



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

FIFTH SECTION

CASE OF VARDOSANIDZE v. GEORGIA

(Application no. 43881/10)

JUDGMENT

Article 2 • Positive obligations • Death from carbon monoxide poisoning following reconnection of improperly installed gas-operated water heater despite warning from gas company • Dangerous activities carrying an inherent risk to life • Deficiencies in the supervision of compliance with safety rules not sufficient to hold the respondent State accountable • Violation of relevant safety rules discovered by the gas company before death and water heater disconnected • Unpredictability of human conduct • Unreasonable decision of the applicant's family to take fatal risk by reconnecting device to gas supply

STRASBOURG

7 May 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 Vardosanidze v. Georgia,

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

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges*,

and Victor Soloveytchik, *Deputy Section Registrar*,

Having deliberated in private on 24 March 2020,

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

PROCEDURE

1. The case originated in an application (no. 43881/10) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Georgian national, Ms Lali Vardosanidze (“the applicant”), on 26 June 2010.

2. The applicant was represented by Ms N. Jomarjidge, of the Georgian Young Lawyers Association (GYLA), and Ms J. Evans, Ms J. Gavron, Mr P. Leach, and Ms K. Levin of the European Human Rights Advocacy Centre (EHRAC). The Georgian Government (“the Government”) were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

3. Relying on Article 2 of the Convention, the applicant complained that the respondent Government had failed to protect her son’s life from lethal poisoning by carbon monoxide owing to their failure to adequately regulate and supervise the safe use of gas-operated household devices, and that the investigation into his death had not been effective.

4. On 1 September 2014 notice of the complaints under Article 2 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Kutaisi.

6. On 1 June 2007 technicians from a limited liability company called Kaztransgaz-Tbilisi (“the gas company”) – the sole company licenced to distribute natural gas in Tbilisi – discovered, as part of a safety check, that a gas-operated water heater had been improperly installed in a one-bedroom

apartment that the applicant's son, G.K. and his grandmother, P.A., had been renting in Tbilisi since December 2006 ("the apartment"). The inspection record no. 171786 made by the technicians indicated the surname of a certain individual (G.) as client ("აბონენტო"), apparently referring to the owner of the apartment, but it does not appear that the owner was informed about the inspection (see paragraphs 12 and 23 below). The inspection record in question indicated that "the gas meter was sealed in cellophane, the water heater was disconnected from the gas pipe, [and] the resident was provided with instructions". It was signed by the technicians and the applicant's mother. The record did not elaborate on the nature of the violation of safety rules found, if any, or why exactly the water heater had been disconnected. Nor did it elaborate on the nature of the instructions given to the applicant's mother.

7. On 30 April 2008, as the applicant's son had not been responding to telephone calls, his friend, G.G., went to the apartment. He looked through the window of the apartment, which was located on the ground floor of an eight-storey apartment building, and saw G.K. lying on the bed face down. G.G. immediately called the police, who arrived with an ambulance. The police and the paramedics forced open the apartment and found that G.K. was dead.

8. On the same day a preliminary criminal investigation was opened by the prosecutor's office concerning incitement to commit suicide, and a forensic medical expert examination was ordered in order to determine the cause of G.K.'s death.

9. On the same day the gas-operated water heater was removed from the apartment by three technicians from the gas company, and was "sent for an expert examination", as confirmed by inspection record no. 001671 dated 30 April 2008.

10. Between 30 April and 19 May 2008 a forensic medical examination was carried out. The resulting report, report no. 587/33 ("the first expert report"), reached the following conclusion:

"The cause of G.K.'s death is asphyxiation as a result of poisoning by carbon monoxide (an asphyxiating gas). This is confirmed by the forensic medical examination of the body, as well as the biochemical analysis of the blood, which revealed the presence of carboxyhaemoglobin at a level of 60%."

11. On 2 May 2008 the investigator ordered a technical expert examination of the gas-operated water heater. The expert was to answer the following questions:

- a) Was the gas-operated water heater ... installed in violation of the safety rules?
- b) By 30 April 2008 had the gas-operated water heater been used in violation of the safety rules? If so, how?
- c) Is the gas-operated water heater ... in good technical condition? If not, what kind of damage can be observed?

d) Is the gas-operated water heater ... licensed, and is its use permitted in Georgia?

e) Could G.K. have prevented the accident?

f) In this particular case, it should be determined who was responsible for complying with the safety rules when installing and using the gas-operated water heater.”

12. On 15 May 2008 the owner of the apartment, R.G., noted that the applicant’s mother, P.A., and son., G.K., had been renting his apartment since December 2006 and had not raised any complaints with him. As regards the water heater, he had purchased it in a shop in September 2005 and installed it with the help of a technician he had found at the shop. He did not know whether representatives from the gas company had visited his apartment while the applicant’s family had been living there.

13. On 27 June 2008 an expert from the National Forensic Bureau issued report no. 1449/15 (“the second expert report”). He reached the following conclusions:

“a) The gas-operated water heater ... was not removed by the expert. Therefore, it is impossible to establish whether it was installed in violation of the safety rules.

b) By 30 April 2008 the said device was probably in use in violation of the safety rules ... The use of the heater [which left the exhaust fumes inside the premises] in the apartment in question with the ... door, [standard] window, small window ... closed could have limited air circulation, which would inevitably have led to incomplete combustion of the gas and could have led to the [relevant] result.

c) During the laboratory examination, the technical condition of the gas-operated water heater was satisfactory;

d) The gas-operated water heater ... is industrially manufactured. The intended use of such a heater (when correctly used) is safe and its use is not prohibited in Georgia;

e) The deceased, G.K., could have avoided the fatal accident [by airing the area];

f) In accordance with the existing technical guidelines, responsibility for the safe use of gas-operated household devices in residential buildings lies with residents, while the supervision of gas pipes and the safe use of gas devices lies with the gas management unit...”

14. The case files indicate that G.G., who had discovered G.K.’s dead body (see paragraph 7 above), gave a statement confirming that upon discovering G.K.’s body, he had noticed that a small upper window had been open in the apartment.

15. On 11 June 2008 a technician from the gas company, T.K., who had visited the apartment on 1 June 2007 (see paragraph 6 above), noted that a violation of safety regulations had been discovered as part of the annual safety check the company had carried out. T.K. stated that the gas-operated water heater had been installed “incorrectly”, without elaborating on the nature of the faulty installation. The technicians had therefore disconnected the water heater from the pipe, sealed the faucet (“დავლუქეთ ონკანი”), wrapped the gas meter in cellophane, and drawn up a corresponding

inspection record, which had been signed by the person present in the apartment. He noted that the person in question had been warned against reconnecting the water heater.

16. On 11 June 2008 A.B., another technician from the gas company who had visited the apartment on 1 June 2007, gave a similar statement.

17. On 5 September 2008 it was decided that the criminal investigation would be reclassified and the relevant events would be considered with regard to Article 240(1) § 2 of the Criminal Code – violation of safety regulations resulting in a person’s death (see paragraph 31 below).

18. On 9 September 2008 the applicant’s mother stated that on 1 June 2007 the technicians from the gas company had visited the apartment, drawn up an inspection record whose contents she was unaware of, and sealed the gas meter, without disconnecting the gas pipe from the water heater or leaving a copy of the inspection record for her.

19. On 10 September 2008 the applicant was granted victim status. She stated that according to the information she had been given by her son and mother, the gas company technicians had only sealed the gas meter in cellophane, without disconnecting the water heater from the gas pipe or sealing the pipe faucet.

20. On 25 September 2008 T.K. (see paragraph 15 above) gave an additional statement to the investigator. He noted that safety checks were carried out annually, and clarified his remit in the context of the safety check procedure. According to T.K., as per the gas company’s internal instructions (see paragraph 38 below), an incorrectly installed gas-operated device was to be disconnected from the gas pipe and the residents were to be given “instructions” while “sealing the device went beyond [his] remit.”

21. On 25 September 2008 A.B. (see paragraph 16 above) also gave an additional statement similar to that of T.K. (see paragraph 20 above). He noted that an incorrectly installed gas-operated device was to be disconnected from the gas pipe and the residents were to be given “instructions while sealing [went] beyond [their] remit”.

22. On 29 September 2008 the expert (see paragraph 13 above) was questioned. He noted that in certain cases carbon monoxide poisoning might still occur even when a window was left open, as a result of the incomplete combustion of gas. If, for instance, the apartment had been damp, this “would have contributed to intense incomplete combustion.”

23. On 18 October 2008 the owner of the apartment, R.G., gave an additional statement. He noted that the apartment had been renovated in 2005 and he had installed new gas pipes which had been assessed by the gas company, and he had been assured about their safety. Subsequently, he had installed the gas-operated water heater with the help of a technician he had found at a shop. He had not been aware of the need to inform the gas company, and had not been aware of any issues with the water heater. In 2005 a woman had been renting his apartment. She had moved out due to

damp in the apartment that had affected particularly one of the walls. He had renovated the apartment in order to fix that problem. Subsequently a family with a small child had rented it. The wall had become damp again and he had renovated the apartment before the applicant's family had moved in. He had not been aware of the visit from the gas company's technicians in the period that followed or any irregularities associated with the installation of the water heater.

24. On 8 April 2009 A.B. gave yet another statement to the investigator. He noted that as part of the security checks, when a water heater was assessed, the technicians checked whether chimney and ventilation systems were adequate by enquiring whether the resident possessed a certificate in that regard "issued by the relevant agency." In the absence of such a certificate, the resident was prohibited from using the water heater. As regards the eight-storey apartment building where the applicant's son had lived, it had been completely prohibited to have a gas-operated water heater installed in it, owing to the absence of chimney systems in buildings with five or more floors. He noted that the violation of that rule had been the reason why the water heater had been disconnected from the gas pipe. As regards the sealing of the faucet, as per the internal instructions of the gas company applicable at the material time, this had not been the responsibility of the technicians. The resident had been provided with verbal instructions.

25. On the same date T.K. gave a similar statement. He specified that in the apartment building in question, which lacked chimney systems, the ventilation systems were faulty, therefore it was not permitted to install gas-operated water heaters. Furthermore, it was impossible to install a water heater in an eight-storey apartment building without running the risk of carbon monoxide poisoning, and the installation of such heaters was not permitted in buildings with more than five storeys. That had been the installation error observed in the apartment where G.K. had died. The resident had been provided with verbal instructions. T.K. noted that the resident could have reconnected the water heater to the pipe, as the technicians had not been obliged to seal the faucet at the material time.

26. On 24 April 2009 A.K., the third technician from the gas company, who had visited the apartment on 1 June 2007, gave a statement noting that he did not remember the particular circumstances surrounding the visit, as a long time passed since then and he had visited numerous other apartments in the years since that visit. He added that the installation of gas-operated water heaters in apartment buildings with more than five storeys was not allowed, owing to the absence of adequate chimney and ventilation systems in such buildings. As technicians were not required to seal the relevant faucet in the event of discovering an incorrectly installed water heater, gas consumers were able to reconnect the heaters themselves.

27. On 16 October 2009 the preliminary criminal investigation was closed on the grounds of the absence of a crime. According to the

prosecutor's report, even though the expert had been unable to establish whether the water heater had been installed in violation of the safety rules, it had been established that it had been altogether prohibited to have such water heaters installed in an eight-storey building. On 1 June 2007 the gas company technicians had discovered the violation of the safety rule in question, disconnected the water heater from the gas pipe, and given instructions to the applicant's mother. Nevertheless, given that the water heater had been functioning in the apartment on 30 April 2008, G.K. must have carelessly reconnected it, and it was the inhabitants of residential buildings who were responsible for ensuring the safe use of household gas equipment. The prosecutor took note of the expert's finding that G.K. could have avoided the fatal accident by opening the window (see paragraph 13 above), and G.G.'s statement that the small upper window had indeed been open (see paragraph 14 above). The prosecutor further noted the expert's statement that, in certain cases, damp in an apartment might aggravate the situation, despite there being an open window or door (see paragraph 22 above). She also pointed to the statement of R.G., the owner of the apartment in question, confirming that it had been damp in the apartment, which had led him to carry out several renovation projects (see paragraph 23 above). Based on the above information, the prosecutor concluded that G.K.'s death had been an accident, caused by reconnecting the water heater to the gas supply despite the gas technicians' warning, involving no element of a crime.

28. On an unspecified date the applicant appealed against the prosecutor's decision of 16 October 2009. She submitted, among other things, that contrary to inspection record no. 171786 drafted on 1 June 2007 (see paragraph 6 above), the gas company technicians had not cut off the gas supply to the water heater, had not given her mother instructions, and had violated the relevant regulations in respect of their duties. Considering that a small upper window had been open in the apartment at the material time, the applicant submitted that her son could not have avoided the accident. She further submitted that while the prosecutor had noted that it had been completely prohibited to have a water heater installed in an eight-storey building, the gas company technicians had not indicated that in the relevant inspection record. Furthermore, the owner of the apartment who had installed the water heater had been at fault for not complying with the relevant regulations requiring him to ensure that such an installation be in compliance with technical requirements and be performed by the gas company rather than some private contractor. She further noted that the water heater had been installed two years before they had started to rent the apartment. Therefore, the investigation needed to determine whether the owner of the apartment had been warned by any authority about the faulty installation. The applicant further indicated that after disconnecting the

water heater the gas company technicians had been obliged to lock the faucet rather than merely disconnect the gas pipe.

29. On 24 November 2009 the Tbilisi City Court rejected the applicant's appeal against the investigator's decision of 16 October 2009. It found that the gas-operated water heater had been reinstalled by the person using it despite the warning against this made by the gas company, and this had caused the fatal accident. Therefore, the prosecutor's decision to terminate the preliminary investigation on account of the absence of a crime had been correct. The applicant appealed on an unspecified date.

30. On 28 December 2009, agreeing with the lower court's findings, the Tbilisi Court of Appeal rejected the applicant's appeal in a final decision. The court found it established, citing an opinion of an engineer of the gas company dated 9 September 2008, that the water heater had been carelessly reconnected by the applicant's family, leading to the fatal accident.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code (1999)

31. The Criminal Code, as it stood at the material time, provided as follows:

Article 240(1): Breach of safety regulations at electric, thermal energy, gas, oil or oil product facilities

"1. A breach of safety regulations during the placement, design, construction, or operation of electric, thermal energy, gas, oil or oil product facilities that results in serious or less serious damage to health, or which causes serious damage, is punishable by a fine or limitation of freedom for up to three years, or imprisonment for a period up to two years. Such a penalty may or may not be accompanied by a prohibition on practising or loss of a professional position for up to three years.

2. The same action which results in loss of life or some other grave outcome is punishable by a term of imprisonment of between four and seven years. Such a penalty shall be accompanied by a prohibition on practising or loss of a professional position for up to three years.

3. The act described in the first paragraph of the present Article which results in the loss of two or more lives is punishable by imprisonment for six to ten years. Such a penalty shall be accompanied by a prohibition on practising or loss of a professional position for up to three years."

B. Regulations at the material time concerning the use of gas-operated household devices

1. Gas Consumption Safety Rules (2002)

32. Order no. 8 on the Safety Rules in Gas Consumption adopted by the Head of the National Inspectorate for Technical Supervision on 28 March 2002 ("the Order on Gas Consumption Safety Rules"), in force at the

material time, stated the following: “responsibility for the safe use of household gas-operated devices in a residential building lies with its inhabitants” (section 31(3)).

33. Section 32(3) provided as follows:

“tools and equipment that leak gas [or] have insufficient safety features or ventilation systems, as well as those connected to the natural gas supply without authorisation, shall be disconnected [from the natural gas supply] by installing a cap on the [relevant gas line/faucet] (“სახმობის დაყენებოთ”) and [the relevant] inspection record being compiled.”

2. *Presidential Decree on Measures to Avoid Accidents Caused by Violations of Norms on the Use of Natural Gas (2002) adopting the Temporary Additional Instruction on the Safe Internal Use of Gas in Residential, Educational, and Public Spaces*

34. On 22 June 2002 the Presidential Decree (*ბრძანებულება*) no. 308 on Measures to Avoid Accidents Caused by Violations of Norms on the Use of Natural Gas was issued. It adopted the “Temporary Additional Instruction on the Safe Internal Use of Gas in Residential, Educational, and Public Spaces” (“the instructions”) apparently drafted in accordance with the earlier findings of a commission of inquiry into the causes of accidents related to the consumption of natural gas in violation of the safety rules. The Decree called on the gas companies to “reveal and address violations of safety rules”, and required the local municipalities to aid the gas companies in this task. It also noted that “regulatory organisations should intensify control not to allow the sale of uncertified gas-operated devices”.

35. According to Section 1 of the instructions, in force at the material time, “the increased number of accidents related to the use of household devices operated by natural gas point[ed] to an alarming situation and require[d] implementation of immediate measures.” Among other things, Section 1 of the instructions called for a ban on installing and using in homes, schools, nurseries, and public buildings any gas-operated heaters or water heaters which left combustion exhaust fumes in confined spaces in buildings without appropriate ventilation systems. Section 2 of the instructions provided as follows: (a) the installation of any gas-operated household device should be effected only by a licensed organisation, and be conditional upon the existence of necessary documentation; (b) the licensed organisation should verify the suitability of the ventilation systems; and (c) the organisation in question should draw up an appropriate installation record to be transferred to the relevant gas company so that the latter registered in its system the device concerned. Section 4 of the instructions also stated that “the responsibility for the safe use of a duly installed and registered gas-operated household device rests with a resident, an owner.”

3. *Rules on the Consumption of Natural Gas (2004)*

36. Rules on the Consumption of Natural Gas adopted by the National Energy Regulatory Commission (Resolution no. 10, 30 September 2004 – “the Gas Consumption Rules”), in force at the material time, provided that the natural gas distributor “[should] observe the established safety norms...” (section 2(2)(c)).

37. Under section 2(3)(d)-(e), if the use of certain gas equipment posed a risk to the life, health or property of an individual, “the natural gas supply [to the household] should be immediately cut off”, and the same rule applied if it was found that the applicable safety rules had been violated and/or the use of certain gas equipment might have caused damage. Under section 5 of the Gas Consumption Rules, before starting to use a new or newly renovated gas-operated device, the consumer was obliged to ensure that the technical aspects of the device’s connection were verified by the gas provider. In addition, while the gas company’s staff members were required to compile a relevant inspection record upon discovering a customer’s violation of the safety rules, section 11(2) of the Gas Consumption Rules provided for a list of information to be included in such a record, such as, among other things, the nature of the violation found and the gas consumer’s explanations.

4. *Instructions for Technicians Ensuring the Use and Repair of Gas-Operated Devices (2006)*

38. Instructions for Technicians Ensuring the Use and Repair of Gas-Operated Devices (“Instructions for Technicians”, a document apparently adopted by the gas company in 2006) provided that technicians were to disconnect an incorrectly installed gas-operated device and draft a corresponding inspection record.

5. *Supervisory body in respect of rules on gas consumption*

39. The Order on Gas Consumption Safety Rules of 2002, adopted by the National Inspectorate for Technical Supervision (see paragraph 32 above), provided as follows:

Section 31(4)-(6):

“The natural gas provider shall supervise the safety of the gas pipes and equipment inside such buildings.

A technical supervisory body [the National Inspectorate for Technical Supervision] shall supervise enterprises which are responsible for overseeing the safe use of gas-operated household devices.

A commission appointed by an appropriate body shall investigate accidents ... related to the use of gas in residential buildings.”

40. Under section 32(2), as regards the frequency of inspections, the inspection of residential buildings was “to be arranged in consultation with a technical supervisory body”.

41. The Internal Regulations of the National Inspectorate for Technical Supervision (adopted by Presidential Decree (ბრძანებულება) no. 775, in force between 29 December 1997 and 6 July 2004), provided for the inspectorate’s obligation to monitor the construction and use of gas supply systems (section 14(d)). On 20 December 2005 new Internal Regulations of the National Inspectorate for Technical Supervision were adopted by Government Decree (დადგენილება) no. 277. They were in force until 20 January 2010. In accordance with section 2(2)(f) of the new regulations, the National Inspectorate for Technical Supervision was to supervise “the development of designs for and the construction and use of the major gas supply systems and pipelines ...” The documents did not specify the inspectorate’s supervisory duties in respect of the safe installation and use of gas-operated household devices at the material time.

6. Construction regulations

42. The Government submitted an excerpt from unnamed construction regulations, in accordance with which it was prohibited to install gas-operated water heaters in apartment buildings with more than five storeys. A permission to install such devices in buildings with more than five stories could be exceptionally granted depending on the functionality of the pipeline systems. In such a case the airing of the exhaust fumes must have been ensured by means of an exhaust pipe attached to an external wall (“გარე კედელში გამავალი საკვამლე არხი”).

C. Subsequent amendments to the regulations concerning the use of gas-operated household devices

43. On 9 July 2009 the National Energy and Water Supply Regulatory Commission adopted decree no. 12 on the Rules of Natural Gas Supply and Consumption. The new document superseded the Gas Consumption Rules (see paragraphs 36-37 above). It provided for representatives from the gas company being obliged to carry out annual safety checks and having a duty to provide the users of gas-operated devices with information concerning a violation of the safety rules – if one was discovered – and measures to address the irregularity, and also having a duty to follow up on a violation of safety rules within three months of the violation being discovered. The technicians from the gas company were to cut off the gas supply to the consumer if, upon inspection, the irregularity had not been adequately addressed.

D. Statistical information concerning carbon monoxide poisoning

44. According to information obtained by the applicant from the Tbilisi Ambulance Centre, 16,538 incidents of carbon monoxide poisoning were reported in Tbilisi between 2007 and 2015, with 1,305 cases in 2008. No information was available as to how many poisoning incidents had had a fatal outcome.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

45. The applicant complained that the Government had failed to protect her son's life from lethal poisoning by carbon monoxide owing to their failure to adequately regulate and supervise the safe use of gas-operated household devices, and that the investigation into his death had not been effective. She relied on Article 2 of the Convention which, in so far as relevant, reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ...”

46. The Government contested that argument.

A. Admissibility

47. The Court notes that the application 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

48. The applicant submitted that the Government had failed to respect their positive obligations under Article 2 of the Convention to protect her son's life and to investigate his death effectively. In particular, the domestic legislation at the material time had contained only general rules, without adequately ensuring the effective protection of gas consumers' safety. Furthermore, the law had failed to specify a clear course of action which the gas company and consumers had been obliged to follow upon discovering the defective installation of a gas-operated device in a residential building. Additionally, the law, as it had stood at the material time, had not provided for regular safety checks or an obligation to follow up on the discovery of a faulty installation of a gas-operated device. Nor had the relevant legislative

acts adequately addressed the matter of the safety instructions to be given to individuals on the safety standards to be followed, either generally or following the discovery of a faulty installation, as in the applicant's son's case. In such circumstances, placing the responsibility to comply with safety standards when using gas-operated household devices solely or primarily with consumers had been unjustified. The applicant further underlined that there was no designated official authority responsible for overseeing the activities of the gas company and its compliance with safety standards. Finally, she emphasised in particular that, considering the high annual rate of carbon monoxide poisonings, the Government had been well aware of the risk which the gas-operated household devices posed to the life and health of society, and had failed to adequately regulate the matter.

49. As regards the criminal investigation into her son's death, the applicant maintained, among other arguments, that it had been deficient, as it had not addressed the possible role of various individuals and their omissions in relation to the fatal accident, and the scope of the regulatory framework at the material time or any potential deficiencies in that framework, that aspect having been an essential element of the crime in respect of which the investigation was carried out.

(b) The Government

50. The Government submitted that the domestic law at the material time had contained regulations concerning the safe use of gas-operated household devices, without elaborating on the mechanisms for their enforcement. They maintained that responsibility for the safe use of household gas equipment had rested with the inhabitants of a residential building. As regards the duties of the gas company upon discovering that such equipment had been incorrectly installed, the gas company technicians had duly fulfilled those duties by disconnecting the water heater from the gas pipe, locking the relevant gas pipe faucet, compiling an inspection record, and instructing the applicant's mother accordingly. The Government did not comment on the allegedly inconsistent nature of the various regulations concerning the duties of the gas company. They stated that the law had not provided for regular safety checks on gas equipment in residential buildings, and no additional safety check had been conducted between 1 June 2007 and the time of G.K.'s death. By contrast, as of 2009 there had been an obligation to carry out an annual safety check, and a duty on the part of the gas company representatives to follow up on a violation of the safety rules within three months of such a violation being discovered.

51. As concerns the criminal investigation, the Government submitted, among other things, that the conclusion that G.K.'s death had been an accident related to his decision to reconnect the gas-operated water heater despite the apparent risks – a mistake attributable to him – had been in line with the conclusions of experts.

2. *The Court's assessment*

(a) **General principles**

52. The Court reiterates firstly that its approach to the interpretation of Article 2 is guided by the idea that the object and purpose of the Convention as an instrument for the protection of individual human beings requires its provisions to be interpreted and applied in such a way as to make its safeguards practical and effective (see, for example, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2429, § 64, and *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV). The Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State, but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 134, 25 June 2019; *L.C.B. v. the United Kingdom*, no. 23413/94, p. 1403, § 36; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

53. Such a positive obligation may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society (see *Nicolae Virgiliu Tănase*, cited above, § 135, and *Cevrioğlu v. Turkey*, no. 69546/12, § 50, 4 October 2016, with further references). In the latter circumstances, the positive obligation covers a wide range of sectors (see *Ciechońska v. Poland*, no. 19776/04, §§ 61-62, 14 June 2011, with further references). The situations which may engage States' positive obligations are not exhaustive, and the Court has found that the positive obligation under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII, and *Ciechońska*, cited above, § 63).

54. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see *Öneryıldız*, cited above, § 89, and *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 129, ECHR 2008 (extracts)). In the particular context of dangerous activities special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity, and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of

citizens whose lives might be endangered by the inherent risks (see *Öneryıldız*, cited above, §§ 71 and § 90). Among these preventive measures particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. The relevant regulations must also provide for appropriate procedures for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels, taking into account the technical aspects of the activity in question (see *Öneryıldız*, cited above, §§ 89-90, and *Budayeva and Others*, cited above, § 132). As to the choice of particular practical measures, the Court has consistently held that where the State is required to take positive measures, the choice of means is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see *Budayeva and Others*, cited above, § 134).

55. However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources (see *Ciechońska*, cited above § 64, and *Cevrioğlu*, cited above, § 52).

56. Furthermore, where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Paul and Audrey Edwards*, cited above, § 54). In this connection, the Court observes that unlike in medical negligence cases, where a civil remedy may suffice (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I), in cases concerning death resulting from dangerous activities, the procedural positive obligation to have in place an effective independent judicial system capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim entails an obligation to carry out an effective official investigation (see *Nicolae Virgiliu Tănase*, cited above, §§ 137-38).

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

57. The Court observes that the core of the applicant's complaint before it concerns the alleged inadequacy of the regulatory framework with respect to the safe use of gas-operated household devices, in the context of the respondent Government's positive obligations regarding dangerous activities – such as the installation of improvised gas connections in closed living spaces without ventilation – carrying an inherent risk to life. The

applicant argued that such deficiencies were closely linked with her son's death, and the domestic authorities failed to comply with the procedural obligations under Article 2 of the Convention.

58. In that context, it is undisputed between the parties that the applicant's son died as a result of poisoning by carbon monoxide (an asphyxiating gas) emitted from an incorrectly installed gas-operated water heater. By contrast, the parties disagree as to whether the domestic legislation contained adequate guarantees to safeguard G.K.'s life, what particular regulations were in place to prevent accidents related to the use of gas-operated household devices, and whose responsibility it was to ensure compliance with such regulations.

59. In this regard, the Court reiterates that the mere fact that the regulatory framework may be deficient in some respect is not sufficient in itself to raise an issue under Article 2 of the Convention. It must be shown to have operated to the relevant individual's detriment (see, *mutatis mutandis*, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 188, 19 December 2017). Therefore, while the Court takes note of the statistical information regarding the high number of incidents relating to carbon monoxide poisoning in the city of Tbilisi between 2007 and 2015 (see paragraph 44 above), and the related content of the Presidential Decree of 2002 (see paragraph 34 above), the Court's task is not to make an abstract assessment of the regulatory framework applicable in the present case but to determine whether the manner in which they were applied to, or affected, the applicant's son gave rise to a violation of the Convention.

60. Against this background, the Court notes that various regulations existed at the material time which prohibited the installation of the type of the water heater at the core of the present case in spaces which were not equipped with adequate ventilation systems (see paragraphs 35 and 42 above). Such safety rules were aimed at avoiding the accumulation of exhaust fumes inside dwelling spaces to safeguard life and health of the population, and appear reasonable. By contrast, as concerns the supervision of compliance with those rules, the legislation in force at the material time did not specify how frequently the gas company was to perform safety checks and it was only subsequently, in 2009, that the relevant amendments were introduced to address the matter (see paragraph 43 above). Furthermore, the domestic legislation does not appear to have required, at least at the material time, that a written warning be given to a resident of an apartment when a violation of a safety rule was found. Nevertheless, these deficiencies are not sufficient to hold the respondent Government accountable for failing to avert the death of the applicant's son.

61. In particular, while the safety regulations noted in the preceding paragraph do not appear to have been respected in the present case, and the above-noted deficiencies existed in respect of the regularity of safety check-ups and the manner in which a violation of the safety rules was to be

communicated to the individuals concerned, the Court draws particular attention to the undisputed fact that the violation of the relevant safety rules was in fact discovered by the gas company before the death of the applicant's son, and the water heater was disconnected and nevertheless reconnected by the applicant's family. The applicant does not deny this fact but asserts that the gas company should have followed up on their first visit. In this context, as the Court has already noted above, the positive obligation under Article 2 cannot impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct (see paragraph 55 above). The applicant's family having been warned, even if verbally, against using the water heater, their subsequent decision to take the fatal risk by reconnecting the device to the gas supply does not appear reasonable, especially in the face of the widespread knowledge relating to the attendant risks (see paragraphs 34 and 44 above), and cannot, in the particular circumstances of the case, give rise to a violation of the State's obligations under Article 2 of the Convention (see *Ercankan v. Turkey* (dec.), no. 44312/12, § 45, 15 May 2018).

62. Furthermore, and considering the above findings, the Court notes that the principal conclusion of the domestic criminal investigation into the death of the applicant's son that his death had been a fatal accident after he had reconnected the water heater against the warning of the gas company (see paragraph 27 above) upheld by the domestic courts (see paragraphs 29-30 above) does not appear arbitrary and, in the circumstances of the present case, does not raise an issue under the procedural limb of Article 2 of the Convention.

63. In the light of the foregoing, the Court considers that there has been no violation of Article 2 of the Convention.

II. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

64. The applicant invited the Court to find that the respondent Government had failed in their duty to assist the Court in the case. In particular, she contended that the Government had failed to submit crucial documents from the criminal case material, such as an expert's statement, a copy of an inspection record in respect of a neighbouring apartment, a statement by the applicant's mother, and a copy of construction regulations stating that the installation of water heaters was prohibited in eight-storey apartment buildings. The applicant relied on Article 38 of the Convention, the relevant part of which provides as follows:

“1. If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities; ...”

65. The Government contested that argument. They submitted that the documents in question had not been requested by the Court. Furthermore, in the Government's opinion, the documents mentioned by the applicant had not been of any importance for her complaints before the Court. However, since the applicant considered them crucial, in their response, the Government provided the Court with the documents identified by the applicant.

66. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual application instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013, and *Kagirov v. Russia*, no. 36367/09, § 133, 23 April 2015, with further references). The Court further notes that the obligation to furnish the evidence requested by the Court is binding on the respondent Government from the time such a request is made, whether this is when notice of an application is given or at a subsequent stage in the proceedings (see *Al Nashiri v. Poland*, no. 28761/11, § 364, 24 July 2014).

67. Turning to the circumstances of the present case, the Court notes that it had not asked the Government to submit to it the documents specified by the applicant. Nevertheless, the Government did provide the Court with those documents, on the basis of the applicant's request to that end.

68. Having regard to the above, the Court finds that there has been no failure to comply with Article 38 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention;
3. *Holds* that there has been no failure to comply with Article 38 of the Convention.

VARDOSANIDZE v. GEORGIA JUDGMENT

Done in English, and notified in writing on 7 May 2020 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Deputy Registrar

Síofra O'Leary
President