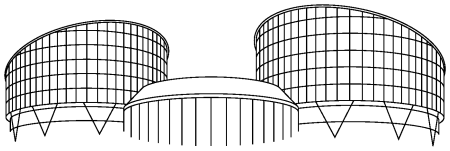

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GULYAN v. ARMENIA

(Application no. 11244/12)

JUDGMENT

STRASBOURG

20 September 2018

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 Gulyan v. Armenia,

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

Linos-Alexandre Sicilianos, *President,*
Kristina Pardalos,
Krzysztof Wojtyczek,
Ksenija Turković,
Pauliine Koskelo,
Jovan Ilievski, *judges,*
Siranush Sahakyan, ad hoc *judge,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 28 August 2018,

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

PROCEDURE

1. The case originated in an application (no. 11244/12) 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 Ashot Gulyan ("the applicant"), on 22 February 2012.

2. The applicant was represented by Ms M. Ghulyan, Mr A. Karakhanyan and Mr H. Ghukasyan, lawyers practising in Yerevan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia to the European Court of Human Rights.

3. The applicant alleged, in particular, that the death of his son in police custody had amounted to a violation of his right to life, that the authorities had failed to carry out an effective investigation into his son's death and that his son had been unlawfully and arbitrarily deprived of his liberty.

4. On 20 October 2015 the application was communicated to the Government.

5. Mr Armen Harutyunyan, the judge elected in respect of Armenia, was unable to sit in the case (Rule 28 of the Rules of Court). Accordingly, the President of the Chamber decided to appoint Mrs Siranush Sahakyan to sit as an ad hoc judge (Rule 29 § 1(a)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1942 and lives in Yerevan.

A. Death of the applicant's son

7. On 9 May 2007 at around 10.30 p.m. a certain S.V. was shot dead following an argument in front of a restaurant owned by the applicant's son, Levon Gulyan, aged 30. Later that evening a team of law-enforcement officers arrived at the crime scene, which included several police officers of the local Shengavit district police station ("the police station"), investigators of the Shengavit district prosecutor's office ("the prosecutor's office") and two officers of the Principal Department for Criminal Intelligence ("the PDCI") of the Armenian police: the deputy head of the PDCI, H.T., and the head of the Homicide Unit, G.T.

8. On 10 May 2007 at around 3-4 a.m. Levon Gulyan was taken by police officers to the police station in connection with the incident. PDCI Officers H.T. and G.T. had a talk with him for several hours, after which he was taken to the prosecutor's office, where between 11.40 a.m. and 12.55 p.m. he was questioned as a witness by the prosecutor. He was kept at the police station until around 10 p.m. Levon Gulyan stated during questioning that he had gone out of his restaurant to smoke that evening when he had noticed a group of young people having an argument. He had unsuccessfully tried to calm them down and then had gone back into the restaurant. Later, when leaving the restaurant, he had seen police cars and other vehicles and found out that someone had been fatally shot. He had not seen the murder or heard gun shots. Two employees of his restaurant, barman H.M. and waitress M.G., were also questioned. M.G. stated that Levon Gulyan had been outside the restaurant when gunshots had been heard.

9. On 11 May 2007 Levon Gulyan appeared again at the police station. The applicant alleged that Levon Gulyan had been kept there for the whole day and night and had been released in the morning of 12 May 2007 in order to be able to participate in a parliamentary election taking place on that day, on the condition that he return to the police station a few hours later. The Government alleged that Levon Gulyan had not been kept at the police station on 11 May 2007 and that he had gone home.

10. On 12 May 2007, at around noon, Levon Gulyan appeared again at the police station.

11. At around 2 p.m. he was taken from there by car to the PDCI which was situated at the Armenian police headquarters, by two PDCI officers, V.G. and S.M., on the order of the head of the PDCI, H.M.

12. At 2.30 p.m. Levon Gulyan's entry into the police headquarters was recorded.

13. At around 3.20 p.m. Levon Gulyan was found dead in the courtyard of the police headquarters with multiple injuries. It appears that he had fallen from the window of the office of the head of the Homicide Unit, G.T., which was situated on the second floor of the building.

14. At an unspecified time an examination of the scene of the incident and an external examination of the body were carried out. The relevant records stated that Levon Gulyan was lying 2 m from the building with his head towards the building and his legs towards the opposite building. He was leaning on the left frontal part of his body. His shoe laces were missing and were found in his trouser pockets, while a lock of hair was found lying about 1 m away from his body. The frame of the window from which he had apparently fallen was 40 cm wide.

B. Investigation

1. Investigation by the Yerevan prosecutor's office

15. On the same day, that is 12 May 2007, a prosecutor of the Yerevan prosecutor's office took a statement from PDCI Officer G.T., who submitted that Levon Gulyan had been brought to his office at around 2.30 p.m. and he had had a talk with him for about thirty minutes about the circumstances of the murder. In order to report to the deputy head of the PDCI, H.T., the results of the talk, he had then left the office but had not wanted to leave Levon Gulyan alone, so he had taken him to Officer S.M.'s office. On his way to H.T.'s office he had bumped into Officer A.M. and told him to stay with Levon Gulyan in S.M.'s office and to send S.M. for lunch. At around 3.30 p.m., when he had been in H.T.'s office, he had heard noises in the corridor. He had gone out and learned that somebody had fallen from the window. He had run to the courtyard and seen Levon Gulyan lying on the ground. He had immediately called an ambulance and tried to provide first aid, but Levon Gulyan had already died. Later he had learned from A.M. that the latter had moved Levon Gulyan to his (that is to say G.T.'s) office so that S.M. had been able to go for lunch. Levon Gulyan had jumped out of the window of the office when A.M. had gone out to fetch some water.

16. The prosecutor also took a statement from PDCI Officer A.M. who submitted that at around 3 p.m. Levon Gulyan had been taken by Officer S.M. to G.T.'s office. Then Officer S.M. had said that he had had to go for lunch, while G.T. had been at that moment reporting to the deputy head of PDCI, H.T., so he had stayed with Levon Gulyan. He had seen Levon Gulyan earlier in Officer S.M.'s office and had been aware that he had been summoned in connection with the murder. Since he had been

dealing with that case, he had decided to ask him some questions. Levon Gulyan had been tired and irritated, so he had decided to change the subject and had asked some unrelated questions concerning his restaurant. Levon Gulyan had then asked for permission to smoke and later for some water. There had been no water or bottle in the office. He had gone to a nearby office to fetch water but had then heard the sound of a window opening and a "boom". He had run back to the office but there had been no one. The window had been open so he had immediately understood that Levon Gulyan had escaped. He had quickly run to the courtyard and had seen Levon Gulyan lying on his back, with blood around his head. There had been no one there, but later the members of his unit had arrived. A.M. submitted that he could not give their names as he had been in a state of shock.

17. The prosecutor instituted criminal proceedings under Article 110 § 1 of the Criminal Code (provoking a person to suicide), relying on G.T.'s and A.M.'s above statements, including their allegation that Levon Gulyan had fallen and died while trying to escape through the window.

18. Following the institution of proceedings, on the same day the prosecutor questioned PDCI Officers G.T. and A.M. as witnesses. They made submissions similar to those made earlier that day (see paragraphs 15 and 16 above). Officer G.T. explained that he had left his office to report to the deputy head of the PDCI, H.T., because Levon Gulyan, during their conversation, had provided the name of a previously unknown person who had been involved in the argument with S.V.

19. The prosecutor furthermore ordered a forensic medical examination, asking the medical examiner to clarify, *inter alia*, the injuries to Levon Gulyan's body, whether they could have been sustained as a result of the fall and hitting obstacles on the way down, and his position when sustaining those injuries.

20. On 13 May 2007 the requested medical examination was performed, resulting in medical report no. 402, according to which Levon Gulyan had suffered open injuries to his skull and closed and blunt-force-trauma injuries to his thorax and spine, with multiple fractures and bruises, which had been sustained by colliding with obstacles and the ground as a result of the fall and had caused his death. When sustaining the injuries to the skull and the area of the left shoulder girdle, Levon Gulyan had been facing, with the left part of his head and the area of his left shoulder girdle, towards the object that had caused the injuries, whereas when sustaining the injuries to his thorax and the shoulder and lower spine, Levon Gulyan had been facing with the back surface of his thorax towards the object that had caused the injuries. Apart from the above-mentioned injuries there were also bruises on the left side of his abdomen, the left elbow joint, the dorsal surface of the left wrist and the outer surface of the right ankle joint, as well as scratches in the areas of the right elbow joint, the dorsal surface of the wrist joint and

the palm, the anterior surface of the left elbow joint, the outer surface of the right ankle joint and the frontal surface of the left knee joint, which had been caused by blunt objects while still alive and could be qualified as minor injuries.

21. On 14 May 2007 the applicant was recognised as a victim and informed of his rights. He was questioned on the same day.

22. On the same date the prosecutor ordered a forensic examination of marks, specifically fingerprints found on the window.

23. On 15 May 2007 an additional examination of the scene of the incident and the building was performed. It was noted that there was a yellow gas pipe passing horizontally along the wall at some distance from the building about two metres below the window. There was also an entresol floor below the ground floor, covered by a shed that stretched from the building into the courtyard. It appears that there was no open exit from the courtyard to the street.

24. On the same date the prosecutor ordered a forensic examination of fibres on Levon Gulyan's clothes and under his fingernails, and of some smears found on the windowsill.

25. On 17 May 2007 the prosecutor questioned the deputy head of the PDCI, H.T., as a witness.

26. On 18 May 2007 a medical examination was performed, which found that it could not be ruled out that the lock of hair found at the scene had belonged to Levon Gulyan.

27. On 19 May 2007 the prosecutor, following a request by the applicant, decided to order another medical examination of Levon Gulyan's body to be performed by two foreign experts from Germany and Denmark. That decision stated that on 12 May 2007 Levon Gulyan had been invited to the PDCI for an "operative talk". The experts were asked to clarify the injuries on Levon Gulyan's body and their origin, including whether there had been any injuries which could suggest that he had been ill-treated prior to his fall.

28. On the same date the experts conducted the requested medical examination, producing report no. 418, which concluded that the cause of death had been a massive blunt-force trauma to the head and chest. The experts found multiple lesions on the head and body, but no typical defence lesions. The lesions were fresh and had been sustained while still alive. They had been caused by severe blunt force trauma and could, as stated, have been caused by a fall from a height. The distribution of the lesions and the position of the body at the scene suggested that the deceased had hit the ground with the head and the upper part of the body first, and that he might have hit an object on the way down, possibly the pipe seen on the outside of the building under the window. There were no lesions that could not be explained by a fall from a height. On the other hand, it could not be ruled out that a few of the smaller bruises and abrasions could have been caused

by another impact (such as a punch or blow) prior to the fall. The experts, having examined the scene of the incident, found no indentations or other indications of a person having hit the shed. They did not examine the gas pipe.

29. On 21 May 2007 the results of the forensic examination of the marks were produced in report no. 16080702, which stated that the fingerprints found on the internal side of the middle part of the window frame and on the left window pane belonged to Levon Gulyan. There was also a palm print and one fingerprint on the window which did not belong to him.

30. On 4 June 2007 the prosecutor ordered an additional forensic examination of the marks. The forensic expert was asked whether the palm print and the fingerprint, which did not belong to Levon Gulyan, belonged to PDCI Officers G.T. or A.M., or to a third person, H.M., the cleaning lady who had apparently cleaned G.T.'s office on 13 May 2007.

31. On 12 June 2007 the results of the forensic examination of the fibres and smears were produced in report no. 16170705, which stated, *inter alia*, that foreign natural and chemical fibres had been found on Levon Gulyan's clothes and under his fingernails, which were fit for a further comparative examination. The fibres found on his clothes did not have the same generic origin as those taken from the pipe and the entresol shed. The smears found on the windowsill had the same generic origin as the samples taken from the soles of Levon Gulyan's shoes.

32. On 18 June 2007 the results of the additional forensic examination of the marks were produced in a report, which stated that the palm print and the fingerprint found on the window did not belong to PDCI Officers G.T. or A.M. or to the cleaning lady.

33. By letter of 12 July 2007 the prosecutor, in reply to an enquiry made by the Yerevan prosecutor's office, stated, *inter alia*, that the officers of the police station, having received an assignment to find and bring eyewitnesses, had brought Levon Gulyan to the prosecutor's office for questioning, which had happened only once on 10 May 2007. He had been accompanied by police officers but not handcuffed. No other investigative measures with his participation had been planned for the period of 10 to 12 May 2007 and the question of his appearance on 12 May 2007 at the PDCI was to be clarified with that authority.

34. At some point during the investigation, the Prosecutor General's Office ordered that an investigative experiment be conducted in order to clarify the mechanics of Levon Gulyan's fall, but there was no follow-up to that decision because of the absence of a suitable dummy.

35. On 6 August 2007 the head of Armenian police issued a conclusion on the results of an official inquiry into Levon Gulyan's death, finding that PDCI Officer A.M. had shown a low level of professionalism by leaving Levon Gulyan alone in the office as a result of which Levon Gulyan had attempted to escape and died, while PDCI Officer G.T., as Officer A.M.'s

superior, had not properly supervised his subordinate. Both of them were to be subjected to a disciplinary sanction.

2. Investigation by the Special Investigative Service (SIS) and the applicant's appeals to the courts

(a) Investigation by the SIS, termination of the criminal proceedings and the applicant's challenge before the courts

36. On 12 December 2007 the investigation was taken over by the SIS and assigned to investigator G.P.

37. On 19 December 2007 the investigator questioned PDCI Officer G.T. as a witness. Officer G.T. stated that Levon Gulyan had been invited to the PDCI in order to clarify the discrepancies between his statement and that of waitress M.G., who had also been invited to the PDCI. In his opinion, Levon Gulyan, having found out that M.G. had also been invited, had decided to escape in order not to take part in a confrontation alongside her, as this would have revealed the fact that he had made a false statement. G.T. alleged that Levon Gulyan had found out about the imminent confrontation by overhearing his telephone conversation with another police officer.

38. On 12 March 2008 the investigator terminated the criminal proceedings. This decision, which, following an appeal by the applicant, was approved by the supervising prosecutor, stated that on 12 May 2007 Levon Gulyan and M.G. had been separately invited to the PDCI to clarify the discrepancies between their statements. At the PDCI he had been taken to the office of the head of the Homicide Unit G.T., who had had a talk with him for about thirty minutes, during which Levon Gulyan had provided the nickname of one of the persons who had been involved in the argument with S.V. G.T. had then left the office in order to report this new piece of information, while Levon Gulyan had remained with the deputy head of the Homicide Unit A.M., with whom he had had a talk of a general nature. During their conversation Levon Gulyan had found out that M.G. had also been invited to the PDCI. Realising the imminence of a face-to-face confrontation with her, during which he would not have been able to conceal the identity of those involved in the argument, including that of the murderer, he had decided to escape. For that purpose he had asked Officer A.M. for some water. After A.M. had gone out to fetch some water, Levon Gulyan had tried to escape through the window but had fallen from a height of about 7 m and had died on the spot. Taking into account that Levon Gulyan had not been subjected to violence, threats, or inhuman or degrading treatment during his stay at the PDCI, and the fact that his escape had been motivated by his intention to conceal the identity of the offenders and his death had been the result of a fall, there was no *corpus delicti* in the actions of the police officers. Nor was there a criminal element in A.M.'s actions, specifically the fact that he had left Levon Gulyan alone in the office,

because Levon Gulyan had had only the status of a witness as opposed to that of a suspect or accused.

39. On 7 April 2008 the applicant contested that decision before the courts, complaining in detail that the investigation had not been impartial, transparent and effective. He relied on, *inter alia*, Articles 2, 5 and 13 of the Convention.

40. On 6 June 2008 the Kentron and Nork-Marash District Court of Yerevan allowed the appeal and ordered that the case be resumed. The District Court held that the investigator's decision had been unfounded and violated individual rights and that no proper investigation had been carried out and a number of important circumstances had not been established. In its decision, reasoned in detail, the District Court found, *inter alia*, that: (a) the investigating authority had failed to determine the lawfulness of taking Levon Gulyan and others between 10 and 12 May 2007 to the law-enforcement agencies and keeping them there for extended periods of time; (b) the allegations raised in the press and by some of the witnesses, including barman H.M., that Levon Gulyan had been ill-treated with the purpose of coercing a confession during his stays at the law-enforcement agencies had not been investigated, including the allegation that such acts had been committed in G.T.'s office and had led to his being thrown out of the window; (c) not all reasonable steps had been taken to secure evidence, including questioning police officers, to prevent their possible collusion and preserve the scene of the incident; (d) no proper assessment had been made of the fact that Levon Gulyan had neither been summoned nor gone voluntarily to the PDCI; (e) the events preceding the incident had not been properly clarified, in view of the multiple discrepancies in the statements made by the police officers, which also cast doubt on their credibility and the validity of the conclusions reached by the investigating authority on the basis of those statements; (f) no proper assessment had been made of the alleged behaviour of the deputy head of the Homicide Unit, A.M., upon his return to G.T.'s office, specifically his reaction to the open window; (g) it had not been clarified whether Levon Gulyan had been able to move about freely while at the PDCI; (h) no investigation had been carried out into the fact that his shoe laces had been missing at the time of the incident and had been found in his trouser pockets; (i) no convincing evidence had been obtained concerning Levon Gulyan's fall and the preceding events; the investigating authority from the very outset had carried out the investigation on the premise that Levon Gulyan had attempted to escape and had died as a result of a fall, but had failed to carry out a complete and objective investigation into his motives, including the fact that he had only been a witness and that the window had been more than 7 m high and there had been numerous obstacles in the police building; (j) while, according to the official version, Levon Gulyan had hit an obstacle or obstacles during the fall, which could have been the gas pipe, no explanation had been provided

for the absence of any particles on his clothes and under his fingernails of the pipe in question or any other possible obstacle, such as the entresol shed, or vice versa; nor had it been clarified whose fibres had been discovered on Levon Gulyan's clothes and no samples had been taken in that connection from police officers; (k) no explanation had been provided or samples taken from police officers in relation to the palm print found on the window, which had not belonged to Levon Gulyan; (l) the investigation had not clarified the mechanics of Levon Gulyan's fall and had not carried out in that connection an investigative experiment because of the absence of a suitable dummy, despite the fact that such an experiment had been ordered by the Prosecutor General's Office; no measures had been taken to obtain such a dummy from the Prosecutor General's Office of Russia within the framework of inter-State legal assistance; (m) no investigation had been carried out in connection with the findings of foreign experts concerning the other injuries found on Levon Gulyan's body, such as small bruises and scratches; (n) it had not been clarified how a lock of hair belonging to Levon Gulyan had been found lying at a distance from his body; (o) the applicant and other victims in the criminal case had not been involved in any investigative or other procedural measures and had had no possibility to pose questions to the police officers or the experts; and (p) the remains of a cigarette found in the ashtray in G.T.'s office had not been seized and examined to determine whether it had been Levon Gulyan who had smoked it.

41. On 16 June 2008 the prosecutor lodged an appeal against this decision.

42. On 21 July 2008 the Criminal Court of Appeal dismissed the prosecutor's appeal and upheld the findings of the District Court. It further added that the investigation had been flawed and based on only one premise, that of Levon Gulyan's attempted escape. Furthermore, the explanation provided for that sole premise was farfetched and the investigating authority, having showed a one-sided approach to the assessment of the collected evidence, had failed to carry out an impartial, objective and full investigation in that connection, thereby reaching inaccurate conclusions. The investigating authority had failed to explain and assess why Levon Gulyan, who had already been questioned, had been "invited" and then, having been *de facto* deprived of his liberty, transferred to the PDCI in order to carry out "investigative measures, including a cross-examination" by officials who had had no authority to do so, which had violated his right to liberty and resulted in his demise. There had been no instruction from the investigator to carry out a face-to-face confrontation and, moreover, by taking Levon Gulyan to an alleged confrontation, the PDCI officers had violated Article 206 § 2 of the CCP, pursuant to which a witness had had to be questioned at the location where the investigation had been in train or, if necessary, where he or she had been located, whereas the

PDCI could not be considered to have been either of those. The assessment of evidence had not been objective since the investigating authority had given preference to the statements of the police officers without a proper evaluation of other evidence in the case. The resulting decision, which had been taken in violation of the Constitution and Article 2 of the Convention, had amounted to a two-page document which had failed to make even a single reference to any evidence.

(b) Resumption of the criminal proceedings, their subsequent termination and the applicant's challenge before the courts

43. On 16 August 2008 the investigation was resumed and assigned to the same SIS investigator.

44. On 18 August 2008 the SIS investigator sent a letter to the PDCI, requesting that an investigation be carried out in order to find out whether Levon Gulyan's fall had been witnessed by any police officers, and to report back.

45. Between September 2008 and April 2009 the investigator conducted a number of interviews, including with Officers A.M., G.T., V.G. and S.M., the head of PDCI, H.M., as well as two other PDCI officers, H.S. and E.V. The applicant and his representatives were present at these interviews and were apparently able to pose questions. Levon Gulyan's wife and the cleaning lady were also questioned as witnesses during the same period.

46. On 13 September 2008 the Prosecutor General's Office of Armenia sent a letter to the Prosecutor General's Office of Russia, enquiring about the availability of a 178-cm-tall dummy weighing 95 kg for the purpose of carrying out an investigative experiment.

47. By letter of 1 December 2008 the Prosecutor General's Office of Russia replied that they did not have at their disposal a dummy matching the specified characteristics. However, they had purchased dummies 170 cm tall and weighing 40 kg, one of which could be provided to the Armenian authorities. It appears that there was no follow-up to this offer.

48. On 16 April 2009 the investigator terminated the criminal proceedings. This decision, which, following an appeal by the applicant, was approved by the supervising prosecutor, provided a similar account of events to the decision of 12 March 2008, with the exception that it stated that Levon Gulyan had found out about the imminent confrontation with waitress M.G. from a telephone conversation he had overheard between PDCI Officer G.T. and his colleagues, and that Levon Gulyan had hit a pipe during the fall. The decision similarly concluded that there was no *corpus delicti* in the actions of the police officers. It referred, *inter alia*, to the statements of a number of police officers, medical reports nos. 402 and 418 and reports nos. 16080702 and 16170705. Relying on the latter two documents, the decision stated that the fact that Levon Gulyan had climbed onto the windowsill without any external assistance was substantiated by his

fingerprints found on the window and the smears found on the windowsill, left by his shoes.

49. On 3 July 2009 the applicant contested that decision before the courts, complaining, *inter alia*, that the investigating authority, lacking from the very outset the intention of establishing the truth, following the resumption of the criminal proceedings had carried out an investigation which had been a pure formality and had ignored the issues raised in the court decisions. He relied, *inter alia*, on Articles 2, 5 and 13 of the Convention.

50. On 2 December 2009 the Kentron and Nork-Marash District Court of Yerevan dismissed the applicant's arguments and upheld the investigator's decision of 16 April 2009.

51. On 11 December 2009 the applicant lodged an appeal against this decision.

52. On 5 February 2010 the Court of Appeal dismissed the applicant's appeal and upheld the decision of the District Court.

53. On 25 February 2010 the applicant lodged an appeal on points of law.

54. On 27 August 2010 the Court of Cassation allowed the applicant's appeal on points of law, quashing the decisions of the lower courts and obliging the investigating authority to remedy the violations of individual rights which had taken place in the course of the investigation. The Court of Cassation stated at the outset that the authorities were required under Article 2 of the Convention to carry out an effective investigation with the aim of providing a convincing explanation for the death of Levon Gulyan who, at the material time, had been under the supervision of the PDCI officers. It further held that not all measures had been taken yet for the authorities to be considered to have fulfilled this requirement. In particular, no investigative experiment had been performed to determine the mechanics of Levon Gulyan's fall, whereas the necessity of such an experiment had been confirmed by the Kentron and Nork-Marash District Court of Yerevan, the investigating authority and the supervising prosecutor. The investigating authority was still reasonably capable of taking measures to obtain the necessary dummy, since it could be ordered from the same company which provided dummies to the Prosecutor General's Office of Russia. However, the investigating authority had not taken any measures in that connection in the four months following the letter of 1 December 2008. It was therefore necessary to obtain the dummy in question, carry out the experiment, compare its results with the other evidence and, if necessary, carry out other investigative measures. The Court of Cassation held that a conclusive finding on the fulfilment of the procedural obligation of Article 2 of the Convention would be possible only following the implementation of the experiment in question and, if necessary, of the resulting other measures. A global assessment of the effectiveness of the investigation would be

possible after taking into account all such evidence. Therefore, the questions raised by the applicant in his appeal could be answered only after the investigation had been completed.

(c) Resumption of the criminal proceedings, their subsequent termination and the applicant's challenge before the courts

55. On 18 January 2011 the investigation was resumed and assigned to the same SIS investigator.

56. On 24 January 2011 the investigator applied to the Prosecutor General's Office, requesting assistance in obtaining an appropriate dummy from the Prosecutor General's Office of Russia.

57. By letter of 18 March 2011 the Prosecutor General's Office replied that the fact of Levon Gulyan's death as a result of an attempted escape through a window had been established and it was impossible to guarantee the objective legitimacy of results by carrying out the investigative experiment, since Levon Gulyan, from the moment he had climbed onto the windowsill and until his collision with the ground, had performed conscious and intentional actions characteristic exclusively of his physical fitness and mentality, which were impossible to replicate with the help of a dummy or through any other experiment and research, and it was objectively impossible to approximate the circumstances of an investigative experiment to the actual event and to establish through such investigative experiment any circumstances having evidentiary value.

58. On 21 March 2011 the investigator terminated the criminal proceedings on the same grounds as previously, reiterating, *inter alia*, the position set out by the Prosecutor General's Office.

59. On 2 May 2011 the applicant contested that decision before the courts.

60. On 25 May 2011 the Kentron and Nork-Marash District Court of Yerevan allowed the applicant's appeal and to oblige the investigator to restore his violated rights. It found that the investigating authority had failed to carry out a full and comprehensive investigation, to show due diligence and to comply with the requirements of the Court of Cassation's decision of 27 August 2010. Instead of obtaining the necessary dummy for the purpose of ensuring the effectiveness of the investigation and giving a global assessment to the incident through comparison of evidence, the investigating authority had decided once again to terminate the proceedings by relying – without any proper reasoning – on the prosecutor's unfounded letter of 18 March 2011, which had had no evidentiary value.

61. On 3 July 2011 the prosecutor lodged an appeal against this decision.

62. On 30 June 2011 the Court of Appeal dismissed the prosecutor's appeal and upheld the decision of the District Court

63. On 18 July 2011 the prosecutor lodged an appeal on points of law.

64. On 26 August 2011 the Court of Cassation declared the appeal on points of law inadmissible.

(d) Resumption of the criminal proceedings and their subsequent termination

65. On 8 September 2011 the investigation was resumed and assigned to the same SIS investigator.

66. On 6 December 2011 the SIS investigator sent enquiries to the Ministry of Defence, the Ministry of Emergency Situations, the Armenian police and the National Security Service, inquiring whether they had a dummy weighing 95 kg and with a height of 178 cm. It appears that none of those authorities had at their disposal a dummy of the required size.

67. On 8 February 2012 the investigator terminated the criminal proceedings on the same grounds as previously. This decision stated, *inter alia*, that it had been impossible to carry out an investigative experiment because of the absence of a dummy and, even if such an experiment were to be carried out, this would not lead to the establishment of any circumstances having evidentiary value.

68. The applicant alleges that he had never been informed about this decision and a copy of it was served on him only in April 2015 after he had applied to the authorities for additional information and copies of documents in order to submit them to the Court.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

69. Article 110 § 1 provides that, with indirect intention or involuntarily, provoking a person to suicide or an attempted suicide through threats, cruel treatment or repeated degrading of his or her dignity is punishable by imprisonment for a period not exceeding three years.

B. Code of Criminal Procedure

70. Article 205 §§ 1 and 2 provides that a witness is called for questioning by an investigator upon a summons. The summons contains an indication of the summoning authority, the person summoned, the procedural capacity in which the person is summoned, and where and when (the date and hour) the person summoned must appear. A summons is served on the person who is being summoned upon his signature or through means of telecommunication.

71. Article 206 § 2 provides that a witness is questioned at the location where the investigation is being carried out or, if necessary, where the witness is located.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

72. The applicant complained that his son's death in police custody and the failure of the authorities to carry out an effective investigation into his son's death had amounted to a violation of 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

73. 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

(a) The applicant

74. The applicant submitted that the authorities had failed to carry out an effective, transparent, thorough and objective investigation and to provide a plausible and convincing explanation for Levon Gulyan's death and of the circumstances which had preceded and led to his death. The only hypothesis of his death which had been considered by the authorities had been his attempted escape, whereas he could have fallen out of the window under a number of different circumstances, including being shoved or killed. The applicant pointed to the fact that Levon Gulyan had been involved in the case only as a witness and had never tried to avoid appearing before the investigating authority. The version of his attempted escape had therefore been fictitious. It had also lacked logic, taking into account the height of the second-floor window and the fact that there had been no unimpeded exit from the police building's courtyard. No convincing motives had been put forward for his alleged escape, while the one put forward had not been supported by any evidence, including any proof of Levon Gulyan's interview on that day or of a face-to-face confrontation that had been due to take place between him and M.G. The need for such a confrontation had also been lacking, since there had been no essential discrepancies between Levon Gulyan's and M.G.'s statements.

75. Furthermore, a number of important circumstances remained unexplained. It was unclear as to why and on whose instruction Levon

Gulyan, who had been involved only as a witness, had been transferred to and kept at the PDCI, especially when the criminal case had been under the auspices of the prosecutor's office. It was suspicious that, after having been transferred to the PDCI under the control of two officers, Levon Gulyan had been left alone in the office without any supervision. The investigation had failed to take all the necessary measures to establish the identity of the person to whom the palm print had belonged and to investigate the origin of the injuries on Levon Gulyan's body which had been sustained while alive or of the foreign natural and chemical fibers found on his clothes and under his fingernails, which may have suggested very close contact with another person and could not have ruled out the possibility of resistance. The investigating authority had failed to carry out the relevant investigative experiment to establish the mechanics of Levon Gulyan's fall or to try to give any explanation for the absence of his shoe lace, the fact that his body had been found at a distance of 5.8 m from the building and the question as to how he could have fallen out of a window which had been only 40 cm wide. The numerous discrepancies in the police officers' statements had not been duly addressed. Not all the identities of those involved in the incident had been disclosed and nobody had been charged or punished. His rights as a victim had not been duly ensured, since he had encountered obstacles when trying to obtain information and he had not been notified of the decision of 8 February 2012, as a result not being able to contest it. The investigation had not been independent because on each occasion when the courts had ordered its resumption it had been assigned to the same SIS investigator. The ineffectiveness of the investigation had been also confirmed by the domestic courts.

76. The applicant lastly argued that, even assuming that the hypothesis of an attempted escape had been true, the authorities had been under an obligation to protect Levon Gulyan's life while he had been under their control. Thus, if the police officers had known that he had been to undergo a confrontation with M.G. and, as alleged by the Government, had an interest in concealing the circumstances of S.V.'s death, they had to take certain precautions to minimise any potential risk to his health and life. However, according to the official version, he had been left alone in the office of Police Officer G.T., where the window had not had any bars, without any control and supervision.

(b) The Government

77. The Government submitted, relying on the results of the official investigation, that the authorities had discharged their obligation to provide a satisfactory and convincing explanation for Levon Gulyan's death, which had resulted from his attempted escape through a window. They argued that Levon Gulyan could have had an interest in concealing the circumstances of S.V.'s death, since it had been established that he had been involved in the

argument with S.V. and a friend of a friend had been implicated in his shooting. Furthermore, the motive of Levon Gulyan's attempted escape from the building of the police headquarters had been established, specifically to avoid an imminent confrontation with waitress M.G., of which he had learned not long before his attempted escape. Medical report no. 418 had also proved the fact that Levon Gulyan had died as a result of a fall as opposed to any ill-treatment, since it had established that there had been no lesions on his body which could not be explained by a fall. This fact had also been confirmed by the statements of the police officers. Moreover, the presence of fibres did not necessarily suggest any resistance, as claimed by the applicant. The fact of Levon Gulyan's attempted escape had been further supported by a number of examinations, which had confirmed the presence of his fingerprints on the window frame and of smears on the windowsill which had had the same generic origin as the samples taken from the soles of his shoes. Furthermore, the window from which Levon Gulyan had tried to escape had been only 40 cm wide and it was difficult to imagine that he – with a height of 178 cm and weighing 95 kg – could have been thrown out of that window without any signs of violence on his body.

78. The Government submitted that the investigation carried out by the authorities had been in conformity with the requirements of Article 2. Firstly, the investigative measures taken had been adequate and prompt: on the very day of the incident the scene had been immediately examined, criminal proceedings had been instituted, a forensic medical examination had been ordered, statements had been taken from Officers G.T. and A.M., who had also been questioned as witnesses, thereby effectively preventing their collusion, and samples had been taken from Levon Gulyan's hair and fingernails. Between 13 and 15 May 2007 a number of other examinations had been ordered. Later a number of other witnesses had been questioned, including PDCI Officers V.G. and S.M., and further examinations had been ordered. The marks found on the window had been examined and been found neither to belong to Officers G.T. and A.M. nor to the cleaning lady. Following the decision of the Kentron and Nork-Marash District Court of Yerevan of 6 June 2008, the investigating authority had taken measures to eliminate the deficiencies of the investigation mentioned in that decision. In particular, additional interviews had been conducted with a number of police officers in order to clarify the discrepancies between their statements, as well as with Levon Gulyan's wife and the cleaning lady. An enquiry had been sent to the PDCI to find out whether there had been any eyewitnesses to Levon Gulyan's fall. As regards the investigative experiment, the investigating authority had acted diligently by trying to obtain the necessary dummy after the investigation had been resumed on 8 September 2011, by sending enquiries to various State bodies, none of whom unfortunately had had the required dummy. The Government argued that the failure to conduct

the investigative experiment in question could not have had a significant impact on the adequacy of the investigation. They further argued that the applicant had been closely involved in the proceedings, having been recognised as the victim and informed of his rights two days after the incident. He had been properly familiarised with all the decisions taken during the investigation, had lodged various requests during the investigation which had been taken into account and decided upon with proper reasoning and had participated in interviews of witnesses and posed questions. Lastly, the investigation had been conducted firstly by the Yerevan prosecutor's office and then the SIS, both of which had been separate bodies from the Armenian police with no institutional or hierarchical connection. Moreover, an independent forensic medical examination had been carried out by German and Danish experts.

2. The Court's assessment

(a) General principles

79. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 56-57, ECHR 2004-XI, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 208, ECHR 2011 (extracts))

80. 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. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a

satisfactory and convincing explanation (see, among other authorities, *Salman v. Turkey* [GC], no. 12986/93, §§ 99 and 100, ECHR 2000-VII).

81. 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; also *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 102, 23 February 2006; *Jasinskis v. Latvia*, no. 45744/08, § 71, 21 December 2010; and *Petrović v. Serbia*, no. 40485/08, § 74, 15 July 2014).

82. 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 *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016; *Mustafa Tunç and Fecire Tunç*, cited above, § 172;, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 113, ECHR 2005-VII). 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. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Nachova and Others*, cited above, § 113, and *Mustafa Tunç and Fecire Tunç*, cited above, §§ 173 and 174). 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 (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 321, ECHR 2007-II, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175).

83. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence. A requirement of promptness and reasonable expedition is implicit in this context. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Mustafa Tunç and Fecire Tunç*, cited above, §§ 177-79).

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

(i) Procedural limb

84. In order to establish whether the State satisfactorily discharged its obligation to account for Levon Gulyan's death, the Court must first have regard to the investigation carried out by the authorities and the conclusions reached by them.

85. The Court notes from the very outset that the question of effectiveness of the investigation was examined by the domestic courts in response to the applicant's appeals, which concluded that the investigation had not been effective and had had numerous shortcomings in its conduct (see paragraphs 40 and 42 above). The Court cannot but endorse the findings reached by the domestic courts. It stresses, however, that these findings did not have tangible results on the effectiveness of the investigation, which was repeatedly closed and resumed by the investigators.

86. The Court notes in this connection that the investigating authority accepted the version of Levon Gulyan's attempted escape from the very outset and conducted the entire investigation on that premise, never seriously questioning it or making attempts to verify any other possible scenario. Not only was that version of events based entirely on the statements of Police Officers G.T. and A.M., who appear to have been involved in the events of that day and who could not be considered impartial witnesses, but it was not supported by any evidence either. Thus, there is no proof whatsoever that Levon Gulyan was summoned to the PDCI for a confrontation with another witness, M.G., which he then allegedly tried to avoid by escaping. Moreover, such a motive for his alleged escape appears to have been provided for the first time at a rather advanced stage of the investigation (see paragraph 37 above). The investigating authority failed to clarify as to why Levon Gulyan, who had been involved in the case only as a witness, had been taken to the PDCI by police officers as opposed to being summoned as required by law (see paragraph 70 above) or why he had been taken to the PDCI in the first place, in violation of the law, given that the investigation into S.V.'s murder had been conducted by another authority, namely the prosecutor's office (see paragraph 71 above). Furthermore, there is no evidence that Levon Gulyan was questioned at the PDCI before the incident and the nature of the so called "operative talk" remains unclear and unexplained.

87. The Court further notes that a number of investigative measures were not taken. Firstly, the investigating authority failed to clarify to whom the palm print and the fingerprint found on the window had belonged and limited itself to examining the fingerprints of Officers G.T. and A.M. and the cleaning lady (see paragraphs 30 and 32 above), whereas it could not be ruled out that other employees of the PDCI had also been involved in the

events of that day. Secondly, no sufficient measures were taken to clarify the origin of the natural and chemical fibres found on Levon Gulyan's clothes and under his fingernails (see paragraph 31 above). Thirdly, no investigation was carried out to clarify the origin of the injuries recorded by the medical examiner which had been sustained by Levon Gulyan while still alive and whether they could have resulted from any ill-treatment (see paragraph 20 above). Fourthly, the investigative experiment, which was supposed to clarify the mechanics of Levon Gulyan's fall, was not carried out because of the absence of a suitable dummy (see paragraph 34 above). Fifthly, no attempt was made to explain why Levon Gulyan's shoelaces had been found in his pocket. As already indicated above, these and a number of other shortcomings of the investigation were confirmed by the domestic courts. Even assuming that it had been possible to remedy the shortcomings in question following the resumption of the investigation, there was nothing to suggest that any serious attempts were made or meaningful measures were taken in that connection after the courts ordered a reopening of the investigation (see paragraphs 43-48 above). Moreover, not only was the above-mentioned investigative experiment never carried out despite the repeated instructions of the domestic courts but its effectiveness and necessity were questioned by the investigating authority despite having been emphasised by the domestic courts (see paragraphs 54, 57, 60 and 67 above).

88. The Court lastly cannot overlook the applicant's allegation, which the Government did not explicitly contest, that he was not notified of the investigator's decision of 8 February 2012 (see paragraph 68 above) and considers that the authorities failed in that respect to ensure the applicant's effective participation in the investigation as Levon Gulyan's next-of-kin.

89. The foregoing is sufficient for the Court to conclude that the investigating authority failed to take all the necessary measures to clarify the circumstances of Levon Gulyan's death and that the investigation was not effective.

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

(ii) Substantive limb

91. The Court finds that the investigation conducted at the national level was so manifestly inadequate and left so many obvious questions unanswered that it was not capable of establishing the true facts surrounding the death of the applicant's son. The Court is unable to rely on the conclusion reached at the end of that investigation (see *Cangöz and Others v. Turkey*, no. 7469/06, § 138, 26 April 2016, and cases cited therein). In the circumstances of the present case it finds that the Government have failed to provide a satisfactory and convincing explanation for his death in custody

and thereby discharge the burden of proof which rested on their authorities (see paragraph 80 above).

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

II. ALLEGED VIOLATION OF ARTICLES 5 AND 13 OF THE CONVENTION

93. The applicant alleged also a violation of Articles 5 and 13 of the Convention with regard to the circumstances of Levon Gulyan's death and the subsequent investigation.

94. The Government contested those allegations.

95. Having regard to the facts of the case, the submissions of the parties and its findings under Article 2 of the Convention, the Court considers that it has examined the main legal question raised in the present application and that there is no need to give a separate ruling on these complaints (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

98. The Government argued that the applicant's claim was unsubstantiated and that there was no causal link between the alleged violations and the damage claimed. In any event, the amount claimed was excessive.

99. 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

100. The applicant also claimed EUR 3,600 for the costs and expenses incurred before the Court.

101. The Government referred to the time sheet submitted by the applicant's lawyer, arguing that the number of hours spent on preparing the just satisfaction claim had been unreasonable compared to the number of hours spent on preparing the applicant's reply to the Government's observations.

102. 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 2,000 for costs and expenses in the proceedings before the Court.

C. Default interest

103. 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 Levon Gulyan's death admissible under Article 2 of the Convention;

2. *Holds* that there has been a violation of both substantive and procedural aspects of Article 2 of the Convention in respect of Levon Gulyan's death;

3. *Holds* there is no need to rule separately on the complaints communicated under Articles 5 and 13 of the Convention;

4. *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 2,000 (two thousand 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;

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

Done in English, and notified in writing on 20 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Linos-Alexandre Sicilianos
Registrar	President