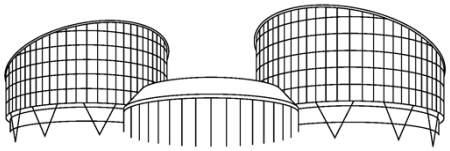

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SARIBEKYAN AND BALYAN v. AZERBAIJAN

(Application no. 35746/11)

JUDGMENT

Arts 2 and 3 • Life • Torture • Effective investigation • Death of Armenian national while detained in Azerbaijan on suspicion of spying and intending to commit a terrorist act • Azerbaijani authorities' failure to consider whether ethnic hatred had been a contributing factor in victim's death and the torture to which he had been subjected • Azerbaijani authorities' lack of communication with victim's relatives and Armenian authorities

STRASBOURG

30 January 2020

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 Saribekyan and Balyan v. Azerbaijan,

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

Angelika Nußberger, *President,*
Yonko Grozev,
Ganna Yudkivska,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 10 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 35746/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Armenian nationals, Mr Mamikon Saribekyan and Mrs Siranush Balyan ("the applicants"), on 10 June 2011.

2. The applicants were represented by Mr A. Ghazaryan and Mr A. Zeynalyan, lawyers based in Yerevan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged, in particular, that their son had been tortured and killed in Azerbaijani detention, involving violations of Articles 2, 3, 13 and 14 of the Convention.

4. On 10 November 2015 notice of the application was given to the Government.

5. The Armenian Government made use of their right to intervene under Article 36 § 1 of the Convention. They were represented by their Agent, Mr G. Kostanyan.

THE FACTS

6. On the morning of 11 September 2010 the applicants' son, Manvel Saribekyan, born in 1990 and a resident of the village of Ttujur in the Gegharkunik region of Armenia, close to the north-eastern border with Azerbaijan, went with his neighbours to the nearby forest allegedly to collect wood and look for stray cattle. At around 5 p.m. he lost his bearings

in the fog and, as it appeared later, was arrested by Azerbaijani military police.

7. On 13 September 2010 the applicants reported to the local police that their son was missing. The police conducted an investigation of the pasture area where he had last been seen and interviewed the applicants, two of the neighbours with whom he was said to have left the morning he went missing and a few other witnesses. The police also sent a description of him to the regional police departments.

8. On the same day Azerbaijani media reported that an Armenian spy – or "saboteur" – had been arrested while he was attempting to cross the border to commit a terrorist act, namely, to blow up a school. In a television broadcast, Manvel Saribekyan appeared, being interviewed by a reporter. He stated that he had been trained in Armenia to carry out terrorist acts on the territory of Azerbaijan. The applicants – as well as the Armenian public – learnt about the capture of Mr Saribekyan through these media reports, especially the television broadcast which was posted on the Youtube website. No official notification of his arrest was made by the authorities of Azerbaijan to the authorities of Armenia. The International Committee of the Red Cross (ICRC) was reportedly not allowed to visit him in custody.

9. According to a decision on the assessment of evidence of 3 January 2011, issued by the investigator in the case at the Military Prosecutor's Office in Baku (see further below at paragraphs 23-26), Manvel Saribekyan had crossed the border to Azerbaijan close to the village of Goyamli in the Gadabay region on 11 September 2010 at around 5.30 p.m. Accompanied by three unidentified persons of Armenian nationality, a shooting had taken place between Mr Saribekyan's group and Azerbaijani soldiers, during which the unidentified persons had retreated back into Armenia. Mr Saribekyan was alleged to have brought one kilogram of explosives for the purpose of bombing a school in the nearby village of Zamanlı. He had been arrested by military police and brought to the Military Police Department of the Ministry of Defence in Baku where he had been detained in a cell.

A criminal investigation pursuant to Article 282.1 of the Azerbaijani Criminal Code was initiated against Manvel Saribekyan and the three unidentified persons. They were suspected of having crossed the border illegally with the intention of bombing the school in order to weaken the military capacity and economic security of Azerbaijan.

10. On the morning of 4 October 2010, at 8 a.m., Manvel Saribekyan was found dead, hanging from a rope in his cell.

11. By decisions of 4 October 2010 the Military Prosecutor's Office ordered a forensic medical examination of Mr Saribekyan's body and an examination of the evidence found in his detention cell. Both decisions stated that, according to information from the Military Police Department, Mr Saribekyan had committed suicide by hanging.

12. The record of the examination of the detention cell, dated 4 October 2010, stated, *inter alia*, the following. The cell had a width of 2.8 m, a length of 5.4 m and a height of 2.9 m. Opposite the entrance door, at the top of the wall, there was a 50 cm high window which opened with an iron bar. The distance from the floor to the bottom of the window was 2.3 m. The distance between the inside of the wall and the iron bar of the window was 34 cm. At the far right corner of the room stood an iron bed with a mattress, a sheet, a pillow and a blanket. Mr Saribekyan was found hanging from the window with a rope that he was said to have made from a t-shirt, an undershirt, a towel and a blanket and which had been slung around the iron bar. The record further stated that his fingerprints were found in the dust on the window. Traces on the floor revealed that the bed had been moved.

13. A forensic medical examination was conducted between 12.40 and 2.05 p.m. on 4 October 2010. Present during the examination were an expert from the forensic medical examination centre of the Ministry of Defence, an attendant at the department of pathological anatomy of the Central Military Clinic Hospital, an attorney at the Military Prosecutor's Office and a senior investigator at the Military Prosecutor's Office. The protocol of 4 October of the initial examination stated that the examination concerned "the corpse of [Manvel Saribekyan] who committed suicide in the military police detention cell". Strangulation injuries were found on Mr Saribekyan's body; the protocol stated that the external examination of the body did not reveal any other signs of injury. The body was said to be well-built, well-nourished and 177 cm in height. According to the protocol, the examination was recorded by video camera; however, no photographic material relating to this forensic examination has been submitted to the Court.

14. On 4 October 2010 the Military Prosecutor's Office informed the ICRC of the death.

15. On 5 October 2010 the Azerbaijani Ministry of Defence and the Military Prosecutor's Office publicly announced that Manvel Saribekyan had committed suicide by hanging in his detention cell.

16. On 7 October 2010 the Military Prosecutor's Office launched a criminal investigation pursuant to Article 125 (incitement to suicide) of the Criminal Code.

17. On 26 October 2010 the ICRC delivered to the Armenian authorities a death certificate that had been received from the Azerbaijani General Prosecutor's Office.

18. The results of the forensic medical examination, including an internal examination of Mr Saribekyan's body, were presented in a five-page expert opinion of 3 November 2010 given by the above-mentioned expert from the forensic medical examination centre of the Ministry of Defence. He drew the following conclusions:

> "Based on the forensic medical examination, the conclusions of additional laboratory investigations, the examination of evidence and the information in the

record of proceedings dated 04.10.2010 "The examination of the scene", and according to the questions which were put before the examination, I come to the following conclusion:

The cause of death of [Mr Saribekyan] was mechanical asphyxiation which occurred during hanging as a result of the compression of the neck membranes. This opinion was confirmed by the detection of the following signs: a strangulation furrow on both side surfaces of the neck, the tip of the tongue squeezed against the teeth, haemorrhages in soft tissues of the neck and both pectoral muscles, involuntary excretion of faeces, congestion of internal organs, haemorrhages under the visceral pleural membranes and epicardium, pulmonary emphysema, partial atelectasis lesions, and brain substance oedema. According to the dynamics of the early signs of decomposition of corpses, death occurred 6-8 hours before the examination of the dead body in the morgue.

The location of the strangulation furrow in the upper third of the neck, being unclosed from bottom to top with a transverse-oblique direction, and the haemorrhage in both pectoral muscles show that the noose around his neck was tightened by his own weight as a result of hanging, front and side parts of the neck having suffered the most pressure from the noose. The noose had been squeezed typically. Taking into account the circular form on the lower extremities of post-mortem lividity and considering the direction of the strangulation furrow, it could be said that the body was hanging in a vertical state and that the dead body was hanging for 4-6 hours.

It appears from the morphological features of the strangulation furrow that the noose around his neck was made from a soft once-folded cloth and that it could have been made from the piece of rope presented for examination.

The forensic-chemical investigations, 'had not found ethyl alcohol, barbituric acid derivatives, alkaloid (or opium) phenothiazine, pyrazolone, benzodiazepine derivatives or salicylates in the blood of the dead body of [Mr Saribekyan]'.

During the forensic examination of a tampon which was taken from the anus of the deceased [Mr Saribekyan], no sperm was found. No changes, injuries or signs of injury were found at the back area and around the anus."

19. On 4 November 2010 Manvel Saribekyan's body was handed over to the Armenian authorities.

20. On 5 November 2010 the Department of Criminal Investigation in the town of Chambarak, Gegharkunik region, opened a criminal investigation under section 2, points 5 and 13, of Article 104 of the Criminal Code of Armenia concerning murder committed with particular cruelty and with motives of national, racial or religious hate or fanaticism. An external examination of the body was carried out on the same day and a forensic medical examination was ordered. Later, the Prosecutor-General instructed the National Security Service to take over the case. During the ensuing investigation, the applicants and several other witnesses, who claimed to have seen the body shortly after its handover, attested that it bore several marks of injuries and torture.

21. By a request of 14 December 2010 the Armenian Prosecutor-General asked for legal assistance from the Azerbaijani Prosecutor-General in the investigation of the death of the applicant's son, referring to the

Commonwealth of Independent States (CIS) Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases. Specifically, the request asked for information as to whether any investigation of his death had been carried out by the Azerbaijani authorities and, if so, that a copy of the materials of such investigation be provided.

22. The results of the Armenian forensic medical examination, performed on 5 November 2010, were presented in a report of 21 December 2010. The following conclusions were drawn:

> "The following injuries were discovered during the forensic examination of Mr Saribekyan's body: a depression due to compression of neck muscles; haemorrhages in pectoral and neck muscles on both sides, the skin on the right side of the head, both thyroid lobes, the soft tissue of both brain hemispheres (temporal areas), the medullary substance, the right side of the chest, the right lumbar and rear surface of the left thigh, and tissue and mucous membranes of the rectal area; as well as a lesion on part of the rectal wall. All of the above-listed injuries were inflicted during life, of which the haemorrhages in the right adipose body of the kidney and the right side of the pectoral muscles as well as the haemorrhages in the segment lying between the medium and rear axillary lines had occurred up to one day prior to death. The haemorrhages into the right lumbar area, left thigh, rectum and its mucous membranes as well as the lesion of the rectal wall had been inflicted 1-2 days prior to death. The depression due to compression of neck muscles, the haemorrhage in both lobes of the thyroid and the cranio-cerebral trauma, including the haemorrhages of the head skin, soft brain membranes and brain tissue, occurred immediately before death, of which the depression and the haemorrhages of neck muscles and both lobes of thyroid were caused by neck compression with a semi-hard ring, while the other injuries were caused with blunt object(s) having a restricted surface. Furthermore, scratches of the right temporal region of the head inflicted with blunt object(s) were also discovered.
>
> During the forensic examination of Mr Saribekyan's body, no gunshot injuries or closed-cut wounds were found.
>
> Mr Saribekyan's death was caused by mechanical asphyxiation as a result of compression of the neck organs with a ring, which is proved by the presence of the relatively slanting depression caused by semi-hard squeezing, running front-to-back and bottom-to-top, which was inflicted during life, and the haemorrhage of lower soft tissues and both thyroid lobes, emphysema as well as hemorrhage of areas beneath the epicardium and mediastinum. Due to the unavailability of data from the previous forensic examination and records describing the appearance of the body at the site of its first discovery it is impossible to determine the precise time of death. However, based on the degree of putrefaction, as well as considering that the body had undergone autopsy and was maintained at low temperatures, it is possible that death had occurred within the timeline mentioned in the decision [of 5 November 2010 to open a criminal investigation, i.e. between 11 September and 5 October 2010]."

The report was accompanied by many photographs and schematic drawings of the body and the injuries. The photographs showed, *inter alia*, the head trauma, several haemorrhages and the strangulation furrow.

23. By the above-mentioned decision of 3 January 2011 (see paragraph 9) the investigator at the Military Prosecutor's Office in Baku terminated the two criminal investigations relating to Manvel Saribekyan, as

no third-party involvement in his death had been found and as the criminal case against him should be discontinued due to his passing. The case against the three alleged accomplices of Mr Saribekyan and an unidentified military officer who had purportedly trained them in how to use explosives was to continue, however. The latter proceedings were discontinued on 1 February 2011 because of the impossibility of identifying the suspects.

24. In his decision, the investigator noted the following on the death of Manvel Saribekyan. The crime scene examination had revealed that he could have easily moved and climbed on top of the bed in his cell and tied a rope through the iron bar of the window. The bed blanket, a towel and Mr Saribekyan's shirt and undershirt had been used to manufacture the rope. All these objects, including the window, as well as samples of Mr Saribekyan's nails, hair and other clothes had undergone physical and chemical examinations. These had revealed that there were pieces of cotton from the towel, shirt and undershirt under his nails. The fingerprints found in the dust on the window were too blurred to be identified, however. The investigator further restated the conclusions of the forensic medical examination. He concluded that it was obvious that Mr Saribekyan had committed suicide.

25. Also according to the investigator, several witnesses – including the translator assigned to Mr Saribekyan as well as military police officers and guards at the detention facility – had been questioned. They had declared that Mr Saribekyan had been detained under proper conditions and that he had never complained of the regime. He had been kept in an individual cell and had allegedly been given three meals per day; all his other needs, including toilet visits, had also been met. He had last been seen alive on 3 October 2010 at 11 p.m. when, during the final check of the day, he had been lying in his bed. At the distribution of breakfast the following morning at 8 a.m., he had been found dead, hanging from a rope in his cell. According to the witnesses, no one had been present in Mr Saribekyan's cell between these times. Further, according to statements taken from four Armenian detainees held at the same place, they had no complaints regarding their treatment and the conditions of detention. The investigator found that Mr Saribekyan had not been physically or mentally assaulted during his detention and that, thus, he had not been brought to suicide by anyone.

26. In regard to the criminal case against Manvel Saribekyan, the investigator mentioned the following. The investigation had revealed that Mr Saribekyan had served in the Armenian army between May 2008 and May 2010. After having been discharged he had returned to Ttujur where he had been unemployed for some time. One day a military officer had assembled him and eight other unknown people and trained them in how to use explosives. Ten named witnesses – apparently Azerbaijani citizens

whose functions were not mentioned in the investigator's decision – had reportedly confirmed these facts.

27. No reply to the request of 14 December 2010 (see paragraph 21 above) having been forthcoming from the Azerbaijani authorities, the Armenian Prosecutor-General extended the period of the pre-trial investigation on 27 December 2010 and on 1 March and 2 May 2011. The last decision extended the investigation until 5 July 2011.

28. On 5 April 2011 the Armenian Prosecutor-General asked for assistance from the chairman of the Coordinating Council of the prosecutors-general of the member states of the CIS in order to obtain an answer to his request of 14 December 2010. The Coordinating Council responded by stating that it had asked the Azerbaijani Prosecutor-General to provide information on criminal investigations in Azerbaijan to both the Council and the Armenian Prosecutor-General. No reply had been made to the Council's request.

29. A second forensic medical examination was ordered by the Deputy Prosecutor-General of Armenia on 21 June 2011. On 19 July its conclusions confirmed the results of the first examination.

30. The Armenian pre-trial investigation was suspended by a decision of 16 December 2011 due to the lack of response from the Azerbaijani Government to the request for legal assistance.

THE LAW

31. The applicants complained under Articles 2, 3, 13 and 14 of the Convention that their son had been tortured and killed in detention, that they had not had an effective legal remedy and that the alleged violations had occurred as a result of discrimination based on ethnic origin.

I. ADMISSIBILITY

A. The applicability of the Convention and the Court's jurisdiction

1. The parties' submissions

(a) The respondent Government

32. The Azerbaijani Government maintained that the applicants' son was captured as a member of the Armenian armed forces and, as military captives on both sides, should be considered as a prisoner of war. The 1994 ceasefire agreement between Armenia and Azerbaijan could not be considered a peace agreement. Furthermore, the relations between the countries were tense, borders were closed and frequent armed incidents

occurred. Consequently, the events complained of were to be examined under international humanitarian law and the applicants – and their son while in detention – should have addressed the ICRC which has a specific mandate under the Geneva Conventions of 12 August 1949. As the present application belonged to the sphere of international humanitarian law, it could not be the subject of the Court's jurisdiction.

(b) The applicants

33. The applicants submitted that their son was a civilian shepherd and not a member of the Armenian armed forces. The Azerbaijani Government had not produced any evidence supporting the latter contention. Moreover, there was no armed conflict within the meaning of international humanitarian law at the time of the events of the present case. The parties to the 1991-94 conflict were bound by the 1994 ceasefire agreement. Moreover, it is the factual situation on the ground that determines whether there is an armed conflict. There were no facts in the case to suggest that there was a resort to hostile armed acts from any side of the conflict at the time when their son crossed the border. Rather, the institution of a criminal case against him for illegal crossing of the border shows that the authorities did not consider him to be a member of the armed forces or a prisoner of war.

34. The applicants further pointed out that, even in international armed conflicts, the Convention continued to apply, interpreted against the background of international humanitarian law. While the ICRC had been given a mandate to act in armed conflicts, for instance by providing humanitarian assistance to victims, it could not take decisions in individual cases of violations of international humanitarian law or international human rights law. Instead, as the case did not concern an exchange of detained persons but the responsibility under the Convention of the Azerbaijani authorities in the treatment and death of their son in detention, the Court had jurisdiction to consider their complaints.

(c) The Armenian Government, third-party intervener

35. Agreeing with the applicants, the Armenian Government submitted that there were no shootings or armed conflict taking place at the time when the applicants' son was captured by Azerbaijani forces. Also, the respondent Government had failed to submit any factual data to support their contention that there was an armed conflict on the border between Armenia and Azerbaijan at that time. Accordingly, international humanitarian law was not applicable in the present case. Furthermore, even if the applicants' son's detention had occurred in the context of an international armed conflict, this would not have suspended the application of international human rights law, in particular the Convention, or the jurisdiction of the Court.

2. The Court's assessment

36. The Court notes at the outset that international humanitarian law and international human rights law are not mutually exclusive collections of law. On the contrary, in situations of armed conflict, the Convention has been applied and its provisions have been interpreted in so far as possible in light of the general principles of international law, including the rules of international humanitarian law (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 185, ECHR 2009; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 102-104, ECHR 2014). This approach is also consistent with the jurisprudence of the International Court of Justice (see, for instance, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports* 2004, § 106; and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *ICJ Reports* 2005, § 216).

37. Nevertheless, for international humanitarian law to apply, there must normally be an armed conflict or occupation of territory. As regards conflicts of an international character, Article 2, common to the four Geneva Conventions, provides the following in paragraphs 1 and 2:

> "In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
>
> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

38. Thus, the existence of an armed conflict (or the occupation of territory) is determined with reference to objective and factual criteria. It depends on facts demonstrating the *de facto* existence of hostilities between the belligerents (see the 2016 ICRC commentary on common Article 2, §§ 210-211).

39. Turning to the present case, it is clear that a state of hostility and tension has prevailed between Azerbaijan and Armenia for decades, going back at least to the late 1980s when they were still republics of the Soviet Union. The conflict between the two countries, which has centred on the status of the province of Nagorno-Karabakh, gradually escalated into full-scale war in early 1992. On 5 May 1994 a ceasefire agreement (the Bishkek Protocol) was signed by Armenia, Azerbaijan and the "Nagorno-Karabakh Republic" (see further *Sargsyan v. Azerbaijan* [GC], nos. 40167/06, §§ 14-28, 16 June 2015).

40. Since 1994 there have been recurring breaches of the ceasefire agreement along the borders which have led to the loss of many lives. Furthermore, there are no diplomatic relations between Azerbaijan and Armenia. However, the respondent Government have not put forward any

materials or concrete information that would show that there was a resort to armed force between the two states at the time of the events relating to the arrest and detention of Manvel Saribekyan or that he was to be regarded as a prisoner of war. The lack of a formal peace agreement between Azerbaijan and Armenia is not decisive, as it is the situation on the ground that determines whether there is an armed conflict or not. Moreover, the Court notes that the relevant events did not take place on territory under occupation but concerned a crossing of the border between the states of Armenia and Azerbaijan and the subsequent detention of the applicant's son in Baku.

41. In conclusion, no facts have been presented which indicate that the Convention is not applicable in the present case or that the Court has no jurisdiction. The respondent Government's objection must therefore be rejected.

B. Exhaustion of domestic remedies

1. The parties' submissions

(a) The respondent Government

42. The Azerbaijani Government asserted that the applicants had the right to challenge in the Azerbaijani courts the procedural acts and decisions of the prosecuting authority. As the applicants had not done so, they had failed to exhaust effective remedies within Azerbaijan.

(b) The applicants

43. The applicants stated that there was no available effective remedy for them to exhaust in Azerbaijan. They referred to the conclusions drawn by the Court in the case of *Sargsyan v. Azerbaijan* (cited above, §§ 117 and 119). The respondent Government had merely claimed that such remedies existed but had not specified what those remedies were.

(c) The Armenian Government, third-party intervener

44. The Armenian Government submitted that the respondent Government's objection regarding the non-exhaustion of domestic remedies was groundless. Due to the unresolved conflict concerning Nagorno-Karabakh, there were obstacles of a practical and diplomatic nature for Armenians to gain access to remedies in Azerbaijan. In this context, the Armenian Government referred, *inter alia*, to Azerbaijan's refusal to reply to the request from the Armenian Prosecutor-General under the 1993 CIS Convention (see paragraphs 21, 27 and 28 above).

2. The Court's assessment

45. The Court reiterates that it is primordial that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. The Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It cannot, and must not, usurp the role of Contracting States whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention is therefore an indispensable part of the functioning of this system of protection. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV; and *Sargsyan v. Azerbaijan*, cited above, § 116).

46. While the present case does not concern events relating to the Nagorno-Karabakh conflict, the Court considers nevertheless that certain observations made to describe the general context of relations between Armenia and Azerbaijan in the *Sargsyan* case are relevant also in the present case. As noted above (paragraph 40), there are no diplomatic relations between Armenia and Azerbaijan. Furthermore, borders are closed and postal services are not viable between the two countries. In such a situation it must be recognised that there may be obstacles to the proper functioning of the system of the administration of justice. In particular, there may be considerable practical difficulties in bringing and pursuing legal proceedings in the other country (*Sargsyan v. Azerbaijan*, cited above, § 117).

47. In the present case, the respondent Government have not provided any example of a domestic case or remedy which would show that individuals in the applicants' situation are able to seek redress before the Azerbaijani authorities. On the contrary, the refusal of those authorities to give any assistance or even to reply to the request of the Armenian Prosecutor-General of 14 December 2010 (see paragraphs 21, 27 and 28 above) rather points to the unavailability of effective remedies in Azerbaijan for Armenian citizens.

48. Consequently, the Court considers that the respondent Government have failed to discharge the burden of proving the availability to the applicants of a remedy capable of providing redress in respect of their Convention complaints and offering reasonable prospects of success. The Government's objection concerning the exhaustion of domestic remedies is therefore dismissed.

C. Conclusion on admissibility

49. The Court considers, in the light of the parties' submissions, that the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Furthermore, it finds that the final domestic decision was taken on 3 January 2011 when the investigator at the Military Prosecutor's Office in Baku terminated the two investigations relating to Manvel Saribekyan (see paragraphs 23-26 above) and that, consequently, the application, introduced some five months later, was lodged in time. No other ground for declaring the application inadmissible has been established. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

A. The parties' submissions

1. The applicants

50. The applicants complained that Manvel Saribekyan had died as a result of torture and intentional killing while in detention and that the Azerbaijani authorities had failed to conduct a proper investigation into the circumstances of his death. This involved a violation of Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

51. The applicants claimed that there had been breaches of both the substantive and procedural aspects of Article 2. As regards the substantive aspect, they stated that no plausible explanation had been provided by the respondent Government as to the origin of the injuries on the body of Mr Saribekyan which had been discovered at the forensic examination in Armenia and which had been inflicted the days prior to his death and immediately before the death. These injuries, each of them posing a potential danger to life, built a strong presumption that Mr Saribekyan had

been systematically beaten in detention, culminating in an intense strike to his head, resulting in the crushing of cranial bones and the likely loss of consciousness, immediately before the hanging. He could not have inflicted such injuries on himself. Instead, he was a victim of a staged suicide, perpetrated to disguise the severe injuries he had sustained by being beaten. With reference to the Armenian forensic report, the applicants claimed that the strangulation furrow on his body did not conform with the type of rope with which, the respondent Government claimed, Mr Saribekyan had committed suicide.

52. The applicants further invoked a statement given by Y.G., an Armenian who had crossed the Armenian-Azerbaijani border together with his family in January 2010 in order to escape Armenian law enforcement. Interviewed by one of the applicants' lawyers as well as a representative of an Armenian NGO in January 2015, he had stated that he and his family had been detained at the Military Police Department in Baku until their repatriation in December 2014. They claimed to have been kept in a cell directly above that of Manvel Saribekyan. During the night when Mr Saribekyan died, Y.G. had heard his cell door open and close several times. The next morning an officer had allegedly taken photographs of Mr Saribekyan's cell and in the afternoon a guard had told Y.G. that Mr Saribekyan had not hung himself but had been hanged by other guards. Y.G. had further submitted that it would not have been possible for Mr Saribekyan to hang himself, given the configuration and furnishings of the cells. In particular, the window was placed very high up, just below the ceiling. The iron handle was at the top of the window, which opened downwards. Y.G. had also stated that he, himself, had been regularly beaten and tortured by the guards during the years in detention. The applicants asserted that the testimony of Y.G. confirmed that torture and other inhuman treatment was used as a practice against Armenian detainees at the military police in Baku. It further contradicted the Azerbaijani authorities' contention that no one had entered Mr Saribekyan's cell during the night when he died. Also, the height of the ceiling of his cell and the placement of the window and its handle implied that he could not have tied a rope to hang himself even if standing on a bed.

53. As to the procedural aspect of Article 2, the applicants maintained that the investigation in Azerbaijan had been inadequate. Among other things, they pointed to the many injuries on their son's body discovered during the Armenian forensic examination, which were not mentioned in the Azerbaijani forensic report. Also, the latter report failed to identify that a semi-hard ligature and not a soft one had caused the strangulation furrow. Accordingly, the Azerbaijani forensic examination had not been thorough. Furthermore, its conclusions were not accompanied by any photographic evidence, as opposed to the Armenian forensic report which was supported by colour photos. The applicants further alleged that their son had been

healthy before being captured by the Azerbaijani authorities; all injuries had thus been inflicted while he was in their custody. Alternatively, the applicants stated that the Azerbaijani authorities had failed to take preventive operational measures to protect their son's life, which was in potential danger. In this respect, they referred to the decision of the investigator at the Military Prosecutor's Office in Baku, according to which no one had checked on him between 11 p.m. and 8 a.m. during the night when he died. In the applicants' view, the guards should have monitored Mr Saribekyan's conduct and detected the movement of his bed, which would have been instrumental in the alleged suicide according to the said investigator.

54. Finally, the applicants submitted that the failure of the Azerbaijani authorities to answer to the request of the Armenian Prosecutor-General for legal assistance in the investigation of the death of the applicant's son was a breach of Azerbaijan's positive obligations under the 1993 CIS Convention and a violation of the procedural aspects of Article 2.

2. The respondent Government

55. The Azerbaijani Government submitted that, for a State to be held accountable under Article 2, there had to be sufficient evidence for the Court to conclude beyond all reasonable doubt that the State was responsible for a person's death. However, there was nothing in the present case to suggest that the Azerbaijani State or its agents had killed the applicants' son. Instead, he had committed suicide by hanging, which had been confirmed by the forensic examination conducted on the day of his death by the Azerbaijani authorities. In claiming that their son had been tortured and killed by State agents, the applicants were making highly speculative assumptions. The forensic examination conducted in Armenia could not be considered credible.

56. Moreover, the Azerbaijani authorities had taken all necessary procedural and investigative steps and had informed the general public about the cause of Mr Saribekyan's death. Notably, the Military Prosecutor's Office in Baku had launched a criminal investigation pursuant to Article 125 of the Criminal Code and had concluded, after a thorough investigation, that no incitement to suicide had been confirmed. Also, regarding a possible positive obligation to protect the applicants' son's life, the respondent Government contended that there had been no information indicating that his life was in danger.

57. The Government further stated that Azerbaijani authorities were not obliged to respond to requests of Armenian authorities because all diplomatic relations between the two countries had been suspended. The Armenian authorities must have known that the Azerbaijani Prosecutor-General most probably would not respond to the request for information under the 1993 CIS Convention.

3. The Armenian Government, third-party intervener

58. The Armenian Government generally agreed with the applicants' submissions and their contention that Azerbaijan was responsible for a violation of Article 2 in respect of both its substantive and procedural aspects. The Armenian Government pointed out, among other things, that, where an individual is taken into police custody in good health and is found to be injured on release, it was incumbent on the State to provide a plausible explanation of how those injuries had been caused. In the Armenian Government's view, no satisfactory and convincing explanation of Mr Saribekyan's death had been provided. Furthermore, the Azerbaijani authorities' investigation had been ineffective. The decisions of 4 October 2010 to conduct an examination of evidence and a forensic examination of Mr Saribekyan's body stated that he had committed suicide and the decision of 7 October 2010 to launch a criminal investigation only concerned incitement to suicide. According to the Armenian Government, this showed that the official version of events had already been established by the authorities before they had started to investigate the case.

B. The Court's assessment

1. General considerations

59. Article 2 of the Convention, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective.

60. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and 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 a detained individual is particularly stringent where that individual dies or disappears thereafter.

61. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of

similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Salman v. Turkey* [GC], no. 21986/93, §§ 97-100, ECHR 2000-VII; and *Aktaş v. Turkey*, 24351/94, §§ 289-291, 24 April 2003).

62. Moreover, the obligation to protect the right to life under Article 2, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when someone has died in suspicious circumstances. This obligation is not confined to cases where it has been established that a person has been killed by an agent of the State. The mere fact that the authorities have been informed of the death will give rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see, for instance, *Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010, with further references). Although the failure to comply with this requirement may have consequences for the right protected under Article 13, the procedural obligation contained in Article 2 is seen as a distinct obligation (see, among other authorities, *Šilih v. Slovenia* [GC], no. 71463/01, § 154, 9 April 2009). Furthermore, the Court has consistently examined the question of procedural obligations under Article 2 separately from the question of compliance with the substantive obligation and, where appropriate, has found a separate violation of Article 2 on that account (ibid., § 158).

63. The essential purpose of an official investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. For an investigation into an alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to identify the perpetrator(s) will risk falling foul of this standard.

Furthermore, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, for instance, *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 221-223 and 225, ECHR 2004-III, with further references).

2. The death of Manvel Saribekyan

64. The Court notes that Mr Saribekyan was arrested by Azerbaijani military police on 11 September 2010 after apparently having crossed the border from Armenia. He was brought to the Military Police Department of the Ministry of Defence in Baku, where he was kept in detention until his death on 4 October 2010. There is nothing in the case file to suggest that he had any injuries or illnesses when taken into custody.

65. The evidence presented by the parties concerning the cause of Mr Saribekyan's death differ greatly. The forensic examination performed by the Azerbaijani authorities stated that he died from self-inflicted strangulation injuries, having hung himself in his detention cell with a rope made from soft cloth; no further injuries were indicated in that forensic report (see paragraph 18 above). In contrast, the forensic examination conducted in Armenia concluded that the asphyxiation had been caused by the use of a semi-hard ring and that there were several other injuries on Mr Saribekyan's body, including a cranio-cerebral trauma, which had been inflicted 1-2 days prior to his death and immediately before his death (paragraph 22). The parties have also presented opposing views on the possibility for Mr Saribekyan to have committed suicide, having regard to the configuration of his cell and his physical condition on the day of his death.

66. The Court notes that both investigations comprised external and internal examinations of Mr Saribekyan's dead body. Whereas the Azerbaijani forensic examination was made a few hours after the body had been found, the corresponding examination in Armenia was performed a month later, after the body had been handed over to the Armenian authorities.

67. The Armenian forensic examination was accompanied by many photographs and schematic drawings; in contrast, no supporting evidence for the Azerbaijani findings has been submitted by the respondent Government. Moreover, the photographs included in the Armenian forensic report appear to show injuries that ought to have been examined by the Azerbaijani forensic expert, in particular the cranio-cerebral trauma. The respondent Government did not comment on the results of the Armenian forensic examination or the applicants' associated claims beyond asserting that that forensic examination was not credible.

68. In this connection, the Court reiterates that, while it generally requires proof "beyond reasonable doubt", in situations where knowledge of the events in issue lie wholly, or in large part, with the authorities, as in the case of persons in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. It is then for the respondent Government to provide a satisfactory and convincing explanation (see paragraph 61 above). In the present case, not only the limited extent of the Azerbaijani investigations (paragraph 71 below) and the lack of documentation supporting the findings of those investigations (paragraph 67 above) give cause for concern. The Court also notes that the submissions of the respondent Government in the present case have been very brief.

69. Having regard to the information made available, the Court finds that the applicants have made out a prima facie case that Mr Saribekyan – who was taken into custody in good health and died while under the exclusive control of the Azerbaijani authorities – died as a result of the violent actions of others, notably personnel at the Military Police Department in Baku where he was kept. Given the injuries which Mr Saribekyan sustained prior to his death, as described in the Armenian forensic report, supported by photographic evidence, and the information made available to the Court regarding the configuration of his cell (see paragraphs 12 and 52 above), the account according to which he hung himself cannot be accepted.

70. The Court finds, therefore, that the Government have not convincingly accounted for the circumstances of the death of Manvel Saribekyan and that the respondent State's responsibility for his death is engaged.

It follows that there has been a violation of Article 2 in that respect.

3. The alleged inadequacy of the investigation

71. The Court observes that the Azerbaijani investigation was conducted on the basis of the presumption that Mr Saribekyan had committed suicide by hanging. At the outset, the Military Police Department, in whose custody he was kept, informed the investigators that he had committed suicide by hanging (see paragraph 11 above). The presumption was also reflected in the decisions of the Military Prosecutor's Office of 4 October 2010 that ordered the forensic examination of the body and the examination of the evidence found in the cell (paragraph 13). In addition, the criminal investigation launched by the latter authority three days later concerned (incitement to) suicide and thereby excluded the possibility that Mr Saribekyan had died from direct criminal violence inflicted by others (paragraph 16). It thus appears that the officials involved in the various parts of the investigation did not follow any alternative line of inquiry. This limited scope of the investigation evidently hampered its efficacy.

72. It must also be taken into account that Mr Saribekyan was an Armenian citizen who had been arrested and detained, accused of being an Armenian spy – or "saboteur" – intending to commit the terrorist act of blowing up a school. It can be reasonably assumed that these facts and allegations were known to officers and guards at the facility where he was detained, not least since, immediately after his arrest, he had been shown in Azerbaijani media. Moreover, the Court cannot overlook the general context of hostility and tension between Azerbaijan and Armenia (see paragraphs 39-40 above). In the Court's view, these circumstances called for a careful investigation as to whether ethnic hatred had been a contributing factor in the death of Mr Saribekyan (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 160-168, ECHR 2005-VII). However, no such considerations appear to have featured during the investigation.

73. The Court has further regard to the fact that at no time during the domestic proceedings did the Azerbaijani authorities contact Mr Saribekyan's relatives or any Armenian authority about his arrest, detention or death or the ensuing investigation. Instead, his arrest and death became known in Armenia through Azerbaijani media reports. The only official communication in this respect was the death certificate delivered to the Armenian authorities on 26 October 2010 by the ICRC which it had received from the Azerbaijani General Prosecutor's Office (see paragraph 17 above). Furthermore, the Azerbaijani Prosecutor-General refused to reply to the request for legal assistance made by the Armenian Prosecutor-General under the 1993 CIS Convention, even when that request was repeated via the CIS Coordinating Council (paragraph 28). In this connection, the Court cannot accept the respondent Government's contention that the Azerbaijani authorities had no duty to cooperate on account of the suspension of all diplomatic relations between the two countries. The lack of diplomatic relations does not absolve a Contracting State from the obligation under Article 2 to cooperate in criminal investigations (see, *mutatis mutandis*, *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 244, 29 January 2019; see also the overview of the case-law on the duty to cooperate set out in that judgment, §§ 222-236). It appears that the documents relating to the Azerbaijani investigation came to the knowledge of the applicants and the Armenian authorities only following the communication of the present application. The applicants, as Mr Saribekyan's next-of-kin, thus had no opportunity to safeguard their interests.

74. Having regard to the foregoing considerations, the Court accordingly holds that there has been a violation of Article 2 also in its procedural aspect.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. The parties' submissions

1. The applicants

75. The applicants complained that Manvel Saribekyan had been tortured and ill-treated in detention before he was killed. Moreover, in respect of themselves, the applicants claimed that they had been subjected to mental suffering during the events of the case and that they still suffered because of their inability to find out what happened to their son. They relied on Article 3 of the Convention, which provides the following:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

76. The applicants maintained that torture and inhuman treatment were commonplace in Azerbaijani detention against Armenian detainees, in the overall context of tense relations between the two countries and hatred towards Armenians. As argued also under Article 2 (see paragraph 53 above), they asserted that the Armenian forensic examination of Mr Saribekyan's body had revealed many serious, life-threatening injuries inflicted on him the days prior to his death, giving rise to a strong presumption that he had been systematically beaten in detention. The respondent Government had not given any plausible explanation as to the origin of these injuries or why they had not been recorded in the Azerbaijani forensic expert's opinion.

77. In respect of the applicants themselves, they submitted that they had suffered through stress and anguish, as they had not received any information about the fate of their son for more than 20 days, then had had to wait another month for the handover of his body, which eventually had arrived in a decomposed state with marks of ill-treatment. They stated that they continued to suffer because of their inability to find out what happened to their son.

2. The respondent Government

78. The Azerbaijani Government denied that the applicants' son had been subjected to any kind of ill-treatment in detention or that there was any "Armenophobia" in the country. They submitted that a forensic examination of the body and a criminal investigation had been conducted and that witnesses had been heard, without any evidence of ill-treatment having been found. The applicants' statements in this respect were unsubstantiated and groundless.

79. As regards the alleged suffering of the applicants, the Government stated that the Azerbaijani authorities had announced that their son had been arrested, alive and safe, and that he had appeared on Azerbaijani national

television with no signs of injury. He was in detention for less than a month and information about his death was immediately given to the public and the ICRC. In these circumstances, the applicants could not have sustained such a degree of suffering that it amounted to a violation of Article 3.

3. The Armenian Government, third-party intervener

80. The Armenian Government expressed their overall agreement with the submissions and analysis made by the applicants, pointing to the fact that their son had been systematically beaten in detention as well as brutally beaten shortly before his death. Again, the respondent Government had failed to explain how he had sustained the injuries revealed by the Armenian forensic examination while in Azerbaijani detention. The use of torture was further confirmed by Armenian witness statements and the overall discriminatory policies of the Azerbaijani authorities towards Armenians. The Armenian Government also agreed with the applicants' contention that their own rights under Article 3 had been violated due to the mental suffering to which they had been subjected.

B. The Court's assessment

1. General considerations

81. Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. No provision is made, as in other substantive clauses of the Convention and its Protocols, for exceptions and no derogation from it is possible under Article 15. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

82. Having regard to the strict standards applied in the interpretation of Article 3 of the Convention, ill-treatment must attain a minimum level of severity before it will be considered to fall within the provision's scope. The assessment of this minimum is relative and depends on all of the circumstances of the case including the duration of its treatment, the physical or mental effects and, in some cases, the age, sex and health of the individual. The practice of the Convention organs requires compliance with a standard of proof "beyond reasonable doubt" that ill-treatment of such severity occurred.

83. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a

special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element, as recognised in Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see, among other authorities, *Aktaş v. Turkey*, cited above, §§ 310-313).

84. As regards the mental suffering of a victim's relatives, the Court has consistently acknowledged the profound psychological impact of a serious human rights violation on the victim's family members who are applicants before the Court. However, in order for a separate violation of Article 3 of the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitably stemming from the aforementioned violation itself. The relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question and the involvement of the applicants in the attempts to obtain information about the fate of their relative (see, among other authorities, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 177, ECHR 2013). While a family member of a "disappeared person" can claim to be a victim of treatment contrary to Article 3, the same principle would not usually apply to situations where the person taken into custody has later been found dead. In such cases the Court would normally limit its findings to Article 2. However, if a period of initial disappearance is long it may in certain circumstances give rise to a separate issue under Article 3 (see *Bitiyeva and Others v. Russia*, no. 36156/04, § 105, 23 April 2009, with further references).

2. The treatment of Manvel Saribekyan in detention

85. The Court has found above that the respondent Government have not convincingly accounted for the circumstances of the death of Mr Saribekyan. The opinion issued by the Azerbaijani forensic expert did not mention any of the injuries recorded during the Armenian forensic examination (see paragraph 67 above). The respondent Government did not provide an explanation for the disparate findings of the two forensic examinations; they only stated that the Armenian examination was not credible and that the applicants' allegations that their son had been subjected to ill-treatment were unsubstantiated and groundless.

86. The applicants have claimed that Mr Saribekyan was systematically ill-treated in detention. However, the Court is unable to establish, on the basis of the information available, that he was subjected to ill-treatment throughout the whole period of detention. Nevertheless, the Court takes into

account the Armenian forensic report of 21 December 2010 which, apart from strangulation injuries, recorded haemorrhages in the kidney, chest, lumbar, left thigh and rectum as well as a cranio-cerebral trauma, all caused by blunt objects (see paragraph 22 above). These injuries, estimated to have been sustained by Mr Saribekyan during the last days of his detention, were described in detail and supported by extensive photographic evidence. In the Court's view, neither the documents in the case file nor the observations of the respondent Government give reason to question these findings. Consequently, the Court finds that Mr Saribekyan was subjected to ill-treatment in the form of severe physical violence during the final days of his life, while he was detained at the Military Police Department in Baku. In addition, as has already been noted in the examination of the complaints under Article 2 (see paragraph 72 above), the circumstances surrounding the events, notably the general context of Azerbaijani-Armenian relations and the likelihood that the officers and guards at the detention facility knew about the serious accusations against Mr Saribekyan, called for a careful investigation by the Azerbaijani authorities as to whether ethnic hatred had been a contributing factor to his ill-treatment.

87. Coming to the qualification of the ill-treatment described, the Court is in no doubt that it involved very serious and cruel suffering and that it was carried out intentionally on a detained person under the exclusive control of the authorities. The suffering experienced by Mr Saribekyan prior to his death is to be characterised as torture.

88. Accordingly, the Court concludes that there has been a breach of Mr Saribekyan's rights under Article 3.

3. The alleged mental suffering of the applicants

89. The Court reiterates that the applicants' son disappeared on 11 September 2010. On 13 September the applicants learned that he had been arrested by Azerbaijani military police through reports published by Azerbaijani media. No further information on his fate was given until 5 October when Azerbaijani authorities publicly announced that he had committed suicide the day before. A death certificate was delivered to the Armenian authorities by the ICRC on 26 October and Mr Saribekyan's body was handed over on 4 November.

90. Following his disappearance, the applicant's son thus remained unaccounted for for two days. Subsequently, about three weeks passed before his death was announced. A month after his death, his body was handed over. While the tense relationship between Azerbaijan and Armenia was undoubtedly an exacerbating factor causing emotional distress for the applicants, the mentioned periods of time, in particular the first one during which the applicants did not know the whereabouts of their son, do not as such appear long. It is true, as has been concluded above, that the Azerbaijani investigation into his death was ineffective and did not involve

either the applicants or the Armenian authorities. Consequently, the events that led to their son's death have not been fully elucidated and no one has been held responsible for his ill-treatment and death. However, the Court does not consider that this element raises an issue distinct from the above finding that the flawed investigation involved a violation of the procedural aspect of Article 2. Moreover, noting, *inter alia*, that the applicants did not witness any of the events in question, it finds that there is no sufficiently special feature in the case which gives the suffering of the applicants a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation.

91. Accordingly, while having no doubt that the arrest, detention and death of their son and the uncertainty about what happened to him have caused the applicants profound suffering, the Court finds that there has been no breach of Article 3 in respect of the applicants.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The parties' submissions

1. The applicants

92. The applicants claimed that they had not had an effective remedy in respect of their complaints under Articles 2 and 3. They relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

93. The applicants referred to what they had stated in regard to the respondent Government's objection concerning the exhaustion of remedies (see paragraph 43 above). In essence, they submitted that the possibility of addressing the Azerbaijani authorities was illusory and unrealistic. They added that the ICRC could not be regarded as a remedial mechanism for human rights violations.

2. The respondent Government

94. The Azerbaijani Government submitted that neither the applicants nor their son had raised the issue of a lack of investigation before the Azerbaijani authorities or had substantiated the alleged violations of their rights. Moreover, the Armenian Prosecutor-General's request for legal assistance could not provide a remedy in the case. Due to the suspension of diplomatic relations between the two countries, the applicants, and their son while in detention, should have addressed the ICRC.

3. The Armenian Government, third-party intervener

95. The Armenian Government concurred with the submissions of the applicants.

B. The Court's assessment

96. The Court reiterates its above conclusion that there were no remedies in Azerbaijan for individuals in the applicants' situation (see paragraphs 46-48). However, it has regard to the reasoning which led it to find a violation of Article 2 in its procedural aspect, including the lack of communication of the Azerbaijani authorities with the applicants, as Mr Saribekyan's next-of-kin, or the Armenian authorities at every stage of the events in the case (paragraph 73).

97. In these circumstances, the Court considers that there is no need to examine the case also under Article 13 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 2 AND 3

A. The parties' submissions

1. The applicants

98. The applicants complained that all of the above rights had been breached due to their son's ethnic origin, in violation of Article 14 of the Convention, which provides the following:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

99. The applicants were of the opinion that the events in the present case had to be assessed against the general context of, *inter alia*, the tense relations between Armenia and Azerbaijan and the alleged policy of discrimination and hatred advocated by the Azerbaijani Government against Armenia and its citizens. They referred, for instance, to other cases against Azerbaijan pending before the Court containing complaints of ill-treatment of Armenian citizens in Azerbaijani detention which had similar facts and legal issues as the present case (including *Badalyan*, no. 51295/11; *Khojoyan and Vardazaryan*, no. 62161/14; and *Petrosyan*, no. 32427/16). In regard to their son, they maintained that the allegedly fabricated story of his being a "saboteur" having the intention of blowing up a school showed the discriminatory motives of the Azerbaijani authorities. Furthermore, his ill-

treatment and death in detention was the result of acts perpetrated out of hatred towards Armenians.

2. The respondent Government

100. The Azerbaijani Government contested the applicants' allegations. They argued that the applicants had failed to adduce any evidence showing a direct link between Mr Saribekyan's ethnic origin and the authorities' actions towards him. His detention was not related to his ethnic origin but based on the fact that he was a member of the military forces occupying Azerbaijan's sovereign territory. Furthermore, he had been treated fairly and with appropriate care in detention. The Government strongly denied the allegation that it encouraged hatred towards Armenians.

3. The Armenian Government, third-party intervener

101. In agreement with the applicants, the Armenian Government submitted that the present case had to be considered in the context of a State-sponsored policy of discrimination and hatred towards Armenians in Azerbaijan.

B. The Court's assessment

102. The Court notes that the applicants' complaints under Article 14 have been presented also under Articles 2 and 3 and that the allegations are essentially based on the same facts that have already been examined under the latter provisions. Notably, as part of its findings above (see paragraphs 72 and 86), the Court has taken into account the general context of hostility and tension between Azerbaijan and Armenia and found that the investigation into the death of the applicants' son had been inadequate in several respects, including its failure to consider whether ethnic hatred had been a contributing factor in his death and the torture to which he had been subjected.

103. Accordingly, the Court considers that there is no need to examine the case also under Article 14 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

105. The applicants claimed 120,000 euros (EUR) in respect of non-pecuniary damage sustained by them and their son.

106. The Government contested the claim for being unsubstantiated and unreasonable. They submitted, *inter alia*, that it was the applicants' son's own decision to commit suicide and the authorities had not been able to prevent it. Any finding of a violation in the present case would therefore constitute sufficient reparation in respect of non-pecuniary damage.

107. The Court finds that the applicants have undoubtedly suffered non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, the Court awards them jointly EUR 60,000 in this respect.

B. Costs and expenses

108. The applicants also claimed 1,200,000 Armenian drams (AMD; equivalent to approximately EUR 2,200) for the costs and expenses incurred before the Court.

109. The Government submitted that the claim for costs and expenses should be rejected on the ground that it was unsubstantiated and groundless, as the applicants had not specified the costs incurred and had not presented evidence linking any costs and expenses to the Convention violations alleged.

110. 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.

111. The Court notes that the applicants concluded an agreement with their counsel concerning their fees which is comparable to a contingency fee agreement, an agreement whereby a lawyer's client agrees to pay the lawyer, in fees, a certain percentage of the sum, if any, awarded to the litigant by the court. Such agreements may show, if they are legally enforceable, that the sums claimed are actually payable by the applicant. Agreements of this nature – giving rise to obligations solely between lawyer and client – cannot bind the Court, which must assess the level of costs and expenses to be awarded with reference not only to whether the costs are actually incurred but also to whether they have been reasonably incurred (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

112. The applicants in the present case agreed to pay AMD 1,200,000 to their representatives in the event the Court found in their favour. Such agreements are enforceable under Armenian law. In particular, the Advocacy Act does not set out any limitations on the type of agreement an advocate may enter into with his client, such agreements being regulated by the general provisions of the Civil Code. The Court, therefore, recognises the lawfulness of the arrangement entered into between the applicants and their representatives (see *Asatryan v. Armenia*, no. 3571/09, § 79, 27 April 2017).

113. Having regard to the nature and complexity of the present case, the Court considers that the costs and expenses have been actually and necessarily incurred and are reasonable as to quantum. Moreover, they are related to the violations found. The Court therefore awards the applicants EUR 2,200 under this head.

C. Default interest

114. 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

1. *Declares*, by six votes to one, the application admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 2 of the Convention in respect of the death of Manvel Saribekyan;

3. *Holds*, by six votes to one, that there has been a violation of Article 2 of the Convention in respect of the inadequacy of the investigation into the death of Manvel Saribekyan;

4. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the torture of Manvel Saribekyan;

5. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention in respect of the applicants;

6. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

7. *Holds*, unanimously, that there is no need to examine the complaint under Article 14 of the Convention;

8. *Holds*, by six votes to one,
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
(i) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicants, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Hüseynov is annexed to this judgment.

A.N.
C.W.

DISSENTING OPINION OF JUDGE HÜSEYNOV

The reason for my dissenting from the majority opinion is that, in my view, the present application should have been declared inadmissible as having been introduced outside the six-month time limit.

The respondent Government did not raise in their observations an admissibility objection on that ground, but this could not prevent the Court from examining the matter of its own. The Court has repeatedly stressed that the six-month rule set out in Article 35 § 1 of the Convention is a public-policy one which the Court can, and indeed must, apply even of its own motion (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 247, 28 November 2017, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 138, 20 March 2018).

The majority did touch upon the matter, but confined themselves to stating that "the final domestic decision was taken on 3 January 2011 when the investigator at the Military Prosecutor's Office in Baku terminated the two investigations relating to Manvel Saribekyan ... and that, consequently, the application, introduced some five months later, was lodged in time" (see paragraph 49 of the judgment). Thus, the date when the Azerbaijani investigator terminated the criminal investigation into incitement to suicide (as no third-party involvement in his death had been found) as well as the investigation against him (owing to his passing) was taken by the majority as the starting date for the running of the six-month period. The majority did not provide any explanation as to why the above decision was to be considered a "final decision" within the meaning of Article 35 § 1 of the Convention. In particular, it is not clear why the applicants had to await the outcome of those investigations in order to complain before the Court that their son had been tortured while in detention.

It is evident that the term "final decision" in Article 35 § 1 refers exclusively to the final decision in the process of exhaustion of all domestic remedies. In other words, the term "final decision" becomes meaningless if no domestic remedy is available. In this context, considering the decision of 3 January 2011 as the starting point for the running of the six-month period might imply that there was an effective remedy in Azerbaijan. However, the judgment clearly states that there was no remedy in Azerbaijan "capable of providing redress in respect of [the applicants'] Convention complaints and offering reasonable prospects of success" (see paragraph 48 of the judgment). In a situation where it is clear from the outset that no effective remedy is available in the country, there is no need for an applicant to await any domestic decision in order to lodge a Convention complaint. In such situations, the six-month period runs from the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such an act or had knowledge of its adverse effects (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and

8 others, § 157, ECHR 2009, and *Aydarov and Others v. Bulgaria* (dec.), no. 33586/15, § 90, 2 October 2018).

Thus, in this case, it was clear from the outset that there were no effective remedies for the applicants to try in Azerbaijan, and therefore time, for the purposes of calculating the six-month limit, should run from the act (the alleged murder on 4 October 2010), or from the date of knowledge of the alleged violation (4 or 5 November 2010).

The applicants' son was found dead on 4 October 2010. Incidentally, on 6 October 2010 the Armenian Foreign Minister Eduard Nalbandyan, addressing the Armenian Parliament, accused the Azerbaijani authorities of the killing of an Armenian man found hanged in Azerbaijani custody. He described the death of 20-year-old MS as "horrendous" and the result of "terrorist" and "medieval" methods. On the same day the Minister of Defence of Armenia stated that Manvel Saribekyan had been killed intentionally (report by RFE/RL's Armenian Service on 7 October 2010).

The body of Manvel Saribekyan was handed over to the Armenian authorities on 4 November 2010. On 5 November 2010 a criminal investigation was immediately launched in Armenia concerning aggravated murder. Thus, at the latest, the applicants became aware of the alleged violations on 4 or 5 November 2010. Moreover, it is stated in the judgment that during the investigation in Armenia the applicants attested that the body of their son "bore several marks of injuries and torture" (see paragraph 20 of the judgment). Hence, at the latest by early November the applicants knew of the fact of the violation or violations, and they also knew (or should have known) that no remedy existed in Azerbaijan in respect thereof. Nevertheless they only submitted their application to the Court on 10 June 2011, that is to say, after seven months.