (i) the "NKR" authorities conducted an initial criminal investigation into the matter (case no. 122007.12), (ii) there was apparently also an internal investigation conducted by the "NKR" authorities in parallel with the criminal investigation (see paragraphs 28 and 40 above), and (iii) subsequently the authorities in Armenia launched another investigation (criminal case no. 62202513) – apparently on the basis of the evidence gathered by the "NKR" authorities within the framework of criminal case no.122007.12 – and conducted a joint examination of the two cases under the former number (that is, no. 62202513 – see paragraphs 42, 43, 51 and 55 above).

122. As regards the investigation by the "NKR" authorities, the Court observes that they reacted promptly to the incident in question and opened an investigation into the matter of their own motion. In particular, the "NKR" General Prosecutor's Office instituted criminal proceedings on the

day of the incident – that is, 28 November 2012 (see paragraphs 27 and 28 above) – and the "NKR" police ordered a forensic medical examination (an autopsy) also the same day seeking to determine, among other things, the cause of the death (see paragraph 29 above). The ensuing autopsy report, which was subsequently confirmed by the report of the expert commission that carried out an additional autopsy, determined the time and the cause of death (see paragraphs 30 and 32 above).

123. As it can be seen from the subsequent decision to terminate the criminal proceedings in question (see paragraph 40 above), during the investigation the scene of the incident (that is, cell no. 8 of Shushi Detention Centre – see paragraph 27 above) was examined; H. Movsisyan's body was also examined for any injuries; statements were taken from the governor, guards and detainees of Shushi Detention Centre and from the emergency doctor who had arrived there following the emergency call (see paragraphs 33-40 above).

124. The Court observes that the investigation by the "NKR" authorities was terminated on 18 March 2013 (see paragraph 40 above), that is within less than four months after H. Movsisyan's death.

125. In those circumstances, the Court considers that the investigation by the "NKR" authorities, during which a number of investigative measures were undertaken to shed light on the circumstances of H. Movsisyan's death, was conducted with the requisite diligence and that there was no unjustified delay.

126. That being said, the Court notes that the applicant was not informed of the criminal case instituted by the "NKR" authorities at any point during the relevant proceedings (see paragraph 41 above, which refers to the applicant's request to be involved in those proceedings after she had found out about those proceedings as a result of the complaints and applications she had lodged with the authorities in relation to her son's death). As a result, the applicant had no participation whatsoever in the investigation of that criminal case. This clear deviation from the basic principles of effective investigation has remained fully unexplained.

127. Furthermore, and in so far as the adequacy and thoroughness of the investigation by the "NKR" authorities are concerned, the Court notes the following.

128. It can be seen from the decision of 18 March 2013 that at some point during the criminal investigation the "NKR" police internal security service conducted an internal investigation into the matter. The decision of 18 March 2013 does not contain any details and merely states that "no breaches had been discovered on the part of the officers of [the Prison Department of the 'NKR' police]" during the internal investigation (see paragraph 40 above). The Court has not been provided with any further information or documents in that respect.

129. The Court has not been provided with any documents relating to the investigative measures mentioned in the decision in question (such as the records of the examinations of the scene and the body, and records of witness interviews – see paragraphs 107 and 118 above). As a result, the Court is unable to carry out its own examination of the relevant evidence in the light of the findings reflected in the decision of 18 March 2013 (see paragraph 40 above). It therefore has no other choice than to carry out its assessment on the basis of the description of that evidence in that decision, bearing in mind that that description – especially as regards witness statements – merely consists of the investigator's own brief summaries of those statements and can by no means be considered to reflect the full accounts of the persons who were interviewed in relation to the incident.

130. The "NKR" General Prosecutor's Office found it established that H. Movsisyan died at around 12.50-1 a.m. on 28 November 2012 in cell no. 8 in Shushi Detention Centre as a result of hanging himself from the window bar by a bedsheet (see paragraph 40 above). Although the findings with regard to the time and the cause of the death were based on the results of the autopsy (which were confirmed by the results of the additional autopsy – see paragraph 122 above), the Court notes that the findings with regard to the circumstances of the death relied purely on the statements – as cited in the decision of 18 March 2013 (see paragraphs 34-38 and 40 above) – of the implicated detention centre officers without any thorough analysis of other evidence, including the statements of H. Movsisyan's cell-mates, reconstruction of the incident and so on. Indeed, a reconstruction of the incident would seem to be one useful means of establishing whether it would have been actually possible for H. Movsisyan to get up from his bed, take out his bedsheet, tie a knot with it and then hang himself from the window bars of the cell within six to seven minutes without any of the eight other occupants of the cell waking up.

131. Thus, the decision of 18 March 2013 (see paragraph 40 above) was based heavily on the account of the events given by senior guard M.G., who had been put in charge of, *inter alia*, the relevant cell that night together with guards S.A. and A.V. (see paragraph 34 above). Although it appears from the decision that the guards S.A. and A.V. were also questioned, the decision contains no details whatsoever of their respective statements and merely states that they gave "similar accounts of the events" (see paragraph 40 above). Notably, according to M.G.'s statement, A.V. had been taking his two-hour rest break around midnight (see paragraph 34 above), which means that the former had been patrolling the cells with S.A. when H. Movsisyan's body had allegedly been discovered at (allegedly) around 12.50 a.m. It is therefore not clear how S.A. and A.V. could have given a "similar" account of the events when the latter was stated to have been absent from the scene at the given time.

132. The decision of 18 March 2013 (see paragraph 40 above) was further based on the summaries of the statements given by A.D. (the senior inspector), who had reportedly entered cell no. 8 with M.G. (see paragraph 35 above), P.M. (the junior inspector who had reportedly administered first aid to H. Movsisyan – see paragraph 36 above), Major J.H. and the governor of Shushi Detention Centre, Captain Sa.A. (see respectively paragraphs 37 and 38 above). It also contained a summary of the statement given by S.H., H. Movsisyan's cell-mate, who had occupied the lower bunk of his bed. That statement, however – albeit important in terms of H. Movsisyan's overall state during his detention and the events which had taken place earlier on the day of the incident – did not contain anything specific with regard to the exact circumstances of H. Movsisyan's death, given that S.H. essentially stated that had not witnessed anything specific as he had been asleep (see paragraph 39 above).

133. Lastly, the impugned decision (see paragraph 40 above) states that "it was established" that H. Movsisyan was suffering from "an organic psychopathic-like disorder [and] non-adaptive decompensation with attempted suicide". However, there is nothing in that decision to suggest that any measures were undertaken to clarify whether and to what extent the administration of Shushi Detention Centre had been aware of H. Movsisyan's mental health issues and, most importantly for the purposes of the present case, of his past suicide attempt (see paragraph 10 above). There is equally nothing to suggest that any steps were taken to clarify whether, (i) in the event that they had been aware of H. Movsisyan's state of mind, the administrative authorities of the detention facility had taken any measures and precautions to diminish H. Movsisyan's opportunities to harm himself, or, (ii) in the event that they had not been so aware, to determine any potential responsibility on the part of the authorities who had placed him in detention in respect of their failure to inform those authorities of H. Movsisyan's state of mind.

134. Overall the Court finds it noteworthy that the decision of 18 March 2013 (see paragraph 40 above) does not contain any references whatsoever to important issues – including: the time and circumstances of the discovery of the body; how long it took for the officers to open the door to the cell and to free the body; the exact time when an emergency call was placed and when the ambulance arrived; the details concerning the emergency medical assistance provided by P.M.; or any other medical records concerning H. Movsisyan's state of health (including his mental health) during his stay at the detention facility in question. Instead, and in support of its findings, the decision simply lists: the summaries of the statements of some – but not all – of the questioned witnesses (see, in particular, paragraphs 131 and 132 above); the forensic medical evidence (particularly the results of the additional autopsy – see paragraphs 31 and 32 above); the records of the examination of the scene of the incident and the body; and the documents

concerning the criminal case against H. Movsisyan received from the Regional Court (see paragraph 40 above).

135. Against this background, the investigation by the "NKR" authorities in respect of criminal case no. 122007.12 (see paragraphs 28-40 above) can by no means be considered to have ascertained the circumstances surrounding H. Movsisyan's death.

136. In view of the fact that the authorities in Armenia – namely the Special Investigative Service (the "SIS") – subsequently took over criminal case no. 122007.12 and carried out a joint examination of that case and of case no. 62202513, which it had instituted on account of alleged official negligence (see paragraphs 42, 43 and 121 above), the Court will proceed to examine what steps, if any, were then undertaken within the framework of that joint investigation that could have possibly made good the aforementioned gross shortcomings of the investigation conducted by the "NKR" authorities (see paragraphs 130-134 above).

137. As regards the investigation carried out by the authorities in Armenia – namely, the SIS (see paragraph 42 above) – the Court notes the following.

138. On 28 March 2013 – that is, ten days after the adoption of the decision of 18 March 2013 whereby the "NKR" General Prosecutor's Office terminated the criminal proceedings concerning case no. 122007.12 (see paragraph 40 above) – the SIS instituted criminal case no. 62202513 on account of alleged official negligence (see paragraph 42 above). The same day the SIS took the decision to take over the examination of case no. 122007.12 and to join both cases in a single set of proceedings (to be examined under no. 62202513). The applicant was not informed of these proceedings either (see paragraph 126 above).

139. The Court has not been provided with any material relating to the investigation carried out by the SIS (see paragraph 118 above). Consequently, the only document pertaining to that investigation available to the Court is the decision to terminate it taken by the SIS on 10 December 2013 (see paragraph 55 above).

140. By contrast with the decision of 18 March 2013 (which contained at least summaries of certain witness statements and a brief description of some other evidence gathered by the "NKR" General Prosecutor's Office – see paragraphs 40 and 129 above), the decision of 10 December 2013 did not contain any description whatsoever of the evidence to which the SIS had referred to in support of its findings – including the statements of those witnesses that the decision indicated as having been interviewed (see paragraph 55 above). The decision also referred to "evidence collected in the course of the investigation" without describing and/or specifying that evidence.

141. The Court finds it particularly noteworthy that the domestic criminal courts, which had been provided with hardly any material

concerning the "evidence" gathered by the SIS (see paragraph 63 above for the precise list of the documents that were provided to them), eventually carried out a judicial review of the decision of 10 December 2013 and, as a matter of fact, upheld its findings without having at their disposal the evidence on which it had been based (see paragraphs 64 and 70 above; see also the applicant's arguments in that respect in her complaint to the Council of Justice and in her appeal, as noted, respectively, in paragraphs 65 and 66 above). Notably, there is nothing to suggest that the SIS and the General Prosecutor's Office provided any reasons for refusing to comply with several requests lodged by the domestic courts for them to produce the case-file material (see paragraphs 62, 63, 68 and 69 above).

142. Against this background, the Court cannot consider the conclusions of the investigation carried out by the SIS to be sufficiently reliable (see paragraph 135 above).

143. A further feature of the criminal proceedings in respect of the present case was the applicant's complete isolation from the investigations carried out both in the "NKR" and in Armenia. In particular, not only was the applicant not informed of the relevant proceedings in relation to the death of her son (see paragraphs 126 and 138 above) but the several requests that she lodged to be involved in those proceedings once she found out (thanks only to her own efforts – see paragraphs 41, 47 and 51 above) about their existence were turned down repeatedly for various reasons (see paragraphs 44, 48 and 50 above), until eventually the proceedings were terminated without her ever being involved in them (see, *mutatis mutandis*, *Iorga v. Moldova*, no. 12219/05, § 36, 23 March 2010). Notably, the authorities' refusals to involve the applicant in the proceedings were not supported by any references to the applicable rules of domestic criminal procedure (see paragraphs 74-76 above for a description of the relevant domestic-law provisions).

144. Furthermore, precisely on the grounds that the applicant had not been a party to the relevant proceedings (initially criminal case no. 122007.12 and then the joint investigation conducted under criminal case no. 62202513), the investigating authorities also refused her requests to be provided with the documents drawn up in the course of those proceedings – including the decisions to institute and terminate them (see paragraphs 41, 44, 52 and 53 above), obliging the applicant to seek court orders that she be provided with the documents in question (see paragraphs 54, 62, 63, 68 and 69 above). However, as stated in paragraph 141 above, the domestic criminal courts' request to the prosecution to produce the relevant material was only partially complied with – the applicant was eventually only provided with a very limited amount of material; on the basis of that material she attempted to contest the decision of 10 December 2013 (see paragraph 55 above), but to no avail (see paragraphs 64, 70 and 71 above).

145. The Court notes in this connection that in her appeals against the decision of 10 December 2013 the applicant raised a number of detailed questions in relation to the circumstances surrounding H. Movsisyan's death, such as: whether it had been possible for him to commit suicide by hanging himself from the window bars of the cell within six to seven minutes; whether H. Movsisyan had been provided with appropriate first aid after being taken out of the cell; and the origin of the injury on his right forearm discovered during the additional autopsy (see paragraphs 61 and 66 above). The domestic courts, however, summarily dismissed her arguments (see paragraphs 64 and 70 above) even though, as stated in paragraphs 141 and 144 above, they did not have the full case-file material made available to them by the prosecution.

146. In the Court's view, the persistent refusal of the investigating authorities (first the "NKR" authorities and then the SIS in Armenia) to involve the applicant in the investigation – or even to provide information about the relevant criminal proceedings – deprived her of the opportunity to safeguard her legitimate interests (see paragraph 116 above). The same also prevented any scrutiny of the investigation by the public. This finding alone would be sufficient for the Court to conclude that the authorities failed to carry out an effective investigation into the death of the applicant's son (see, for example, *Anık and Others v. Turkey*, no. 63758/00, § 77, 5 June 2007).

147. The Court, however, cannot overlook all the other matters that were pointed out earlier (see, in particular, paragraphs 129-135 and 139-141 above); in the Court's opinion, these rendered the investigation insufficient and inadequate for the purpose of establishing the circumstances of H. Movsisyan's death and any potential responsibility for his death on the part of particular individuals or the authorities (see the relevant case-law principles cited in paragraphs 113 and 115 above).

148. The foregoing considerations are sufficient to enable the Court to conclude that the investigation in respect of the present case was seriously deficient and that the respondent State thus failed to comply with its procedural obligation under Article 2 of the Convention.

149. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

(ii) Substantive limb

150. Recalling that it is not for the Court to interpret and apply the domestic legislation and to assess the lawfulness of the criminal charges brought against the applicant's son, it notes that it was the choice made by the national authorities to enforce the prison sentence imposed on the applicant's son by the Regional Court's judgment of 20 November 2012 (see paragraphs 26 and 56 above), despite his state of health (see paragraphs 12 and 13 above) and his particular vulnerability, which triggered the impugned events.

151. Where a person dies in custody, it is for the authorities to provide a satisfactory and convincing explanation. Otherwise, the State may be considered to have failed to account for the death engaging its responsibility under the substantive limb of Article 2 of the Convention (see, for example, *Çelikbilek v. Turkey*, no. 27693/95, §§ 72 and 79, 31 May 2005, and, *mutatis mutandis*, *Lapshin*, cited above, §§ 110 and 119-120; see also the case-law principles cited in paragraphs 108, 110 and 111 above).

152. The applicant's son, H. Movsisyan, was a detainee at Shushi Detention Centre in the "NKR" under the care and responsibility of the authorities when he died as a result of what was alleged to be suicide (see paragraphs 25, 27, 40 and 55 above).

153. Both in her submissions to the domestic courts (see paragraphs 61 and 66 above), and (in so far as her procedural complaint under Article 2 of the Convention was concerned – see paragraphs 104 and 106 above) in her application to the Court the applicant argued that the authorities had failed to provide a convincing explanation for her son's death.

154. At the same time, in so far as her substantive complaint under Article 2 of the Convention was concerned, the applicant emphasised the authorities' alleged failure to protect her son, who had had mental health issues and had already once attempted to commit suicide while he was under the care and control of those authorities; that failure included placing the applicant's son in an ordinary cell without any psychiatric or psychological assistance being provided to him (see paragraph 105 above).

155. According to the official version of events, H. Movsisyan hanged himself between 12.50 and 1 a.m. on 28 November 2012 in cell no. 8 in Shushi Detention Centre, in which he was housed with eight other detainees. H. Movsisyan committed suicide within a period of some six to seven minutes – between checks of the cell conducted by the guards – without any of the detainees noticing anything. He was still alive when the guards and his co-detainees discovered him, but it was not possible to save his life (see paragraphs 28, 34, 36, 39, 40 and 55 above).

156. The Court emphasises at this juncture that in the event that 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 that, as a general rule, it is for those courts to assess the evidence before them. Although 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)).

157. However, as stated in paragraph 112 above, the Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process.

158. The Court has already examined the investigations carried out by the authorities of the "NKR" and of Armenia and concluded that those were not capable of establishing the circumstances of H. Movsisyan's death and any potential responsibility for his death on the part of particular individuals or the authorities (see paragraphs 135, 142 and 147 above). Consequently, the authorities cannot be regarded as having discharged their obligation to provide a plausible explanation for the death of the applicant's son, which occurred while he was in their care (see, *mutatis mutandis*, *Muradyan*, cited above, § 155).

159. Having regard to the manner in which the authorities conducted the relevant investigations – including, among other things, the complete lack of any public scrutiny of those investigations (see paragraph 146 above) as well as the manner in which the domestic courts carried out the judicial review of their findings (see, in particular, paragraph 141 above) – the Court sees no reason to accept those findings (even with reservations) and to make its assessment based on the facts as established during those investigations (compare and contrast *Hovhannisyan and Karapetyan*, cited above, § 98; also see, *mutatis mutandis*, *Ohanjanyan*, cited above, §§ 159 and 160). The Court accordingly finds that the respondent State failed to provide a satisfactory and convincing explanation for the death of H. Movsisyan, which occurred when he was in detention within the control of the authorities (see the case-law principles cited in paragraph 110 above).

160. Having regard to its above-mentioned finding that the respondent State failed to account for the death of the applicant's son (see paragraphs 158 and 159 *in fine* above) and to the insufficiency of the material at its disposal (see paragraphs 107 and 118 above), the Court finds it unnecessary (and indeed impossible) for it to also examine the arguments put forward by the applicant in relation to her complaint about the authorities' alleged failure to protect her son's right to life (see paragraph 105 above).

161. There has accordingly been a violation of Article 2 of the Convention under its substantive limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

162. The applicant complained that there had been no possibility under domestic law for her to claim compensation from the State for the damage suffered as a result of the loss of her son. She 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."

A. Admissibility

163. The Court notes that this complaint, which is linked to the one examined above, 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

164. The applicant argued in her application that there was no legal mechanism under domestic law by which to claim compensation for the damage suffered as a result of the loss of her son, given the fact that the domestic proceedings had not led to the establishment of any individual criminal responsibility. Consequently, where a person had died while under the exclusive control of the authorities (for example, while being held in detention or while performing military service – as had been the case with her son), there was no domestic remedy by which to claim compensation for damage resulting from the State's failure to comply with its obligations under Article 2 of the Convention.

165. The Government did not make any submissions in this respect (see paragraph 107 above).

2. The Court's assessment

166. As the Court has stated on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision). The scope of the obligation under Article 13 varies, depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see, among other authorities, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 96, ECHR 2002-II, with further references).

167. In the present case, the Court has found that the respondent State failed to account for the death of the applicant's son, which occurred when he was within the exclusive control of the authorities; the respondent State

should therefore be held responsible for his death (see paragraphs 159 and 161 above). The applicant's complaints in this regard are therefore "arguable" for the purposes of Article 13 in connection with Article 2 of the Convention (see, *mutatis mutandis*, *Keenan v. the United Kingdom*, no. 27229/95, § 124, ECHR 2001-III).

168. Within the context of Article 2 of the Convention, the Court has previously held that there should be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving a breach of their rights under the Convention. Furthermore, in the event of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress (see *Paul and Audrey Edwards*, cited above, § 97, with further references).

169. In several cases involving events that occurred prior to the legislative amendments introducing the possibility to claim compensation for non-pecuniary damage from the State (see paragraph 84 above and paragraph 170 below) the Court has previously found that the lack of legal provisions making it possible to apply for compensation for the non-pecuniary damage suffered as a result of the loss of life of one's child was in breach of the requirements of Article 13 of the Convention (see the above-cited cases of *Mirzoyan*, §§ 79-83; *Hovhannisyan and Karapetyan*, §§ 146 and 147; *Dimaksyan*, §§ 113 and 114; and *Varyan*, §§ 144-46).

170. The Court observes that since the legislative amendments that entered into force on 1 November 2014 (that is to say when the applicant's appeals against the decision of 10 December 2013 were still pending before the domestic courts – see paragraphs 69-71 above) Article 17 of the Civil Code has provided for the possibility of claiming compensation for non-pecuniary damage from the State for an established violation by State or local-government bodies or their officials of the fundamental rights guaranteed under the Convention, including under Article 2 of the Convention (see paragraphs 79, 80 and 84 above).

171. These legislative amendments were already in force when the criminal proceedings in respect of the death of the applicant's son were still pending. The applicant argued, however, that because no State official had been found criminally liable, she had had no legal possibility to make use of the newly-introduced remedy (see paragraph 164 above).

172. The Court notes in that connection that the newly introduced Article 162.1 of the Civil Code does not specifically refer to the establishment of individual criminal responsibility as a pre-condition for the exercise of the right to claim compensation for non-pecuniary damage (see paragraph 80 above). It states, in particular, that a person may claim compensation for non-pecuniary damage from the State if a violation by a State or local-government body has been established by the prosecutor or by

a judicial ruling (ibid.). It is not clear, however, what type of procedure, if any, is available to the victim or the victim's family under domestic law whereby the institutional liability of State bodies can be established in respect of their failure to comply with the obligations imposed by Article 2 of the Convention.

173. The Court observes that the newly introduced Article 1087.2 § 9 of the Civil Code, which sets out the relevant procedure, provides that a claim against the State for compensation for non-pecuniary damage may be submitted to a court together with a claim seeking to establish a breach of the rights guaranteed by the Convention (see paragraph 83 above). In a previous case, however, the Court noted that in accordance with the relevant domestic judicial practice, the domestic courts required that a claim for compensation for non-pecuniary damage for a violation of a Convention right be based on a decision of the prosecuting authority or on a court ruling obtained in another set of judicial proceedings (see, in particular, *Botoyan v. Armenia*, no. 5766/17, § 121, 8 February 2022).

174. Having regard to the applicable legal provisions (see, in particular, paragraphs 80-83 above), and in the absence of any further clarifications on the matter by the parties (see paragraphs 164 and 165 above), the Court is unable to conclusively establish whether there exists (contrary to the assertion made by the applicant in her application – see paragraph 164 above) an effective mechanism for establishing any institutional liability on the part of State bodies for a breach of the rights provided under Article 2 of the Convention in the event that the relevant domestic proceedings have not ended with prosecution and/or a conviction.

175. That being said, the Court notes that it has held in a previous case that, in view of the monetary ceiling with regard to compensation in respect of non-pecuniary damage suffered as a result of a breach of the right to life prescribed by Article 1087.2 § 7 of the Civil Code (see paragraph 82 above), this compensatory remedy could not be considered as providing sufficient redress in respect of complaints under Article 2 of the Convention (see *Nana Muradyan*, cited above, §§ 109-11). Therefore, even if there existed a procedure to have the institutional responsibility of a State body established in relation to the death of the applicant's son, the amount of compensation that could be potentially awarded to her would not be capable of remedying – in compliance with the requirements of Article 13 of the Convention – the impugned state of affairs.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

177. 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

178. The applicant claimed 7,100 euros (EUR) in respect of pecuniary damage, which included funeral expenses and costs incurred in tending and improving her son's grave. She further claimed EUR 60,000 in respect of non-pecuniary damage.

179. The Government submitted that the applicant had failed to support with any documentary evidence her claim in respect of pecuniary damage. They further submitted that her claim in respect of non-pecuniary damage was excessive.

180. The Court notes that the applicant's claims in respect of pecuniary damage are not supported by any evidence. It therefore rejects these claims. At the same time, making its assessment on an equitable basis, and in view of the violations found in the present case, the Court awards the applicant EUR 50,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government's request to strike the application out of the Court's list of cases;

2. *Declares* the application admissible;

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 2 of the Convention under its substantive limb;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 9 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President