



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

FIRST SECTION

CASE OF MURADYAN v. ARMENIA

(Application no. 11275/07)

JUDGMENT

STRASBOURG

24 November 2016

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 Muradyan v. Armenia,

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

Mirjana Lazarova Trajkovska, *President*,

Ledi Bianku,

Kristina Pardalos,

Aleš Pejchal,

Armen Harutyunyan,

Pauliine Koskelo,

Tim Eicke, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 3 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 11275/07) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Armenian national, Mr Hrachya Muradyan (“the applicant”), on 12 March 2007.

2. The applicant was represented by Mr M. Shushanyan, a lawyer practising in Yerevan. The Armenian Government (“the Government”) were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. The applicant alleged, in particular, that his son, Suren Muradyan, had died as a result of ill-treatment by his superiors – three military officers – and the subsequent failure to provide him with adequate medical assistance and that the authorities had failed to carry out an effective investigation into these circumstances.

4. On 17 November 2011 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1956 and lives in Baghramyan village.

A. Suren Muradyan's illness, hospitalisation and his subsequent death

6. On 26 June 2001 Suren Muradyan was drafted into the Armenian army and assigned to military unit no. 59703 of the Nagorno Karabakh Armed Forces (hereafter, the military unit) situated in the unrecognised Nagorno Karabakh Republic (hereafter, Nagorno Karabakh). During his service he also participated in the activities of the music squad as a trumpet player.

7. From 24 or 25 July 2002 Suren Muradyan started to feel unwell. His temperature occasionally rose to 40°C, he shivered and had headaches, and suffered from nausea and loss of appetite.

8. It appears that on the next day Suren Muradyan, who remained in the barracks throughout this period, was visited by the head of the military unit's medical service, A.H. (hereafter, military unit doctor A.H.). The outcome of this visit is unclear. It further appears that on 27 July 2002, when Suren Muradyan's condition worsened, his fellow servicemen once again called A.H., who at the time was at the aid post. He refused to visit, telling them that Suren Muradyan should come to the aid post himself.

9. It further appears that later Suren Muradyan was visited by the head of the military unit's aid post, S.G. (hereafter, military unit doctor S.G.), who apparently administered anti-fever pills and gave some injections. Suren Muradyan was apparently diagnosed as having "acute respiratory illness".

10. Throughout this entire period only two entries were made in Suren Muradyan's personal medical file kept at the military unit's aid post, on 29 July and 1 August 2002, according to which Suren Muradyan was suffering from general asthenia, loss of appetite, body aches, muscle pain and high fever. Anti-fever medicine was prescribed, such as analgin and paracetamol.

11. On 3 August 2002 at 6.30 p.m. Suren Muradyan, whose condition had deteriorated, was taken to the military hospital of Mekhakavan (Nagorno Karabakh) by military unit doctor S.G. At the time of admission Suren Muradyan complained of general asthenia, nausea, fever and shivering. As a preliminary diagnosis "malaria" was indicated. The acting head of the infection unit of the hospital, I.M. (hereafter, hospital doctor I.M.), was assigned as his doctor in charge.

12. At 6.45 p.m. Suren Muradyan underwent a preliminary examination. His temperature was 38.5°C and his general condition was considered to be of medium gravity. He believed himself to have been ill for the past week with periodic rises of temperature and shivering fits. His lungs were checked and abdomen palpated. Upon palpation, the left side of his abdomen caused him pain, while the right side caused only light pain. In conclusion it was noted that Suren Muradyan was to undergo close

observation of his temperature and a parasitological examination, taking into account that he was serving in a malaria hotbed and had preliminary clinical signs of malaria. Anti-fever medicine and vitamins were prescribed and he was put on a drip.

13. On 4 August 2002 at 11 a.m. Suren Muradyan's general condition was considered relatively satisfactory and his temperature was 37.2°C. He had no shivering fits.

14. At 3.30 p.m. Suren Muradyan started shivering and his temperature rose to 39.8°C. A general blood test and a parasitological examination were assigned, and a blood sample was taken for examination.

15. At 7.40 p.m. Suren Muradyan's condition worsened. He was conscious and agitated. He vomited, complained of nausea and abdominal pains and was pale and breathing heavily. According to the medical orderly, Suren Muradyan fell down after returning from the lavatory. While being examined, he lost consciousness and his pulse disappeared. A resuscitation specialist was urgently called.

16. At 7.45 p.m. the resuscitation specialist registered Suren Muradyan's clinical death and started resuscitation therapy.

17. At 9.15 p.m., after the resuscitation therapy proved ineffective, Suren Muradyan's biological death was registered. According to the results of the parasitological test, which became known on the same day, no trace of malaria was discovered in Suren Muradyan's blood sample.

B. Investigation by the Hadrut Garrison Military Prosecutor's Office of Nagorno Karabakh

1. Preliminary medical conclusions and institution of criminal proceedings

18. On 5 August 2002 investigator G. of the Hadrut Garrison Military Prosecutor's Office of Nagorno Karabakh ordered a post-mortem examination of Suren Muradyan's body to be conducted by a forensic medical expert in Yerevan, Armenia. The expert was asked to determine the time and cause of death, the existence of any external injuries, their nature, method of infliction and possible link with the death. The above-mentioned blood sample was also presented to the expert for a malaria test.

19. On the same day the investigator conducted an external examination of Suren Muradyan's body. He then took a statement from a senior nurse from the hospital reception who submitted that Suren Muradyan, upon his arrival at the hospital, was feeling so unwell that he could hardly speak and asked to lie down. After he told hospital doctor I.M. that he had been feeling this way for the last eight days, I.M. angrily asked military unit doctor S.G., who had accompanied Suren Muradyan to the hospital, why he had been

brought to the hospital so belatedly. The nurse further confirmed that Suren Muradyan had been brought to the hospital with suspected malaria.

20. On 6 August 2002 forensic medical expert M.B. started the post-mortem examination, including an autopsy, of Suren Muradyan's body and on the same day sent a telegram to investigator G., saying that Suren Muradyan had died as a result of acute internal bleeding caused by a ruptured spleen resulting from an internal blunt injury to the left side of the abdomen involving old and new bruises.

21. On the same day the investigator decided, taking into account that Suren Muradyan had been subjected to ill-treatment, to institute criminal proceedings no. 91204602 under Article 105 § 2 of the old Criminal Code of Armenia (intentional infliction of grave bodily harm resulting in the victim's death).

2. The results of the post-mortem examination and other investigative measures

22. On 7 August 2002 at least six servicemen of the military unit were questioned as witnesses. According to their statements, on 21 July 2002 a group of servicemen of the military unit, including Suren Muradyan, had been taken to the town of Martuni (Nagorno Karabakh) in order to participate in a comedy contest organised between teams from different military units. The group was accompanied by lieutenant V.G. and captain D.H. (hereafter, officers V.G. and D.H.). After the contest, the servicemen had been taken to a post office, outside which an argument had erupted between officers V.G. and D.H. on one side and Suren Muradyan on the other. Officer V.G. claimed that a watch that Suren Muradyan was wearing belonged to him and had been lost some days before, during a table tennis match. Officers V.G. and D.H. had both started swearing at Suren Muradyan. Officer V.G. had then grabbed Suren Muradyan's hand and removed the watch. Suren Muradyan had explained that he had borrowed the watch from a fellow serviceman, whose name he did not know, to wear at the comedy contest. Officers V.G. and D.H. did not believe him and gave him a deadline to reveal the identity of that person. They further claimed that a second watch had been lost and ordered Suren Muradyan to find and bring it within the same deadline. Officer D.H. had threatened that, if he failed to do so, he would get into trouble. After the incident the group had walked to the bus to return to the military unit. Suren Muradyan and officers V.G. and D.H. had walked apart, calmly discussing something.

In reply to the investigator's question, the servicemen stated that neither V.G. nor D.H. had hit Suren Muradyan during the argument. They further stated that they had heard later from Suren Muradyan that during the following days he had been taken on several occasions by officers V.G. and D.H. to the office of lieutenant colonel K.Z., the acting commander of the

military unit, who was also its deputy commander (hereafter, officer K.Z.). There he had been given a deadline to comply with their demands. Officer K.Z. had threatened that, if he failed to do so, he would get into trouble and would be punished. From 24-25 July 2002 Suren Muradyan had started to feel unwell and stayed in bed. A couple of times he had been visited by military unit doctors A.H. and S.G. On 2 August a group of servicemen of the military unit had travelled to the town of Stepanakert (Nagorno Karabakh) to participate in another round of the contest. Suren Muradyan had gone along but could not participate as he felt very unwell. The group had returned to the military unit from Stepanakert late at night and on the following day Suren Muradyan had been taken to hospital.

In reply to the investigator's question, the servicemen stated that they were unaware if Suren Muradyan had been beaten or had been involved in a fight.

23. On the same date two other servicemen of the military unit, K.E. and G.M., were questioned. Serviceman K.E. stated that he had been present during the table tennis match in question, while serviceman G.M. stated that he was the person who had lent the watch to Suren Muradyan. On 23 or 24 July 2002 (according to serviceman G.M.) or 25 July 2002 (according to serviceman K.E.) all three of them had been taken several times by officers V.G. and D.H. to officer K.Z.'s office in the headquarters, where they were asked about the watches. There they had been given a deadline until 6 p.m. to find and bring the second watch. When they had returned at 6 p.m., Suren Muradyan and serviceman K.E. had been ordered to enter first, while serviceman G.M. had entered after they went out. According to serviceman G.M., they had been given two more days, while according to serviceman K.E., they had been given until Saturday (27 July) morning to find the second watch. Serviceman K.E. further stated that on 27 July he had been temporarily transferred to a different location for works and was no longer involved in this story. He added that when he and Suren Muradyan had been together in the office nobody had touched them.

24. On 9 and 10 August 2002 respectively the investigator took statements from officers D.H. and V.G. in their capacity of witnesses, who recounted the events that had taken place on 21 July 2002 in Martuni, including the argument between them and Suren Muradyan near the post office. Officer V.G. stated, *inter alia*, that Suren Muradyan had voluntarily removed and handed the watch to him. Officer D.H. stated, *inter alia*, that he had met Suren Muradyan on the next morning in front of the headquarters and had given him a three-day deadline to find and bring the second watch. Both officers further stated that following the expiry of the three-day deadline they had taken Suren Muradyan and serviceman K.E. to the office of officer K.Z. who had had a talk with them in private.

No questions were posed by the investigator to officer D.H., while officer V.G. was asked several questions about the argument of 21 July

2002. Officer V.G. admitted swearing at Suren Muradyan, as well as briefly shaking and pulling on his hand, but denied hitting him and could not remember whether he or officer D.H. had slapped him.

25. On 11 August 2002 the investigator questioned officer D.H. as a witness, posing a number of questions about the argument of 21 July 2002. The investigator further asked for information on the follow-up meetings, to which officer D.H. confirmed his earlier statement, adding that he had not heard any noise coming from officer K.Z.'s office while waiting outside.

26. On the same date serviceman K.E. was questioned again. He added to his previous statement that officer K.Z. had sworn at them but had not hit them, when he and Suren Muradyan were in his office.

27. On 12 August 2002 officers D.H. and V.G. were questioned again and asked further questions about the argument of 21 July 2002. Officer D.H. was further asked, *inter alia*, whether he had had personal motives in summoning Suren Muradyan so often to the headquarters, as well as why no entry had been made in Suren Muradyan's medical file until 3 August 2002, if he had asked for medical help already on 25 July 2002.

28. On 17 August 2002 the investigator took a statement from officer K.Z. in his capacity as a witness. Officer K.Z. confirmed that he had summoned Suren Muradyan and serviceman K.E. to his office for a talk in connection with the lost watches. During their talk Suren Muradyan had been allowed to go and fetch serviceman G.M. He had then had a talk with all three of them, releasing G.M. first and ordering the other two to find and bring the second watch. Officer K.Z. further stated that on 29 July 2002 he had again summoned Suren Muradyan and serviceman K.E. but the latter had come alone since Suren Muradyan was unwell. He had then ordered serviceman K.E. to fetch Suren Muradyan. When the latter came, he had asked what was wrong with him and why he was staying in the barracks, to which Suren Muradyan had replied that he had a fever and was taking treatment prescribed by the doctor. He had then given them one week to find the second watch.

The investigator posed two questions to officer K.Z.: (a) whether he had beaten, slapped or sworn at Suren Muradyan or serviceman K.E. when they were in his office, which officer K.Z. denied, and (b) whether he was alone when he met with them, to which officer K.Z. replied that he had met them only in his office.

29. On 2 September 2002 the applicant was granted victim status.

30. On 11 September 2002 the post-mortem examination was completed and its results were sent to the Hadrut Garrison Military Prosecutor's Office. The relevant parts of forensic medical expert M.B.'s conclusions read as follows:

“External examination of the corpse. ... Injuries: There is an abrasion measuring 0.8 x 0.6 cm on the right side of the forehead, which is located lower than the surrounding skin and has a dark red surface. ...

Internal examination of the corpse. ... In the thickness of the muscles in the area of the left side of the abdomen, in the projection of the spleen, bruising measuring 10 x 9 cm was discovered...

The blood sample taken from Suren Muradyan at the hospital was sent to the Ministry of Defence of Armenia and the National Security Service of Armenia for a bacteriological examination...

The following reply, dated 21 August 2002, was received from military unit no. 74252 of the Ministry of Defence of Armenia on 28 August 2002 ... 'three-day-old malaria agents ... were found as a result of a bacteriological examination under a microscope slide of Suren Muradyan's blood smear taken at the hospital'. According to the results of the forensic histological examination ... dated 11 September 2002 ... 'Forensic histological conclusion: ... old and new bruises to soft tissues in the area of the left side of the abdomen; internal bruising of the spleen'.

Forensic medical diagnosis. A closed blunt injury to the abdomen, old and new bruises to soft tissues and muscles in the area of the left side of the abdomen, enlarged spleen..., spleen rupture and bruising, ... Acute internal bleeding. Malaria. An abrasion on the right side of the forehead...

Conclusions.

...

2. Suren Muradyan's death was caused by acute internal bleeding resulting from the rupture of the deformed and enlarged spleen, accompanied by a closed and diffuse abdominal injury and by old and new bruises in the area of the left side of the abdomen.

3. The following injuries were identified as a result of the forensic medical examination of Suren Muradyan's corpse: old and new bruises to soft tissues and muscles in the area of the left side of the abdomen, spleen rupture and bruising ... [and] an abrasion on the right side of the forehead. ... Of the above-mentioned bodily injuries the old and new bruises to soft tissues and muscles in the area of the left side of the abdomen [and] spleen rupture and bruising ... were inflicted by blunt objects or tools having a limited surface; judging by the nature of the old and new bruises to soft tissues and muscles in the area of the left side of the abdomen it can be said that the old bruises are more than about 8-10 days old, while the new bruising is about 1-2 days old. The closed and diffuse abdominal injury accompanied by spleen rupture and acute internal bleeding is considered a grave bodily injury posing threat to life and has a direct causal link with [Suren Muradyan's] death. The abrasion on the right side of the forehead was inflicted while alive by a blunt object having a limited surface and is considered a minor bodily injury...

4. As indicated above, the death occurred more than 8-10 days after the infliction of the main injuries (the above-mentioned old bruising in the area of the left side of the abdomen, in all probability accompanied by an initial sub-capsular rupture of the spleen and absorbent haemorrhage). As regards the abrasion on the right side of the forehead and the new bruise, these were inflicted 1-2 days before death.

...

12. It follows from the reply received from Laboratory no. 3 of the Ministry of Defence of Armenia that three-day-old malaria agents were discovered in the blood sample [taken from Suren Muradyan at the military hospital].

13. ... A. Suren Muradyan's spleen was enlarged and deformed as a result of malaria.

B. C. As indicated above, the initial closed and blunt abdominal injury, accompanied by the old bruising in the area of the left side of the abdomen, in all probability led to the sub-capsular rupture of the spleen with concentration of blood, which is also indirectly evidenced by the absorbent haemorrhage in the spleen disclosed by the forensic histological examination; the spleen capsule erupted as a result of the increase in concentration of blood in the following days, which led to acute bleeding. This process may last days but it is impossible to determine the exact number of days.

D. It appears from the medical file that on 4 August 2002 at 7.40 p.m. Suren Muradyan fell down in the hospital's lavatory; taking into account the above-mentioned circumstances concerning the spleen rupture and acute internal bleeding, the spleen rupture could not have been caused by the fall in the hospital's lavatory."

31. On 12 September 2002 officers V.G. and D.H. were arrested under Article 251 of the old Criminal Code of Armenia (insult of a subordinate by a violent act by a superior).

32. On 13 September 2002 they were charged under the same Article and were detained. This decision stated that on 21 July 2002 at around 6.30 p.m. near Martuni post office, officers V.G. and D.H., being public officials and suspecting Suren Muradyan of theft, instead of applying disciplinary sanctions, attacked him in front of about fifteen servicemen by swearing at him, thereby humiliating him. It further stated that officer V.G., having pulled at Suren Muradyan, caused him physical pain.

33. On 14 September 2002 officers V.G. and D.H. were questioned as suspects and both confirmed that on 21 July 2002 they had pulled and sworn at Suren Muradyan near the Martuni post office. They were asked questions about the swear words used.

34. On 25 September 2002 investigator G. decided to assign a panel forensic medical examination in order to determine the scope of responsibility of the military unit and the hospital doctors for Suren Muradyan's death, including the timeliness and accuracy of the diagnosis and the treatment provided, the timeliness of his transfer to hospital and whether they could have detected the injuries revealed by the post-mortem examination. This decision stated, *inter alia*, that on 21 July 2002 Suren Muradyan had had an argument with two officers of the military unit, V.G. and D.H., after which, starting from 24 July, his health had deteriorated.

35. On 6 October 2002 a serviceman of the military unit's music squad was questioned. He stated that Suren Muradyan had had no arguments or scuffles with anybody. On the way back from Martuni, Suren Muradyan had told him that he had got into trouble because of this watch and that "now they would frame him". However, Suren Muradyan had never told him or others that he had been ill-treated, even in reply to a direct question

following his visit to officer K.Z.'s office. The serviceman confirmed that Suren Muradyan had started to feel unwell from 24 July 2002. He further stated that he and others had wiped sweat from Suren Muradyan's forehead, belly, back and legs during his illness but had not noticed any traces of injuries. On the second day of his illness, military unit doctor A.H. had come to visit him and concluded that he had caught cold. Several days later military unit doctor S.G. had come, said that Suren Muradyan had flu and given him some pills. On the last days Suren Muradyan had been very ill: he had lost a lot of weight and staggered when walking, so they had to accompany him to the toilets.

36. On 6 November 2002 the experts conducting the panel forensic medical examination produced their opinion. According to its conclusions, it had been possible for the doctors of the military unit not to discover the injuries which led to Suren Muradyan's death since there were no visible traces of injuries on the surface of the skin. The enlarged spleen might have been caused by malaria and the injury sustained by Suren Muradyan might have brought about the sub-capsular bleeding which later led to a ruptured spleen and acute internal bleeding. Referring to the fact that no malaria agents were discovered in Suren Muradyan's blood sample by the parasitological examination of 4 August 2002, the experts attributed this to the fact that agents could be detected at the stage of the disease when the sick person experiences shivering and fever accompanied by high temperature. The opinion lastly stated that, given that no malaria agents had been discovered, not specific but symptomatic treatment had to be prescribed, and in fact had been provided in full.

37. On 7 November 2002 serviceman G.M. was questioned again and stated that both Suren Muradyan and serviceman K.E. had denied having been beaten or sworn at during their first visit to officer K.Z.'s office. When he and Suren Muradyan visited the office the next morning, officer K.Z. had said to him "Why did you enter? You go out, you have received your punishment". In reply to the investigator's question, serviceman G.M. stated that he had not noticed any bruises or signs of pain on Suren Muradyan when he came out of the office five minutes later. He could not say what officer K.Z. meant by his statement and whether it meant that now it was Suren Muradyan's turn to be punished.

38. On 2 December 2002 the applicant lodged a complaint with the Military Prosecutor of Armenia, arguing in detail that his son had died as a result of a beating by officers V.G., D.H., K.Z. and another officer, B., as well as the failure of the doctors of the military unit, S.G. and A.H., to provide medical assistance. He claimed that serviceman G.M. had admitted during questioning, in his presence, that he had been badly ill-treated by officer K.Z. in his office. Suren Muradyan had been next to enter that office, alone, and the following morning he had been so unwell in bed that he was not able to return to officer K.Z.'s office. The applicant alleged that the

beating which resulted in Suren Muradyan's ruptured spleen and subsequent death had taken place at that moment. He further claimed that the doctors had intentionally refused to provide medical assistance and to transfer Suren Muradyan to hospital in order to cover up the abuse. The applicant requested the Military Prosecutor to identify those responsible for his son's death.

39. On 10 December 2002 investigator G. decided to order an additional forensic medical examination. In addition to the questions asked earlier, the experts were requested to determine whether the military unit and the hospital doctors could have detected the spleen enlargement and what they were supposed to do if it had been detected, as well as whether Suren Muradyan's spleen could have ruptured earlier and been followed by slow bleeding.

40. On 11 December 2002 the forensic medical experts produced an additional opinion. According to its conclusions, since on 29 July 2002 Suren Muradyan had not complained of abdominal pains, the doctors of the military unit had no reason to suspect malaria and diagnosed his condition as an acute respiratory illness. The opinion further stated that usually a doctor was obliged to deliver a diagnosis after having carefully examined the patient. Suren Muradyan's medical file contained his complaints but no indication of results of any such examination. If on 29 July 2002 Suren Muradyan's spleen had already been enlarged, it would have been possible to detect this through palpation and to transfer him to hospital. The same was possible at the hospital. As regards the sub-capsular rupture of the spleen, it was almost impossible to detect. Had the spleen rupture been detected and the spleen removed by surgery, Suren Muradyan's life could have been saved. Lastly, the injuries discovered by the post-mortem examination were not detected by the doctors since there were no visible traces of injuries on the outer part of the skin.

41. On 15 December 2002 a serviceman, K.B., who had been undergoing treatment at the hospital when Suren Muradyan was admitted, was questioned. He stated that he had become acquainted with Suren Muradyan upon the latter's admission to hospital. Suren Muradyan had looked very ill and told him that he had spent the last eight days in the barracks. K.B. further stated that he had not noticed any bruises on Suren Muradyan's forehead or any fights or arguments during his two-day stay in hospital.

42. On 4 February 2003 the criminal case against officers V.G. and D.H. concerning the charges of insult was disjoined from the main criminal proceedings concerning Suren Muradyan's death since there was no causal link between the two. A new number was assigned to the disjoined case (no. 91200703).

43. During the investigation a number of other unrelated offences committed by officers V.G. and D.H. were revealed. As regards, in

particular, officer D.H., the investigation revealed that in April 2002 he had kicked a soldier for sleeping on watch duty and broken the soldier's arm. Officer D.H. was charged with inflicting bodily injuries.

44. On 28 February 2003 the bill of indictment concerning the disjoined case was submitted to the Syunik Regional Court.

45. By a letter of 19 March 2003 the Minister of Defence of Nagorno Karabakh filed a motion with the Syunik Regional Court requesting that a non-custodial sentence be imposed on officer D.H. and that he stay under the control of the military unit command, taking into account his long and diligent service in the armed forces, the report/request of the command of formation no. 42009 and the fact that he regretted his actions and that his actions posed no danger to society.

46. On 12 April 2003 forensic medical expert M.B. was questioned. He confirmed that Suren Muradyan had already been ill with malaria when he sustained the old bruises in the area of the left side of the abdomen. He stated that the fact that Suren Muradyan was ill might have accelerated the transformation of the sub-capsular rupture into a full rupture and internal bleeding. However, even a healthy spleen could suffer a sub-capsular rupture from a blow, later leading to a full rupture. The transformation of the sub-capsular rupture into full rupture could happen with or without external influence. The expert lastly confirmed that the new bruises found on Suren Muradyan's body and the abrasion to the left side of his forehead could have been caused by his falling on the hospital floor not long before his death.

47. On 18 April 2003 serviceman G.M. was questioned again and confirmed that no sound of blows or other loud noise could be heard when he had waited for Suren Muradyan outside the office. Later he had heard rumours that Suren Muradyan had been beaten by officers V.G. and D.H. Serviceman G.M. further explained that he had inquired with Suren Muradyan and serviceman K.E. whether they had been beaten, because officer K.Z. had hit him a few times while in the office. He lastly requested that no criminal proceedings be brought against officer K.Z. because he had hit him just two or three times on his buttocks.

48. On 24 April 2003 the applicant contacted the investigating authority, willing to provide additional information. On the next day he was questioned and stated that in October-November 2002 he had heard from a former colleague of his, who in mid-August 2002 had visited a relative serving in the same military unit, that he had heard one of the officers saying that a serviceman matching Suren Muradyan's description had recently died as a result of a beating by officer V.G.

49. On 26 April 2003 both the former colleague and his relative serving in the military unit were questioned and confirmed this information but could not remember the name of the officer in question. On 4 October 2003

the former colleague's relative was once again questioned and stated that the officer's name was V.M.

50. On 27 April 2003 several more persons were questioned, including military unit doctors S.G. and A.H., hospital doctor I.M., and an orderly of the hospital, H.G.

51. Military unit doctor S.G. stated, *inter alia*, that a few months before, during a conversation with serviceman G.M., he had asked the latter to confirm the rumours that Suren Muradyan had been beaten by officers V.G. and D.H., to which serviceman G.M. replied that he was not aware of that. S.G. was further asked questions regarding the medical assistance provided to Suren Muradyan at the military unit.

52. Military unit doctor A.H. claimed that he had also examined Suren Muradyan once, including palpating his abdomen, but no abnormalities were found or bruises and injuries revealed. He was further asked to explain as to why he had refused to visit Suren Muradyan after being called by the latter's fellow serviceman.

53. Hospital doctor I.M. stated that it was he who had initially diagnosed Suren Muradyan as having malaria, because of the symptoms and the fact that he was serving in a malaria hotbed. Suren Muradyan had not told him, except on the day he died, that he had been beaten or that he had fallen, and since there were no symptoms he did not put such questions to the patient. However, on the last day, when he rushed to provide medical aid to Suren Muradyan, the latter, when asked what had happened, told him "I have pain in my belly, I feel very ill, I fell not long ago in the ward".

54. Hospital orderly H.G. stated that on 4 August 2002 at 7 p.m. Suren Muradyan had told him that shortly before he had felt giddy and fallen down. About half an hour later he had called a doctor because Suren Muradyan's condition had worsened and then, after Suren Muradyan lost consciousness, he summoned the resuscitation specialist, who came and started resuscitation procedures.

3. The court proceedings into the disjoined case (criminal case no. 91200703)

55. On an unspecified date the court proceedings into the disjoined criminal case against officers V.G. and D.H. on account of insult commenced at the Syunik Regional Court of Armenia, sitting in Stepanakert (Nagorno Karabakh). It appears that officer V.G. pleaded guilty and admitted that he had sworn at and pushed Suren Muradyan and pulled the watch off his wrist, but said that he had not hit him.

56. On 5 May 2003 the Syunik Regional Court found officers V.G. and D.H. guilty as charged and sentenced them to one year's imprisonment.

57. On 2 June 2003 officer V.G. was released on parole.

C. Investigation by the Military Prosecutor's Office of Armenia

1. Investigative measures carried out by the Military Prosecutor's Office of Armenia and other relevant developments

58. On 10 July 2003 the investigation into Suren Muradyan's death (criminal case no. 91204602) was taken over by the Military Prosecutor's Office of Armenia and assigned to investigator H.

59. On 12 September 2003 the applicant lodged a complaint with the Military Prosecutor's Office of Armenia, claiming that the investigation was flawed and had failed to reveal those responsible for his son's death, despite the fact that there was sufficient evidence that he had died as a result of ill-treatment by the three officers, V.G., D.H. and K.Z.

60. On 1 October 2003 military unit doctor A.H. was questioned again and confirmed his earlier statement (see paragraph 52 above).

61. On 6 October 2003 serviceman G.M. was questioned again and added to his previous statements that on the day of their first visit to officer K.Z.'s office, K.Z. had hit him two or three times with a wooden pole on his buttocks when he was alone in his office.

62. On 11 November 2003 a confrontation was held between serviceman K.E. and another serviceman, during which K.E. stated that on the day of their first visit to officer K.Z.'s office they had also gone to officer D.H.'s office where the latter had started screaming at them because of the stolen watch. Officer K.Z. also threatened to undress them in front of the entire battalion if they failed to find the second watch.

63. On 5 December 2003 serviceman G.M. was questioned again and described in greater detail how officer K.Z. had taken a wooden pole from behind a safe, told him to lean against the wall and hit him three times on his buttocks.

64. On 14 April 2004 officer V.G. was questioned and stated that he had not provided the full story in his previous testimony and that during the argument between him and Suren Muradyan on 21 July 2002 he had grabbed the latter's left wrist with his right hand and started shaking it briskly, during which Suren Muradyan's fist had touched the left side of his abdomen in the area of the spleen. Being very angry, he had not noticed whether Suren Muradyan's facial expression had changed as a result of the blow, but he had not displayed any unusual movements or convulsions. Officer V.G. further denied hitting Suren Muradyan.

65. On 19 April 2004 the investigator questioned two of the servicemen, A.P. and D.M., who had previously testified on 7 August 2002 and asked them to describe how officer V.G. had pulled on Suren Muradyan's hand on 21 July 2002. According to A.P., officer V.G. had grabbed Suren Muradyan's left forearm, while according to D.M. – the left wrist, and had pulled forcefully. Suren Muradyan had tried unsuccessfully to free his arm. When he was pulling back his arm, officer V.G.'s hand was also

being pulled back with it. Officer V.G. had then removed the watch with his other hand, while still holding on to Suren Muradyan with his right hand.

66. On 2 August 2004 the applicant was questioned and stated that some days earlier he had bumped into a number of servicemen who had told him about the circumstances of Suren Muradyan's murder and the identities of those who had ill-treated him. According to them, Suren Muradyan had told them that he had been summoned to the headquarters where he had been badly beaten by officers V.G., D.H. and K.Z., as a result of which he had lost consciousness and been taken back to the barracks by couriers. The applicant requested that these allegations be investigated.

67. On 9 August 2004 the Military Prosecutor of Armenia addressed a letter to the Head of the National Security Service of Nagorno Karabakh, informing him of the applicant's allegations and requesting that those circumstances be clarified.

68. On 17 and 19 August 2004 the investigator questioned officers D.H. and V.G. respectively. Both denied the above allegations. Officer V.G. added that the only time that there had been any use of force in respect of Suren Muradyan was during the incident of 21 July 2002, when he had shaken Suren Muradyan's hand briskly, during which his hand had touched Suren Muradyan's abdomen. In reply to the investigator's question as to why he had earlier stated that it had been Suren Muradyan's hand that touched the abdomen while now he was stating that it had been his hand, officer V.G. stated that, since he was holding Suren Muradyan's hand in his hand, both his and Suren Muradyan's hands had touched the abdomen.

69. On 2 September 2004 the investigator decided to assign an additional panel forensic medical examination and pose further questions to the medical experts, taking into account that it had been established that during the argument of 21 July 2002 officer V.G. had accidentally hit Suren Muradyan in the left side of the abdomen. It had been further established that on 4 August 2002 Suren Muradyan had fallen at the hospital, with his left hand under his belly.

70. On 16 September 2004 forensic medical expert M.B. was questioned again. He stated that the sub-capsular rupture and the bruising to the soft tissues had been caused by direct contact with a blunt object. If, during that blow, officer V.G. had held in his hand the deceased's forearm or part of his wrist, those parts must have touched the front wall of the deceased's abdomen during the blow, while the injuries, namely the rupture and the bruising to the soft tissues of the abdominal area, were caused by direct contact with officer V.G.'s fist; contact between the deceased's wrist or forearm with that area could not have caused the sub-capsular rupture. If the deceased's wrist or forearm or fist touched the abdomen, then officer V.G.'s fist must have undoubtedly touched the front wall of the abdomen.

71. On 12 October 2004 the panel of experts produced their opinion in reply to the questions posed by the investigator's decision of 2 September

2004. As regards the responsibility of the military unit and the hospital doctors, the experts found that they had failed to reach a timely and accurate diagnosis and to provide adequate medical treatment. The opinion further included, *inter alia*, the following questions and answers:

(1) Question: what impact could the blow sustained by Suren Muradyan during the argument of 21 July 2002 have had on his health? Could it have caused spleen rupture, internal bruising and subsequently death? Answer: as a result of the blow sustained during the argument of 21 July 2002, Suren Muradyan sustained bruises to muscles and a sub-capsular rupture of his spleen which later led to his death.

(2) Question: was he ill with malaria on 21 July 2002 and why were no malaria agents found in his blood sample at the military hospital, if three-day-old malaria agents were found in the same sample following a later test? Answer: on 21 July 2002 Suren Muradyan was suffering from malaria.

(3) Question: what impact would the above-mentioned blow have had on his health if he had not been ill with malaria? Answer: depending on the strength, location and nature of the blow, it was possible not to sustain a sub-capsular rupture, but even a light blow could cause spleen rupture to an unhealthy and deformed spleen.

(4) Question: could he have sustained bruises to soft tissues in the area of the left side of his abdomen by falling at the hospital on 4 August 2002? Answer: the new bruising to soft tissues in the area of the left side of Suren Muradyan's abdomen could have been caused by his fall at the hospital.

(5) Question: exactly when did his spleen rupture occur, and would his life have been unequivocally saved, if diagnosis had been made in a timely manner? Answer: the sub-capsular rupture of Suren Muradyan's spleen occurred on 21 July 2002, while the second rupture occurred on 4 August 2002 at 7.10 p.m., as a result of which he most likely lost consciousness and fell down. Had the internal bleeding been diagnosed in a timely manner, it might have been possible to save Suren Muradyan's life.

72. On 21 October 2004 forensic medical expert K.H., who had contributed to the opinions of 6 November and 11 December 2002 and 12 October 2004, was questioned. Asked about the discrepancies between the findings in those opinions, expert K.H. stated that it must have been an automatic mistake and admitted that she had not read one of the opinions before signing it. She further stated that the reason why no trace of malaria had been discovered at the Mekhakavan hospital could have been due to lack of proper equipment. She lastly stated that an enlarged spleen in a person suffering from malaria would become hard and filled with blood, the capsule would be strained and become more sensitive. Even a light blow might cause a sub-capsular rupture.

73. On 4 November 2004 hospital doctor I.M. was questioned and added to his previous statement that the pain upon palpation of Suren Muradyan's abdomen made him suspect that it was connected with malaria. In reply to the investigator's question as to why he had not administered anti-malaria treatment if he had been convinced of that diagnosis, I.M. replied that he had had to wait for the result of the parasitological test. Furthermore, often an initial negative result of such test did not mean that a patient had no malaria and this could be confirmed only after a third negative result.

74. On 5 November 2004 the forensic medical expert who had presided over the panel which had produced the opinion of 12 October 2004 was questioned and confirmed the responsibility of both the military unit and the hospital doctors.

75. On the same date the Head of the National Security Service of Nagorno Karabakh sent a letter, marked "secret", to the Military Prosecutor of Armenia. The relevant parts of the letter read as follows:

"To your [letter] of 9 August 2004: ...

The following has been disclosed as a result of the activities aimed at revealing the circumstances, which are of interest, concerning the death on 4 August 2002 of private [Suren Muradyan], a compulsory military serviceman of military unit no. 59703.

For the purpose of clarifying the names of those servicemen who, after the well-known beating of [Suren Muradyan], accompanied him to the barracks or were eyewitnesses, a list of staff of the military unit's music squad, who have been demobilised and are Armenian nationals, was retrieved. At present only the deputy commander of the military unit, [officer K.Z.] (since the incident he has become uncommunicative and avoids discussing this matter even with his close relatives), continues to serve in the said military unit, while [officer D.H.] has possibly moved to [another] military unit, while [officer V.G.] has been demobilised."

76. On 15 November 2004 the Minister of Defence of Nagorno Karabakh filed a motion with the Military Prosecutor of Armenia, asking for officer K.Z. not to be prosecuted, taking into account his positive characteristics, his impeccable service in the armed forces and his active participation in the struggle for the existence of Nagorno Karabakh, as well as the report/request of the command of formation no. 42009.

77. On 17 November 2004 charges were brought against hospital doctor I.M. under Article 375 § 2 of the new Criminal Code of Armenia (abuse of authority or public position, accidentally resulting in grave consequences) on the ground that he had failed to provide adequate treatment to Suren Muradyan.

78. On 19 November 2004 the Military Prosecutor of Armenia lodged an application with the Court of Cassation seeking to re-open the proceedings concerning the criminal case against officer V.G. on the basis of a newly established circumstance. The Military Prosecutor submitted that all possible hypotheses had been verified and it had been established that, apart from the incident of 21 July 2002, Suren Muradyan had no other conflicts

and had good relations with fellow servicemen and officers. It followed from the statements made by officer V.G. on 14 April and 19 August 2004, in which he admitted that during the incident of 21 July 2002 both his and Suren Muradyan's hands had touched the left side of the victim's body, that the sub-capsular rupture of Suren Muradyan's spleen was a result of that incident.

79. On the same date the applicant lodged a challenge with the General Prosecutor's Office against the Military Prosecutor and other employees of the Military Prosecutor's Office, arguing in detail that they had failed to conduct an adequate investigation into his son's death.

80. On 18 and 29 November 2004 charges were brought against military unit doctors A.H. and S.G. under Article 375 § 2 of the new Criminal Code of Armenia.

81. On 24 November 2004 the Senior Assistant to the General Prosecutor decided to dismiss the applicant's challenge of 19 November 2004. This decision stated, *inter alia*:

“On 10 July 2003 the criminal case [concerning Suren Muradyan's death] was transferred from the Hadrut Garrison Military Prosecutor's Office to the investigative division of the Military Prosecutor's Office of Armenia, where following an investigation it was disclosed that from 22 to 25 July 2002 [officers D.H. and V.G.] had on several occasions summoned [Suren Muradyan] to the headquarters of the military unit, demanded the lost watch and, having received no positive reply, had taken him to [the acting commander of the military unit, K.Z.], who in his office had hit [Suren Muradyan], as well as serviceman [K.E.], who had been called to the office in connection with the same matter, with a wooden pole.

According to the materials of the case, a number of witnesses testified that during the argument of 21 July 2002 nobody had hit [Suren Muradyan]. In the course of additional questioning [officer V.G.] alleged that during the argument of 21 July 2002 he, infuriated by [Suren Muradyan's] behaviour, had grabbed his hand and shaken it briskly, during which his hand had touched [Suren Muradyan] in the area of the spleen.”

The decision further referred to the expert opinion of 12 October 2004 and specifically its finding that Suren Muradyan had sustained bruises to muscles and a sub-capsular rupture of his spleen as a result of the blow sustained during the argument of 21 July 2002. The Senior Assistant to the General Prosecutor concluded that the arguments raised by the applicant had been examined in the course of a thorough and objective investigation by the Military Prosecutor's Office and his challenge was therefore unfounded.

82. On 10 December 2004 the Court of Cassation quashed the judgment of the Syunik Regional Court of 5 May 2003 in its part concerning officer V.G. (see paragraph 56 above) and remitted the case for further investigation.

83. On 14 December 2004 the investigator, finding that there were discrepancies between previous expert opinions, and also upon the request

of one of the accused, namely military hospital doctor I.M., decided to assign a new panel forensic medical examination.

84. On 24 December 2004 the criminal case against officer V.G. on charges of insult was re-joined to the main criminal proceedings concerning Suren Muradyan's death.

85. On 28 December 2004 new charges were brought against officer V.G. under Article 375 § 2 (abuse of authority or public position, accidentally resulting in grave consequences). It appears that he was detained on the same day.

86. On 25 January 2005 the panel of experts produced their opinion in reply to the questions posed by the investigator's decision of 14 December 2004, confirming their earlier findings regarding the responsibility of the military unit and the hospital doctors. The opinion also included, *inter alia*, the following question and answer:

Question: what was the intensity of the blow sustained by Suren Muradyan, considering that it caused bruising of deep muscles?
Answer: it was impossible to determine the exact intensity of the blow in the absence of relevant medical criteria, although it could be asserted that the blow had been of certain intensity.

87. On 18 February 2005 the applicant lodged a complaint with the General Prosecutor's Office similar to that of 12 September 2003. He also offered to bring witnesses who, according to him, could tell the truth, namely that on 24 July 2002 his son had been beaten by officers V.G., D.H. and K.Z., as a result of which he had suffered the fatal injury. The witnesses could further confirm that his son had lost consciousness and that military unit doctor A.H. had provided first aid and was therefore aware of the ill-treatment.

88. On 21 and 22 February and 5 and 10 March 2005 the investigator posed a number of questions, suggested by the applicant, to the four forensic medical experts who had produced the opinion of 25 January 2005. Three of the experts were unable to answer the applicant's question about whether it was possible for his son, who on 21 July 2002 had allegedly been ill with malaria and had an enlarged spleen, not to complain, have fever or shiver and to feel well. The fourth expert stated that his son might have experienced dull pain.

In reply to the applicant's question about whether it was possible for his son, whose spleen was enlarged and already ruptured, not to complain for three days of any pain, to feel healthy, participate in exercises and to play the trumpet, two of the experts were unable to provide an answer, the third expert stated that it was only a sub-capsular rupture and not a full one, and the fourth expert stated that it was possible for him not to complain if the sub-capsular rupture had been small, and possible to complain if had been big.

In reply to the applicant's question about how his son would have reacted (screaming, losing consciousness, and so on) when he sustained the injury resulting in extensive bruising and a sub-capsular spleen rupture, three of the experts stated that different people felt and expressed pain differently. The fourth expert stated that it was equally possible for him to feel or not to feel pain. One of the experts also added that it was only a sub-capsular rupture and the spleen was not a painful organ.

In reply to the applicant's question about whether the bruising would have been visible from the outside, one expert referred to the findings in the opinion, two experts said "not necessarily", while the fourth expert stated that it would have been visible, although external bruises healed faster than internal ones.

In reply to the applicant's question concerning the responsibility of the military hospital doctor, all experts stated that the doctor had no reason to suspect internal bleeding because the patient had failed to inform him about the injury, there were no visible external traces and the clinical signs were similar to those of malaria. The hospital doctor had carried out all the examinations and tests which he was obliged to in such circumstances. The applicant alleged that each time the investigator had posed this question to an expert, he would first invite him to leave the room. The answers given to this question by all four experts in his absence were almost identical.

89. On 25 March 2005 the investigator decided to discontinue criminal proceedings against military hospital doctor I.M. for lack of *corpus delicti*, finding that I.M. had carried out all possible examinations which he was able and obliged to perform in the circumstances. This conclusion was reached on the basis of the above statements of the four forensic medical experts.

90. On 29 March 2005 the Military Prosecutor of Armenia decided not to prosecute officer K.Z. for beating serviceman G.M. This decision stated that officer K.Z., suspecting Suren Muradyan and serviceman K.E. of lying about the lost watch, had started swearing at them and demanding that they find it. Thereafter he had ordered them to leave his office and called serviceman G.M. When the latter had told the same story as the two other servicemen, officer K.Z. had become furious, started swearing and ordered serviceman G.M. to turn towards the wall, whereupon he had taken a 120 cm long pole and twice hit serviceman G.M. on his buttocks. Serviceman G.M. had started crying and after leaving the office he had asked Suren Muradyan and serviceman K.E. whether they had also been beaten, to which both of them replied "no". The decision concluded that it was not necessary to prosecute officer K.Z. because he had no criminal record, was known to be of good character and regretted his actions. The motion of the Ministry of Defence of Nagorno Karabakh asking not to prosecute him was also taken into account.

91. On an unspecified date the applicant submitted to the investigating authority a photograph of his son allegedly performing on stage at the comedy contest in Stepanakert on 2 August 2002, arguing that this proved that his son was not yet that ill on that day. The version that his son felt ill and could not perform had been made up on purpose in order to justify the deterioration of his condition and his transfer to hospital. In reality, upon arriving at the military unit from Stepanakert, he had once again been beaten by the officers on the night from 2 to 3 August 2002, which had caused the spleen rupture. This was also confirmed by the new bruising to soft tissues in the area of the left side of the abdomen revealed during the autopsy.

2. Completion of the investigation

92. On 15 April 2005 the bill of indictment was finalised and on 16 April 2005 approved by the Military Prosecutor of Armenia. Its relevant parts stated as follows:

“A number of hypotheses have been checked in the course of the investigation, which have been investigated in an objective manner. Thus, because of a watch found on [Suren Muradyan’s] wrist [officers D.H. and V.G.] invited him to the headquarters on several occasions and presented him to the acting commander of the military unit, [K.Z.], who in an attempt to clarify the above-mentioned question, subjected to beating [serviceman G.M. He] did not, however, beat or hit [Suren Muradyan].

...

It has been confirmed by the investigation that on 21 July 2002, as [officer V.G.] noticed on Suren Muradyan’s wrist his younger brother’s stolen watch, he argued with him, grabbed his hand, started swearing and shook it briskly, during which he hit Suren Muradyan’s abdomen resulting in a sub-capsular rupture of his spleen. Thereafter from 24 July 2002 Suren Muradyan’s health started to deteriorate while in the military unit. On 25 July 2002 Suren Muradyan was visited by [military unit doctor A.H.,] who failed to diagnose Suren Muradyan’s real illness and to make any entries [in the registers] and, having given several paracetamol pills, left. When on 27 July 2002 [A.H.] was called to provide medical assistance to Suren Muradyan, he refused to come and provide assistance and said that the patient should be brought to the aid post. Thereafter Suren Muradyan’s fellow servicemen called [military unit doctor S.G.]. The latter came, also failed to diagnose Suren Muradyan’s real illness and, having given some anti-fever injections and several paracetamol pills, left. Hence, Suren Muradyan remained ill in the military unit until 3 August 2002, which was also in violation of Order no. 586 of the Minister of Defence of 29 May 2000, namely Suren Muradyan was transferred to hospital later than the prescribed 7 days, as a result of which it was impossible to save [his] life.

During the investigation at his additional questioning as a witness on 14 April and 19 August 2004 [officer V.G.] regretted his actions and stated that he had not provided the full story in his previous statements and added that during the incident of 21 July 2002 both his and Suren Muradyan’s hands had hit the left side of the latter’s abdomen.

...

The investigation carried out has confirmed that the sub-capsular rupture of Suren Muradyan's spleen resulted from [officer V.G.'s] actions during the incident of 21 July 2002."

93. All three defendants, namely military officer V.G. and military unit doctors A.H. and S.G., were accused under Article 375 § 2 of the CC in connection with the above acts.

D. The court proceedings against officer V.G. and military unit doctors A.H. and S.G. concerning Suren Muradyan's death

94. On 21 December 2005 the Syunik Regional Court, sitting in the town of Goris (Armenia), found officer V.G. guilty as charged and sentenced him to five years' imprisonment, minus the one year and twenty-four days already spent in detention, finding it to be confirmed that on 21 July 2002 officer V.G., during an argument with Suren Muradyan about a stolen watch, shook briskly Suren Muradyan's hand, and in doing so his hand touched the left side of Suren Muradyan's abdomen causing a sub-capsular rupture of the spleen. As regards military unit doctors A.H. and S.G., the Regional Court re-qualified the charges from Article 375 § 2 to Article 376 § 2 of the CC (official negligence resulting in grave consequences) and, applying Article 64 of the CC, sentenced each of them to a fine of 200,000 Armenian drams (AMD). The Regional Court also granted the civil claim lodged by the applicant and ordered officer V.G. to pay 1,000 United States dollars (USD) and military unit doctors A.H. and S.G. to pay AMD 200,000 each as reimbursement of funeral costs and legal costs incurred by the applicant.

95. On 4 January 2006 the applicant lodged an appeal. He argued in detail that there was sufficient evidence suggesting that his son had been harassed by a number of high-ranking officers, including V.G., D.H. and K.Z., in the period between 21 and 24 July 2002 and that the fatal injury had been inflicted by them on 24 July. The applicant referred, in particular, to a witness statement by his son's fellow serviceman, according to which his son had woken up in the night of 24 July and complained that he was feeling ill. The same followed from the findings of the post-mortem examination, according to which the initial bruising had been inflicted 8-10 days before death. Furthermore, 24 July was the last day of the deadline fixed by the officers. The investigating authority was deliberately ignoring this evidence and had failed to clarify what had happened on that day, while the proceedings had been perfunctory and not objective and aimed to lead the case into an impasse and not to punish the murderers. The applicant further referred to the fact that serviceman G.M. had admitted that he had been ill-treated by officer K.Z. in his office. It followed from the decision of the General Prosecutor's Office of 24 November 2004 that the same had happened to his son. The accused, officer V.G., had also admitted in court

that he had been outside officer K.Z.'s office when the latter ill-treated Suren Muradyan and that he had heard him scream. Furthermore, no explanation had been given for the second bruising and abrasion on the forehead sustained by his son 1-2 days before his death. The applicant further complained that the Regional Court had failed to clarify what was meant by the "well-known beating of Suren Muradyan" referred to in the letter of the Head of the National Security Service of Nagorno Karabakh, as well as the circumstances and perpetrators of this beating. Lastly, as regards the military unit doctors, the applicant complained that the re-qualification of the charge had been inaccurate and the sentence imposed too lenient.

96. Appeals against the judgment of 21 December 2005 were lodged also by officer V.G. and the Prosecutor, who sought harsher penalties.

97. On 20 March 2006 the Criminal Court of Appeal commenced the appeal proceedings. Officer V.G. admitted before the Court of Appeal that either his or Suren Muradyan's hand had possibly touched the latter's abdomen during the argument of 21 July 2002, but argued that Suren Muradyan's spleen could not have ruptured as a result of that contact.

98. In the course of the proceedings, upon the applicant's request, two witnesses, serviceman K.B. (see paragraph 41 above) and hospital orderly H.G. (see paragraph 54 above), were summoned and examined in court.

K.B. stated that Suren Muradyan had told him at the hospital that he had been called to the headquarters by officer D.H. on the day when the latter was on duty and beaten by him, officers V.G. and K.Z. and another officer, N., because of the watch. The officers had pushed him to the ground and started kicking him, while officer K.Z. hit him with a wooden pole. They had demanded that he bring the watch or its value in cash. The most active beaters were officers V.G. and K.Z. He had been beaten so badly that the headquarters couriers had had to carry him back to the barracks. On the next day he was called again by officer K.Z. He had been unable to go but K.Z. had insisted. Thereafter he had remained in the barracks for eight days.

H.G. stated that upon admission to hospital Suren Muradyan was very agitated and kept uttering swear words directed at officers V.G., D.H. and K.Z. He then said that he had been beaten by officers V.G. and K.Z.

Both K.B. and H.G. stated that they had been afraid to tell the truth at their questioning during the investigation as they had been military servicemen at that time. They had been demobilised now, had nothing to be afraid of and were telling the truth. K.B. added that Suren Muradyan had asked him not to tell this to anyone in order not to get into trouble.

99. Officer K.Z. was also summoned and examined in court. He denied having ill-treated Suren Muradyan, but admitted that he had hit serviceman G.M. for having stolen the first watch.

100. The Court of Appeal sent an inquiry to the National Security Service of Nagorno Karabakh asking for clarification of the content of the letter of 5 November 2004.

101. By a letter of 27 April 2006 the Head of the National Security Service of Nagorno Karabakh informed the court that the expression “well-known beating” had been used merely as a brief description of the incident and had no other meaning.

102. The applicant submitted once again before the Court of Appeal that his son had died as a result of ill-treatment by officers V.G., D.H. and K.Z., while the military unit doctors had failed to provide adequate medical assistance.

103. On 20 June 2006 the Criminal Court of Appeal delivered its judgment, upholding that of the Regional Court in its part concerning the guilt of officer V.G. and military unit doctors A.H. and S.G. However, it decided to modify the penalty in respect of A.H. and S.G., imposing a suspended sentence of three and a half and three years’ imprisonment respectively, with two years’ and one and a half years’ probation period respectively. The Court of Appeal decided also to modify the judgment in its part concerning the applicant’s civil claim, by annulling the award of AMD 200,000 to be paid by both A.H. and S.G., on the ground that they had already paid those amounts to the applicant voluntarily.

104. As regards the statements of former servicemen K.B. and H.G., as well as the applicant’s arguments, the Court of Appeal found that these were not sufficient grounds for bringing harsher charges against officer V.G. or for remitting the case for further investigation with the aim of bringing criminal proceedings against officers D.H. and K.Z. Firstly, the court was required by law to examine the case only in respect of the accused and within the scope of the charge against him. Secondly, the law prescribed only two grounds for remitting a case for further investigation, namely (1) if the investigating authority had committed a substantial violation of procedural law or (2) upon the Prosecutor’s request, if there were grounds for harsher prosecution or prosecution on a different factual basis. No such request had been filed by the Prosecutor, while the investigating authority had carried out a thorough, full and objective investigation by examining a number of hypotheses, none of which confirmed that Suren Muradyan had been ill-treated. The Court of Appeal further noted that both K.B. and H.G. had been questioned on numerous occasions during the investigation but had never made such statements in the past. Moreover, they cited as their source of information the late Suren Muradyan. The Court of Appeal lastly referred to the letter of the Head of the National Security Service of Nagorno Karabakh of 27 April 2006.

105. On 29 June 2006 the applicant lodged an appeal on points of law, raising similar arguments.

106. The Prosecutor also lodged an appeal on points of law, seeking that the case be remitted for fresh examination in its part concerning the military unit doctors on the ground that the sentence imposed was too lenient.

107. On 4 August 2006 the Court of Cassation decided to dismiss the applicant's appeal and to grant that of the Prosecutor, finding that the sentence imposed on military unit doctors A.H. and S.G. had not been proportionate to the gravity of the offence and remitting that part of the case for fresh examination.

108. On 15 September 2006 the applicant received a copy of this decision.

109. On 26 September 2006 the Criminal Court of Appeal examined the case anew in its part concerning military unit doctors A.H. and S.G. and decided to sentence them to four years and three and a half years' imprisonment respectively. At the same time the Court of Appeal decided to grant amnesty and to release them from serving their sentence.

II. RELEVANT DOMESTIC LAW

A. The old Criminal Code (no longer in force since 1 August 2003)

110. Article 105 § 2 provided at the material time that intentional infliction of grave bodily harm resulting in the victim's death shall be punishable by imprisonment from five to ten years.

111. Article 251 provided at the material time that insult of a subordinate by a violent act by a superior shall be punishable by imprisonment from six months to five years.

B. The new Criminal Code (in force since 1 August 2003)

112. Article 64 provides that if there are exceptional circumstances related to the motives and purposes of the offence, the role of the offender, his behaviour during and after the offence and other circumstances, which substantially minimise the danger posed by the offence to society, as well as if a member of a criminal group actively assists in disclosure of an offence committed by that group, a lower penalty than the minimum penalty prescribed by this Code or a more lenient penalty may be imposed.

113. Article 375 § 2 provides that abuse of authority or public position, exceeding public authority, as well as omission by a superior or public official, if such acts were committed for selfish ends, personal interest or interests of a group and which accidentally resulted in grave consequences, shall be punishable by imprisonment from three to eight years.

114. Article 376 § 2 provides that official negligence by a superior or public official, if accidentally resulting in grave consequences, shall be punishable by imprisonment from three to six years.

C. The Code of Criminal Procedure (in force since 1999)

115. Article 98 provides that any person participating in criminal proceedings, who may be able to provide information important for the disclosure of the crime and identification of the perpetrator, as a result of which his life, health, property or rights and lawful interests, or those of his family members, close relatives or other close persons may be endangered, is entitled to protection. Protection shall be provided by the authority dealing with the case. The authority dealing with the case, having discovered that a person needs protection, on the basis of that person's written application or of its own motion shall adopt a decision to take a protective measure which is subject to immediate implementation. Article 98.1 lists, among others, changing the place of service as a protective measure.

D. Order no. 586 of the Minister of Defence of Armenia of 29 May 2000 Concerning the Time-Limits for Examination and Treatment of Sick Servicemen at Military Unit Aid Posts, Hospitals and Civil Medical Institutions

116. According to Paragraph 1, the time-limit for treatment of sick servicemen at military unit aid posts must not exceed seven days.

III. OTHER RELEVANT MATERIALS

A. Agreement on Military Cooperation between the Government of Armenia and the Government of the Nagorno Karabakh Republic (signed on 25 June 1994)

117. According to Article 4, the parties agreed that, within the framework of the present Agreement, citizens of Armenia and the Nagorno Karabakh Republic liable for call-up are entitled to perform regular military service, upon their consent, in either the Nagorno Karabakh Republic or Armenia. Having performed regular military service in either of the two states, a person is considered exempt from performing regular military service in the country of his nationality.

118. According to Article 5, if a military crime is committed by Armenian nationals performing regular military service in the Nagorno Karabakh Republic, the criminal proceedings and their trial shall be conducted on the territory of Armenia by the Armenian authorities, in accordance with a procedure prescribed by the Armenian law.

B. Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011: CommDH(2011)12, 9 May 2011

119. The relevant extracts from the Report provide:

“III. Human rights situation in the army

121. In his report on the visit to Armenia conducted in 2007, the Commissioner tackled the issue of the human rights situation in the army. In his recommendations, he called for thorough investigation of murders and acts of ill-treatment as well as the punishment of those responsible. He also recommended that civic control over armed forces be further promoted. ...

1. Acts of violence within the army

123. Acts of violence and various forms of ill-treatment, as well as non-combat death cases, have been recorded a number of times in the Armenian army since its creation. Civil society actors and human rights activists mentioned to the Commissioner that the prevailing customs within the military, which have reportedly favoured impunity among certain military commanders, corruption and penetration of criminal activities in the army – combined with the prevalence of sub-standard living conditions, including lack of adequate food and clothing – have contributed to the occurrence of serious human rights violations in the armed forces that are not related to military operations.

...

Conclusions and recommendations

137. The Commissioner is gravely concerned over the cases of non-combat deaths, torture and ill treatment occurring in the Armenian army. He urges the Armenian authorities to fully acknowledge this phenomenon and intensify their efforts, through prompt and effective investigations, to put an end to the impunity of perpetrators and responsible commanders. The Commissioner believes that there is a need to exercise strong and firm political will of the country’s top leadership to eliminate all such practices, which not only violate human rights but also dishonour the military.

138. The Commissioner understands that conscripts and officers who are victim of abuses are afraid to report them and very rarely use independent complaints mechanisms such as the Ombudsman and courts. The Commissioner urges the Armenian authorities and the military establishment to secure free access to independent complaints mechanisms (outside the military hierarchy and institutions) without fear for retaliation against the complainants.”

THE LAW

I. THE COURT'S JURISDICTION

A. The parties' submissions

120. The Government did not explicitly contest the Court's jurisdiction over the events which took place in Nagorno Karabakh prior to the transfer of the investigation on 10 July 2003 to the Military Prosecutor's Office of Armenia. They made, however, reference to Articles 4 and 5 of the Agreement on Military Cooperation between the Governments of Armenia and Nagorno Karabakh (see paragraphs 117 and 118 above).

121. The applicant claimed that the Agreement was not a public document and therefore lacked legal force. In any event, Armenia had *de facto* jurisdiction over the territory of Nagorno Karabakh which was evidenced by the fact that the case had been tried according to Armenian law, that part of the investigation had been carried out by the Armenian authorities and that the Syunik Regional Court, an Armenian court, held its hearings in Stepanakert, the capital of Nagorno Karabakh. Furthermore, his son had never given his consent to perform compulsory military service in Nagorno Karabakh, as envisaged by the said Agreement. In reality, Armenian conscripts, including his son, were obliged to serve in Nagorno Karabakh if ordered to do so, which was another example of Armenia's *de facto* jurisdiction over the territory in question.

B. The Court's assessment

122. Article 1 of the Convention reads as follows:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.”

123. The Court notes that the applicant's son died while performing military service under the authority of the Nagorno Karabakh Armed Forces at a military unit situated in Nagorno Karabakh and administered by that entity. Furthermore, prior to the transfer of the investigation on 10 July 2003 to the Military Prosecutor's Office of Armenia, the investigation had been conducted by local Karabakhi authorities, namely the Hadrut Garrison Military Prosecutor's Office of Nagorno Karabakh. Even if the respondent Government did not explicitly contest the question of its jurisdiction, the Court nevertheless considers it necessary to examine whether the complaints concerning the events, which took place outside the territory of Armenia and concerned acts or omissions of the local Karabakhi authorities, can be considered to fall under the jurisdiction of the respondent Government and hence engage its responsibility under the Convention.

124. The Court notes that it has already examined this issue and found, in similar circumstances, that Armenia had jurisdiction over the events which happened in the territory of Nagorno Karabakh and the acts committed by the Karabakhi authorities (see *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, §§ 214-215, 17 March 2016). It reiterates in this respect that under its established case-law the concept of “jurisdiction” under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be engaged by acts and omissions of their authorities which produce effects outside their own territory. In conformity with the relevant principles of international law governing State responsibility, the responsibility of a Contracting Party could also arise when as a consequence of military action - whether lawful or unlawful - it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration (see *Loizidou v. Turkey* (merits), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI, and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, §§ 104-106, ECHR 2012 (extracts)).

125. The Court further stated in the case of *Cyprus v. Turkey* that, even if the *Loizidou* judgment addressed a specific complaint concerning the continuing refusal of the authorities to allow the applicant – a Greek Cypriot – access to her property situated in the territory of the Turkish Republic of Northern Cyprus (TRNC), the Court’s reasoning in that judgment was framed in terms of a broad statement of principle as regards Turkey’s general responsibility under the Convention for the policies and actions of the authorities of the TRNC. Thus, having effective overall control over northern Cyprus, Turkey’s responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but should also be engaged by virtue of the acts of the local administration which survived by virtue of Turkish military and other support. It followed that, in terms of Article 1 of the Convention, Turkey’s “jurisdiction” should be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she had ratified, and that violations of those rights were imputable to Turkey (see *Cyprus v. Turkey* [GC], no. 25781/94, § 77, ECHR 2001-IV).

126. Turning to the situation in Nagorno Karabakh, the Court notes that in its leading case on the matter – *Chiragov and Others v. Armenia* – it made a similar statement of principle as regards Armenia’s general responsibility under the Convention. The Court found it to be established that from the early days of the Nagorno Karabakh conflict, Armenia had had a significant and decisive influence over Nagorno Karabakh, that the two entities were highly integrated in virtually all important matters and that this

situation persisted to this day. In other words, Nagorno Karabakh and its administration survived by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercised effective control over Nagorno Karabakh and the surrounding territories. The Court concluded that the matters complained of came within the jurisdiction of Armenia for the purposes of Article 1 of the Convention (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 169-186, 16 June 2015). Thus, the Court considers that, by exercising effective control over Nagorno Karabakh and the surrounding territories, Armenia is under an obligation to secure in that area the rights and freedoms set out in the Convention and its responsibility under the Convention cannot be confined to the acts of its own soldiers or officials operating in Nagorno Karabakh but is also engaged by virtue of the acts of the local administration which survives by virtue of Armenian military and other support (see *Zalyan and Others*, cited above, §§ 214-215, as well as, *mutatis mutandis*, *Djavit An v. Turkey*, no. 20652/92, §§ 18-23, ECHR 2003-III; and *Amer v. Turkey*, no. 25720/02, §§ 47-49, 13 January 2009).

127. The Court therefore concludes that the matters complained of in the present application fall within the jurisdiction of Armenia within the meaning of Article 1 of the Convention and therefore entail the respondent State's responsibility under the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

128. The applicant complained that his son had died as a result of ill-treatment and the subsequent failure to provide him with adequate and timely medical assistance and that the authorities had failed to carry out an effective investigation into these circumstances. He relied on Article 2 of the Convention, which, in so far as relevant, reads as follows:

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

A. Admissibility

129. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

130. The applicant submitted that the authorities had failed to protect his son's life while he had been under their care as a soldier performing

compulsory military service. He had sustained a fatal injury to his spleen involving old and new bruises which proved that he had been ill-treated by the military officers at different periods of time. The authorities, however, had failed to carry out an effective investigation into these circumstances. In fact, they did everything not to disclose the true reasons. In order to shield the perpetrators, they put forward a false account of his son's fatal injury, namely that it had been sustained as a result of an accidental light blow, and utilised the entire investigative machinery, including the medical expertise, to make that account look plausible, despite having numerous pieces of disproving evidence. The diagnosis of malaria, which had allegedly contributed to his son's death, had similarly been faked. The applicant lastly submitted that the effectiveness of the investigation was to be judged not by the quantity of the investigative measures taken but by the quality of such measures.

131. The Government submitted that the State had complied with its obligation to secure the applicant's son's right to life by having in place laws which allow combating and punishing offences against a person. Furthermore, the authorities had conducted an effective investigation: criminal proceedings had been instituted and a number of investigative measures had been ordered and taken, such as an examination of the body by the investigator, a post-mortem examination by a forensic medical expert, numerous other forensic medical examinations, as well as numerous interviews and confrontations. After a thorough and careful investigation three persons had been prosecuted and convicted under the relevant Articles of the Criminal Code, including officer V.G. and two military unit doctors. It had been established that the injury sustained by the applicant's son had been accidentally inflicted by officer V.G. during an argument on 21 July 2002. This conclusion was confirmed by the medical experts. There had also been a thorough investigation into the possible involvement of officer K.Z., but no proof of his guilt had been found. The Government lastly insisted that the applicant's son had an enlarged spleen as a result of malaria, which was one of the factors that led to his death, and contested the applicant's arguments that the malaria diagnosis had been falsified.

2. The Court's assessment

(a) General principles

132. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention - indeed one which, in peacetime, admits of no derogation under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to

make its safeguards practical and effective (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324, and *Makaratzis v. Greece* [GC], no. 50385/99, § 56, ECHR 2004-XI). Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 208, ECHR 2011 (extracts)).

133. The Court has previously emphasised – in relation to persons taken into custody – that such persons are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to provide a plausible explanation for any injuries or deaths suffered in custody, failing which a clear issue arises under Articles 2 or 3 of the Convention (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII, and *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010). Similarly to persons in custody, conscripts are entirely in the hands of the State and any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities. Therefore, the State is also under an obligation to provide a satisfactory and convincing explanation for any injuries or deaths occurring in the army (see *Beker v. Turkey*, no. 27866/03, §§ 42-43, 24 March 2009; *Mosendz v. Ukraine*, no. 52013/08, § 92, 17 January 2013; *Baklanov v. Ukraine*, no. 44425/08, § 67, 24 October 2013; *Marina Alekseyeva v. Russia*, no. 22490/05, § 121, 19 December 2013; and *Metin Gültekin and Others v. Turkey*, no. 17081/06, § 33, 6 October 2015).

134. The Court notes that the obligation to protect the right to life, as well as to duly account for its loss, requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances, even where the presumed perpetrator of the fatal attack is not a State agent (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015). In order to be effective, an investigation must firstly be adequate, that is it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 113, ECHR 2005-VII, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172).

135. The obligation to conduct an effective investigation is an obligation not of result but of means: the authorities must take the reasonable measures available to them to secure evidence concerning the incident at issue, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see *Nachova and Others*, cited above, § 113, and *Mustafa Tunç and*

Fecire Tunç, cited above, §§ 173-174). However, the effectiveness of an investigation cannot be gauged simply on the basis of the number of reports made, witnesses questioned or other investigative measures taken (see *Anguelova v. Bulgaria*, no. 38361/97, § 144, ECHR 2002-IV, and *Pankov v. Bulgaria*, no. 12773/03, § 51, 7 October 2010). The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible and is liable to fall foul of the required measure of effectiveness (see *Ramsahai and Others v. the Netherlands [GC]*, no. 52391/99, § 321, ECHR 2007-II, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175).

136. The question of whether an investigation has been sufficiently effective must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case (see *Mustafa Tunç and Fecire Tunç*, cited above, § 176 and 181). It is lastly to be specified that these requirements are not confined to the preliminary investigation stage, but extend to the trial stage, which must also satisfy the requirements of Article 2 (see *Mosendz*, cited above, § 94).

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

(i) Procedural limb

137. In order to establish whether the State satisfactorily discharged its obligation to account for Suren Muradyan's death, the Court must first have regard to the investigation carried out by the authorities and the conclusions reached by them. It notes in this respect that it is undisputed between the parties that Suren Muradyan died as a result of an injury to his spleen which initially resulted in its sub-capsular rupture and later in a full rupture and acute bleeding. It appears that medical negligence may also have contributed to his death. As regards the fatal injury, the authorities carried out an official investigation into this fact and concluded that it had been sustained on 21 July 2002 when officer V.G., during a public argument with Suren Muradyan, briskly shook his hand, as a result of which their hands – apparently accidentally – hit or touched the left side of Suren Muradyan's abdomen and caused the sub-capsular rupture of the spleen. The Court, however, has doubts about this explanation of Suren Muradyan's fatal injury in view of a number of serious flaws in the conduct of the investigation that led to those conclusions.

138. The Court notes in this connection that the authorities at first appear to have reacted promptly to Suren Muradyan's death. On the day following his death, namely 5 August 2002, the investigator ordered a

post-mortem examination, including an autopsy, to be carried out by a forensic medical expert. The expert started the post-mortem examination on the next day and on that day informed the investigator that Suren Muradyan had died as a result of an injury to his spleen involving old and new bruises. The investigator then decided to institute criminal proceedings under the relevant Article of the Criminal Code on account of intentional infliction of grave bodily harm resulting in the victim's death, taking into account that "Suren Muradyan had been subjected to ill-treatment" (see paragraphs 20 and 21 above). However, it does not appear that the investigating authority made genuine attempts to pursue actively this line of inquiry and to give a proper assessment to the relevant circumstances, despite having a number of concrete leads. The Court, in particular, notes the following.

139. First, as early as on 7 August 2002 the investigating authority, having interviewed a number of witnesses, obtained evidence suggesting that Suren Muradyan had had a conflict with two officers of the same military unit, V.G. and D.H. The conflict had started with an argument on 21 July 2002 because of an allegedly stolen watch and Suren Muradyan had been given a deadline to comply with certain demands and had allegedly been threatened that he "would get into trouble" and "would be punished" if he failed to do so. Furthermore, a few days later (around 23-25 July 2002), apparently when the deadline expired, he was taken by those officers on several occasions to the headquarters, including officer K.Z.'s office, where the threats allegedly continued. This also appears to be the period when Suren Muradyan started to feel unwell (see paragraphs 7, 22 and 23 above). Despite all this evidence which pointed to possible wrongdoing on the part of officers D.H., V.G. and K.Z., they were not immediately isolated and were not questioned until two, three and ten days later respectively (see paragraphs 24 and 28 above). The Court notes that, while there is no evidence to suggest that these officers colluded with each other, the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others*, cited above, § 330).

140. Second, as regards the actual interviews conducted with those officers, the investigating authority, while having eyewitness evidence suggesting that there had been no obvious acts of physical abuse in respect of Suren Muradyan during the argument of 21 July 2002, nevertheless chose to focus its attention primarily on that argument without making any serious attempts to clarify the circumstances of Suren Muradyan's subsequent visits to the headquarters. No detailed questions were posed to the officers in an attempt to inquire about any possible ill-treatment to which Suren Muradyan might have been subjected during those visits. The denial of any ill-treatment on their part was readily accepted without further inquiries, while in some case the interviews were largely confined to the

taking of written statements where the officers were simply asked to recount the events of 21 July 2002 (see paragraphs 24, 25, 27, 28, 33 and 68 above).

141. Third, there were two other servicemen, K.E. and G.M., involved in the same events and summoned to the headquarters together with Suren Muradyan, who could have potentially provided crucial information to the investigation. It is true that both of them, when questioned as witnesses, denied having any knowledge of Suren Muradyan having been subjected to ill-treatment during the visits to the headquarters (see paragraphs 23, 26, 37 and 47 above). However, it cannot be ruled out that their testimony was constrained and they did not speak out for fear of reprisals, given that those implicated were their superiors at the military unit where they continued to perform their military service, including such high-ranking officers as the acting commander of the unit, who was also its deputy commander. The investigating authority did not, however, consider taking any appropriate measures to address this possible problem, such as, for example, applying a protective measure under Articles 98 and 98.1 of the Code of Criminal Procedure by changing the place of service of the said witnesses and thereby guaranteeing their safety from any possible reprisals (see paragraph 115 above).

142. Fourth, the Court notes the ambiguity in the medical expert M.B.'s findings concerning the date of the first and main bruising sustained by Suren Muradyan which was crucial to the investigation. In particular, the expert concluded that this bruising had been sustained "more than about 8-10 days" before death (see paragraph 30 above). Thus, on the one hand, the expert indicated a specific timeframe, namely 8-10 days, but, on the other hand, appears to have suggested that the bruising could have been sustained at any given point before that timeframe, thereby providing a very ambiguous answer to a crucial question and significantly diminishing the probative value of this evidence. The investigating authority failed to clarify this issue, including what the medical expert meant by "*more* than about 8-10 days" (emphasis added), as well as the reasons why it had not been possible to indicate a more specific timeframe for the bruising while it was possible to do so in respect of the second bruising sustained in the same area (1-2 days before death).

143. Fifth, no forensic examination was ever conducted of the premises, including officer K.Z.'s office, where Suren Muradyan was summoned following the argument of 21 July 2002.

144. The Court further notes that the ill-treatment hypothesis was not actively pursued, even after the authorities had obtained evidence suggesting that at least two of the three implicated officers, namely D.H. and K.Z., had been involved in episodes of violence (see paragraphs 38, 43, 47, 61 and 63 above). What is particularly striking is that officer K.Z. was actually implicated in inflicting violence in the context of the same story on one of the other two servicemen, G.M., who had been summoned to K.Z.'s

office together with Suren Muradyan for the same purpose. No importance was given to this fact and the authorities readily accepted the narrative in which only serviceman G.M., but not Suren Muradyan, had fallen victim to acts of violence (see paragraphs 90 and 92 above). There was no change in the course of the investigation even after two witnesses, K.B. and H.G., who had had contact with Suren Muradyan not long before his death, explicitly stated that they had been told by him that he had been ill-treated by officers V.G., D.H. and K.Z. The Court does not find the reasons for dismissing these allegations to be sufficiently convincing (see paragraph 104 above).

145. Thus, instead of addressing the above-mentioned issues and investigating thoroughly what had happened in the days following the argument of 21 July 2002 and whether the applicant's son could have fallen victim to ill-treatment, the investigation mostly focused on the argument itself even if, as already indicated above, there was no evidence suggesting that during that argument Suren Muradyan had been subjected to physical abuse of such nature and gravity which could have resulted in a life-threatening injury to his spleen. The Court notes that it was not until almost two years later that one of the implicated officers alleged that he had not previously told the whole truth and that there had actually been some accidental contact with Suren Muradyan's abdomen during the argument of 21 July 2002 (see paragraph 64 above). The investigating authority readily accepted this allegation, even if there was no objective evidence to support it, and the entire subsequent investigation, including all the medical expertise, appears to have been geared towards justifying the narrative that the first bruising and the sub-capsular rupture of the spleen had been sustained as a result of that accidental contact. The Court notes, however, that even this conclusion was reached with a number of major shortcomings.

146. First, as already indicated above, this version of events was entirely based on the testimony of one of the implicated officers, who could not be considered an objective witness and who, moreover, had made inconsistent statements in that respect throughout the criminal proceedings (see paragraphs 24, 64, 68 and 97 above).

147. Second, even if the relevant medical experts stated that the first bruising and the sub-capsular rupture of the spleen had been sustained as a result of the accidental blow inflicted by officer V.G. during the argument of 21 July 2002, the Court does not lose sight of the fact that the medical experts had been provided with only one narrative in which a single blow had been inflicted on Suren Muradyan in circumstances as alleged by officer V.G. It is therefore not surprising that the experts considered that blow to be the origin of the said injuries. This cannot, however, be interpreted as confirming the veracity of officer V.G.'s allegations or ruling out the possibility of a completely different scenario in which those injuries

had in reality been inflicted and which the investigating authority had failed to investigate properly and to present to the medical experts.

148. Third, no convincing explanation was provided for the fact that one and the same blood sample taken from Suren Muradyan at the hospital before his death was first found not to contain any malaria agents while later it was found to do so. The medical experts either provided conflicting and inconclusive explanations or failed to provide any explanation whatsoever (see paragraphs 36, 71, 72 and 73 above). It is notable that the malaria diagnosis was relied on to explain why Suren Muradyan's spleen was enlarged and deformed and to suggest that it could have erupted even from light contact.

149. Fourth, the investigating authority made no attempts to clarify whether it was medically possible for Suren Muradyan to start feeling unwell only from around 24 July 2002, if the injury to his spleen had been sustained on 21 July 2002, as well as not to show any visible signs of pain during the argument of 21 July 2002 despite allegedly sustaining an injury resulting in bruising measuring 10 x 9 cm and a sub-capsular rupture of his spleen. The answers given by the medical experts to the applicant's relevant questions do not provide for a convincing explanation (see paragraph 88 above).

150. As regards the second bruising in the area of Suren Muradyan's spleen which was sustained 1-2 days before his death, it does not appear that any meaningful attempts were made to investigate the origin of that bruising either, including its possible link to the spleen rupture. It appears that it was believed to have been sustained as a result of Suren Muradyan's fall at the hospital (see paragraph 46 and 71 above). However, such justification completely ignored the fact that the bruising in question had been found to have been sustained by Suren Muradyan 1-2 days before his death, whereas the fall at the hospital apparently happened less than two hours before his death (see paragraph 15 and 30 above). Furthermore, it is not clear on what ground the investigating authority found it to be established that Suren Muradyan's hand had been under his belly when he had fallen at the hospital (see paragraph 69 above).

151. The Court further draws attention to the letter of 5 November 2004 of the Head of the National Security Service of Nagorno Karabakh, as well as the decision of 24 November 2004 of the Senior Assistant to the General Prosecutor of Armenia. The former, which was marked "secret", referred to the "well-known beating of [Suren Muradyan]", while the latter stated that it had been disclosed by the investigation that Suren Muradyan had been beaten in officer K.Z.'s office with a wooden pole (see paragraphs 75 and 81 above). Thus, it appears from the contents of these documents that the authorities had at least sufficient evidence to believe that Suren Muradyan had been beaten, but failed or were unwilling to act on that evidence. The statement by the Head of the National Security Service of Nagorno

Karabakh does not affect this finding as no other alternative convincing explanation for his use of the phrase “well-known beating of [Suren Muradyan]” was provided (see paragraph 101 above).

152. Lastly, the Court cannot ignore the Council of Europe Human Rights Commissioner’s report containing a chapter dedicated to the human rights situation in the Armenian army, from which it appears that the issues alleged in the present application are not uncommon for the Armenian army, including various forms of ill-treatment and non-combat deaths, as well as the lack of accountability for them (see paragraph 119 above).

153. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out an effective investigation into the circumstances in which the applicant’s son had sustained his fatal injury.

154. There has accordingly been a procedural violation of Article 2 of the Convention.

(ii) Substantive limb

155. As regards the substantive limb of Article 2 of the Convention, having concluded that the investigation carried out by the authorities was not effective, the Court cannot consider the conclusions of that investigation to be sufficiently reliable and the explanation for Suren Muradyan’s fatal injury to be convincing and satisfactory. 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.

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

(iii) Medical negligence

157. Having reached the above conclusions, the Court does not find it necessary to examine separately whether medical negligence also contributed to Suren Muradyan’s death and whether there has been an effective investigation into that question.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

158. The applicant reiterated his complaints about his son’s alleged ill-treatment by officers V.G., D.H. and K.Z., the failure to provide him with adequate medical assistance and the failure of the authorities to carry out an effective investigation into his death under Articles 3 and 13 of the Convention.

159. The Government contested those arguments.

160. The Court notes that these complaints are linked to the ones examined above and must therefore likewise be declared admissible.

161. Having regard to the findings relating to Article 2 of the Convention (see paragraphs 153-156 above), the Court considers that it is not necessary to examine whether, in this case, there have also been violations of Articles 3 and 13 of the Convention (see, *mutatis mutandis*, *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 94, 22 November 2011; *Gülbahar Özer and Others v. Turkey*, no. 44125/06, § 78, 2 July 2013; and *Fanziyeva v. Russia*, no. 41675/08, § 85, 18 June 2015).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

162. Lastly, the applicant complained under Article 6 of the Convention of the alleged unfairness of the criminal proceedings concerning his son's death.

163. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

164. 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

165. The applicant claimed 85,000 euros (EUR) in respect of non-pecuniary damage.

166. The Government submitted that there had been no violation of the applicant's rights under the Convention and therefore he was not entitled to compensation. Even assuming that there had been a violation, there was no causal link between such violation and the non-pecuniary damage allegedly sustained by the applicant which, moreover, was not substantiated by any evidence.

167. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found. It therefore decides to award him EUR 50,000 in respect of non-pecuniary damage.

B. Costs and expenses

168. The applicant claimed a total of AMD 79,900 in respect of postal expenses.

169. The Government submitted that this claim was to be rejected since there had been no violation of the Convention.

170. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 165 for the proceedings before the Court.

C. Default interest

171. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Suren Muradyan's death, his alleged ill-treatment and the failure to carry out an effective investigation into his death admissible and the remainder of the application inadmissible;
2. *Holds* that there has been both a substantive and a procedural violation of Article 2 of the Convention in respect of the fatal injury sustained by the applicant's son and the investigation carried out into that fact;
3. *Holds* that there is no need to examine the complaint under Article 2 of the Convention concerning the alleged medical negligence;
4. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;
5. *Holds* that there is no need to examine the complaint under 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, the following amounts, to be converted

into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 165 (one hundred and sixty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Mirjana Lazarova Trajkovska
President