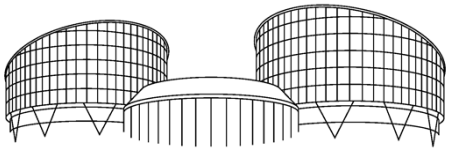

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KHOJOYAN AND VARDAZARYAN v. AZERBAIJAN

(Application no. 62161/14)

JUDGMENT

Art 2 (substantive and procedural) • Life • Lack of reasonable explanation against allegations of infliction of injuries posing a serious and imminent risk to life of an Armenian national in detention • Lack of effective investigation into treatment, including whether ethnic hatred played a role Art 3 (substantive) • Treatment in detention amounting to torture • Inhuman and degrading treatment • No sufficiently special feature of applicants' mental suffering as relatives of the victim Art 5 § 1 • Unlawful detention

STRASBOURG

4 November 2021

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 Khojoyan and Vardazaryan v. Azerbaijan,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application 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 three Armenian nationals, Ms Hasmik Khojoyan, Ms Heghine Vardazaryan and Mr Haykaz Khojoyan ("the applicants"), on 4 September 2014;

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

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Armenian Government, who had exercised their right to intervene in the proceedings according to Article 36 § 1 of the Convention;

the notification provided to the Court of Ms Tehmina Khojoyan's intention to pursue the application following her father's, Mr Haykaz Khojoyan's, death in 2019;

Having deliberated in private on 28 September 2021,

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

INTRODUCTION

1. The case concerns alleged violations of Articles 2, 3, 5, 13 and 14 of the Convention in connection with the captivity and treatment of the applicants' father in the respondent State.

THE FACTS

2. The applicants were born in 1964, 1967 and 1959, respectively. They were represented by Ms K. Gevorkyan, and, originally, Mr V. Grigoryan, lawyers practicing in Yerevan and London, respectively, assisted by Ms L. Alaverdyan, a professor of law in Yerevan, and, with time, Ms J. Gavron and Ms J. Sawyer, lawyers practicing in London. Mr Haykaz Khojoyan died in 2019 and his daughter, Tehmina Khojoyan, assisted by the

same representatives, informed the Court of her intention to pursue the application in his place. For reasons of convenience, the term "the applicants" will continue to be employed in reference to the three original applicants in the present judgment.

3. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

I. UNDISPUTED FACTS

4. On the morning of 28 January 2014 the applicants' father, Mr Mamikon Khojoyan (hereinafter also "Mr Khojoyan"), born in 1937 and a resident of the village of Verin Karmiraghbyur in the Tavush region of Armenia, close to the border to Azerbaijan, left his home. Later the same day, he appeared in a video online, surrounded by a group of people in civilian clothes and a person in Azerbaijani military uniform. On 30 January he was interviewed by Azerbaijani ANS TV. The Azerbaijani online news agency News.az reported the same day that Mr Khojoyan was in detention and that the Ministry of National Security had stated that he was a guide of an Armenian sabotage group and had held a gun when he was apprehended. On 31 January Mr Khojoyan appeared in another Azerbaijani TV broadcast which was uploaded on Youtube. The Court has received the three videos and links to their appearance on Youtube from the applicants.

5. On 4 March 2014, through the mediation of the International Committee of the Red Cross (ICRC), Mr Khojoyan was handed over to the Armenian authorities.

6. On 5 March 2014 Azerbaijani TV relayed an official statement from Azerbaijani authorities that Mr Khojoyan had been injured while captured as an armed guide of an Armenian subversive group and had been taken to Baku where he had received medical treatment, including the removal of a bullet from his arm.

7. No criminal investigation was undertaken by the Azerbaijani authorities, either in relation to the events surrounding Mr Khojoyan's crossing of the border and his alleged subversive motives or with regard to his treatment in detention.

II. FACTS AS SUBMITTED BY THE APPLICANTS

8. The applicants stated that their father was a farmer all his life. On 28 January 2014, when he left his home, he told his family that he was going to collect grapes in the fields. In the Armenian criminal investigation (see paragraph 10 below), several villagers, heard as witnesses, confirmed that they had seen him on that day with a bucket in his hand, stating to some of them that he was going to collect grapes.

9. According to the applicants, in the online video appearing later the same day, 28 January 2014, Mr Khojoyan showed no signs of injury and moved around without difficulty. In particular, there was no blood on his clothes, which made it highly implausible that, as alleged by the respondent Government, he had received a bone-piercing bullet wound on his arm at the time of his capture. However, during the TV interview of 30 January, his right arm was in a cast. Furthermore, in the TV broadcast from 31 January, he had difficulties standing upright and had injuries on his left eye and right hand; it was stated that he was receiving medical treatment. As to the videos submitted by the respondent Government (see paragraph 18 below), the applicants stated that the individual appearing in them was not Mr Khojoyan.

10. On 6 March 2014 the General Department of Criminal Investigation in Yerevan opened a criminal investigation under section 2, points 4, 6 and 12, of Article 112 of the Criminal Code of Armenia concerning intentional infliction of bodily harm with particular cruelty and with motives of national, racial or religious hate or fanaticism. During the ensuing investigation, the second and third applicants and several other witnesses were heard. The second applicant stated that her father had not had any injuries or wounds when leaving his home in the morning of 28 January and that, when she had visited him in the hospital after his return, he had been extremely frightened and his speech had been incoherent. He had told her that he had been taken to Baku, where he had been severely beaten, forced to sleep on a concrete floor, had salt poured into his wounds, received injections and had his head burned with incandescent metal. The third applicant confirmed this account, adding that there were many injuries on his father's body which had been inflicted during his detention in Azerbaijan and that his father's health had deteriorated badly. His consciousness was clouded and he was unable to communicate to his family what exactly had been done to him. A police investigator attempted to interview Mr Khojoyan, but he was unable to speak, allegedly due to his severe health condition.

11. Immediately after the handover, Mr Khojoyan was taken to hospital, first in the Tavush region and then, from 6 March 2014, in Yerevan. Examinations revealed multiple injuries to his head, ribs, arms and other parts of his body which, the applicants claim, were signs of torture. On 10 March 2014 he had plastic surgery on his right arm.

12. Later, forensic medical experts conducted an examination of Mr Khojoyan. In their report of 27 March 2014 the following conclusions were drawn:

> "Contusion wounds to the top of the head and the right arm, injuries to the left outer ear, right cheek, right shoulder-joint, chest and right knee joint, many scratches on the right thigh, a wound on the right arm, scars remaining from the wounds, haemorrhage of the left arm and left forearm, fractures on the ribs on two sides as well as the elbow,

and an open multi-fragmental fracture of the right arm bone have, all taken together, caused grievous bodily harm dangerous to life. The contusions on the head and right arm, the injuries to the outer ear, left arm and left forearm, and the haemorrhage of both thighs were inflicted by blunt firm objects, which caused minor bodily injuries, with short deterioration of health which, taking into account the duration of consequences having a direct causal link with the injuries, lasted not less than six days and not more than 21 days. The scratches on the right cheek, right shoulder joint, chest, right knee joint and right thigh were inflicted by blunt firm objects and did not, taken together and separately, contain features amounting to minor harm to health. The cut wound on the right arm was inflicted by a sharp cutting instrument, which caused minor injury to health, with a short duration which, taking into account the duration of consequences having a direct causal link with the injuries, lasted not less than six days and not more than 21 days. Numerous fractures on two sides of the ribs, inflicted by blunt firm objects and accompanied by a chest deformation, caused grievous bodily harm dangerous to life. Bone fractures on the radius and the ulna were inflicted by blunt firm objects and caused harm to health of medium gravity, with a lasting deterioration of health which, taking into account the immediate link with the injuries, lasted more than 21 days. The bullet which went through the right arm caused an open multi-fragmental fracture of the arm bone and was a result of a shot from a firearm loaded with a bullet, which is evidenced by the wounds, which have turned into scars, on the front and back surfaces of the arm and which caused grievous bodily harm dangerous to life. Having regard to the surgical treatment of the wounds to the arm as well as the absence of medical documents, it is not possible to determine the location of the entrance and exit holes of the shot or the direction and the distance of the shot. There are no signs of sexual acts in the anus, and there are no marks of sperm in the swab examination of the anus, but the absence of the latter does not rule out the possibility of sexual acts in the anus."

13. A chemical forensic examination was also undertaken. Presented in a report of 7 April 2014, the examination showed the existence of petroleum and the psychotropic medicine Apaurin in Mr Khojoyan's blood and urine.

14. Mr Khojoyan was discharged from hospital on 3 April 2014 and died in his home on 20 May 2014.

15. A post-mortem forensic report of 17 June 2014 confirmed the description of injuries given in the report of 27 March. According to the report, those injuries and the petroleum and Apaurin detected in Mr Khojoya's blood and urine were not in direct causal link to his death. The cause of death was, according to the report, a general intoxication of the organism; it was stated that Mr Khojoyan had suffered from a number of injuries and diseases during his life which had all resulted in his death and were in direct causal link with it.

16. By a decision of 4 July 2014 the criminal investigation was suspended, as there was no possibility to conduct any investigation on the territory of Azerbaijan.

17. The applicants submitted psychologists' statements of 26 July 2016 on the consequences for the applicants of the events relating to their father, concluding that they had experienced deep distress, anguish and depression and other psychological problems. The statements also record that the first

and second applicants had expressed that their father had had mental health problems for three years before his capture in Azerbaijan.

III. FACTS AS SUBMITTED BY THE RESPONDENT GOVERNMENT

18. The respondent Government claimed that Mr Khojoyan illegally crossed the border to Azerbaijan before he was captured. Trying to flee, he was wounded and captured by the Azerbaijani armed forces. He was brought to the medical division of the local military unit where he received medical assistance. On the following day, 29 January 2014, he was transferred to the main clinical hospital of the armed forces in Baku where he had radiographic and orthopaedic examinations which showed that he had a wound on his right arm from a bullet that had pierced the bone but did not reveal any other physical anomalies. The bullet was then surgically removed. Blood and biochemical tests, electrocardiogram and an examination of possible infectious diseases were also administered on 29 and 30 January. According to Mr Khojoyan's medical journal, he received, following the initial examinations and surgery, periodical medical examinations and treatment every 2-7 days, which were not limited to follow-up of the arm injury, but included other assessments of his health situation. Furthermore, the ICRC reportedly made regular visits to the applicant and supervised his conditions of detention. The Government rejected the applicants' claim that Mr Khojoyan had been ill-treated during his detention and also sent to the Court two video recordings that they stated "related to the treatment of the applicant's relative".

19. Allegedly, the applicant was detained as a member of the Armenian armed forces and a saboteur. He was held as a prisoner of war pursuant to the 1949 Geneva Convention relative to the Treatment of Prisoners of War and his release came about as part of an exchange of prisoners of war between Azerbaijan and Armenia.

IV. FACTS AS SUBMITTED BY THE ARMENIAN GOVERNMENT, THIRD-PARTY INTERVENER

20. Referring to an article published on 28 January 2014 by Azerbaijani news website Haqqin.az, the Armenian Government submitted that the Head of the Azerbaijani State Commission for Prisoners of War, Hostages and Missing Persons had stated that Mr Khojoyan had been captured in the village of Alibeyli in the Tovuz province of Azerbaijan and transferred to the armed forces. He was described as a civilian. However, according to the article, local residents had stated that he had been armed.

THE LAW

21. The applicants complained under Articles 2, 3, 5, 13 and 14 of the Convention. They alleged, in particular, that their father had been subjected to ill-treatment, physical violence and drug injections which had posed a danger to his life and which had not been investigated, that he had been unlawfully deprived of his liberty, 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. PRELIMINARY ISSUE: THE COURT'S JURISDICTION

A. The parties' and third-party's submissions

22. The Azerbaijani Government maintained that the applicants' father 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 father 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.

23. The applicants submitted that their father was a civilian and not involved in any capacity in the conflict between Armenia and Azerbaijan. He was not the guide of a saboteur group or armed when he was captured. The Azerbaijani Government had not produced any evidence supporting their contentions. The applicants further pointed out that, even in international armed conflicts, the Convention continued to apply. While the ICRC had been given a mandate to act in armed conflicts, it did not have the authority or the capacity to provide a remedy to deal with complaints such as those raised by the applicants.

24. The Armenian Government, third-party intervener, submitted that there was no armed conflict taking place when the applicant was captured by Azerbaijani forces. It is the situation on the ground that determines whether there is an armed conflict and thus whether a captive could be considered a prisoner of war. Furthermore, Mr Khojoyan was a 77-year-old man with memory problems. Shortly before his disappearance, fellow villagers had met him and had been told that he was going to collect grapes. The first video appearing online after his capture in Azerbaijan showed that he was surrounded by civilians. Thus, the claims by the respondent

Government that he was a member of the armed forces and a saboteur, that he had a gun or other weapon on him and that he should be considered a prisoner of war were completely groundless and unsubstantiated. In any event, the application of international humanitarian law never excluded the parallel application of human rights law and, in the instant case, priority should be given to the latter, more specifically the norms of the Convention.

B. The Court's assessment

25. The Court notes that it has already examined and dismissed similar objections by the respondent Government in *Saribekyan and Balyan v. Azerbaijan* (no. 35746/11, §§ 36-41, 30 January 2020). It considers that the present case does not disclose a material difference and sees no reason to decide otherwise. The respondent Government's objection must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

A. Admissibility

1. The parties' and third-party's submissions

26. 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. However, neither they nor the Armenian authorities had complained about the alleged violations of rights or even attempted to address the Azerbaijani authorities after the detention, not even through diplomatic channels. The applicants had thus failed to exhaust effective remedies. Furthermore, the Azerbaijani Government submitted that Article 2 of the Convention did not apply to the applicants' father and no causal link had been demonstrated to suggest that he had been killed or led to certain death. The Azerbaijani Government also objected to the admissibility of the application in so far as concerned Ms Tehmina Khojoyan's intention to pursue the application following Mr Haykaz Khojoyan's death. They argued that individuals bringing applications before the Court had to be able to show that they were "directly affected" by the measure complained of and that, having regard to the fact that Mr Haykaz Khojoyan and his siblings themselves were next of kin who had introduced an application raising complaints related to the death of their relative, their children, grandchildren of Mr Mamikon Khojoyan, which included Ms Tehmine Khojovan, did not have a sufficient link with the deceased to be considered victim in the present case.

27. The applicants maintained that there were no remedies available to them within the jurisdiction of Azerbaijan. They asserted that neither they nor their father had been informed of the existence of any procedural act or

decision to challenge or of any procedure for pursuing a case in Azerbaijan, either at the time of the events in the case or during the proceedings before the Court. In this context, they pointed out that, after the respondent Government had referred to a criminal investigation concerning Mr Khojoyan in their original observations, the Government had stated, after having been requested by the Court to submit the materials of that investigation, that that reference had been included through a technical mistake, as there had not been any investigation. Furthermore, the applicants claimed that the use of any diplomatic channels could not be considered a remedy under Article 35 of the Convention and that, in any event, they were not available in the context of Azerbaijan and Armenia, the latter being shown by the past refusal of Azerbaijani authorities to respond to Armenian requests under the Commonwealth of Independent States (CIS) Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases. As has been mentioned above (see paragraph 23), the applicants also stated that the ICRC could not provide a domestic remedy under Article 35. They generally referred to the Court's conclusions in the cases of *Akdivar and Others v. Turkey* (16 September 1996, §§ 66-69, *Reports of Judgments and Decisions* 1996-IV) and *Sargsyan v. Azerbaijan* ([GC], no. 40167/06, § 117, ECHR 2015). Furthermore, the applicants submitted that owing to the risk at which their father's life had been put, Article 2 of the Convention was applicable in the case. In addition, the applicants maintained that Mr Haykaz Khojoyan's children had a legitimate interest in continuing to pursue his case and requested that his daughter, Tehmina Khojoyan, be permitted to do so.

28. Agreeing with the applicants, the Armenian Government submitted that the ICRC did not have a mandate to provide a remedy for the applicants. In this respect, the Armenian Government pointed out that the respondent Government had not provided any documentation on ICRC visits to the applicants' father. Moreover, due to the unresolved conflict between Armenia and Azerbaijan, there were obstacles of a practical and diplomatic nature for Armenians to gain access to any remedy in Azerbaijan, let alone an effective one. The respondent Government had not specified any domestic authority that could have been addressed or any proceedings that could have been initiated in the applicant's case. They had also failed to show that any investigation had been conducted in Azerbaijan and could not therefore claim that the applicants should have challenged the procedural acts and decisions of the prosecuting authority. Referring to the case of *Saribekyan and Balyan*, cited above, §§ 21, 27, 28 and 73, the Armenian Government further pointed out that, as that case showed, a request by the Armenian Prosecutor-General to the same official in Azerbaijan under the above-mentioned CIS Convention (see paragraph 27) would not have been an effective remedy as the request would have remained unanswered. Relevant to the question of the admissibility of

Article 2 of the Convention, the Armenian Government submitted that Mr Khojoyan had been injected with substances and imposed injuries which, together with diseases from which he suffered, had led to his death.

2. The Court's assessment

(a) Exhaustion of domestic remedies

29. As concerns the respondent Government's objection to the admissibility of the application on the grounds that domestic remedies have not been exhausted as required by Article 35 of the Convention, the Court notes that it has already examined and dismissed similar objections by the respondent Government in *Saribekyan and Balyan*, cited above, §§ 36-41. It considers that the present case does not disclose a material difference and sees no reason to decide otherwise. The respondent Government's objection must therefore be rejected.

(b) The three original applicants' standing to lodge the application

30. Furthermore, the Court observes that the respondent Government have not objected to the applicants' standing to lodge the application. It considers however that it must *ex officio* assess the issue of compatibility *ratione personae* (see, for example, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009). In that context, the Court observes that, in so far as Mr Khojoyan survived his detention (see paragraph 34 below), the complaint lodged under Article 2 of the Convention resembles the complaints relating to ill-treatment under Article 3. As concerns the latter, the Court reiterates that due to the strictly personal nature of the right under Article 3 of the Convention, applicants who complain about treatment concerning exclusively their late relative must show a strong moral interest, besides the mere pecuniary interest in the outcome of the domestic proceedings, or other compelling reasons, such as an important general interest which requires their case to be examined (see, for example, *Kaburov v. Bulgaria* (dec.), no. 9035/06, § 57, 19 June 2012).

31. In the instant case, the Court finds that regard must be had to the applicants' father having died two and a half months after the events complained of (contrast, for example, *Selami and Others v. the former Yugoslav Republic of Macedonia*, no. 78241/13, §§ 55 and 62, 1 March 2018, where over eight years had passed). Moreover, he was hospitalised immediately after the handover and died one and a half months after his discharge from hospital. In addition, the Court notes that the applicants' submissions about his severe health condition, which entailed, *inter alia*, clouded consciousness and inability to communicate (see paragraph 10 above) have not been contested, which would indicate that he was effectively precluded from lodging an application with the Court himself.

32. On the basis of the foregoing considerations, the fact that Mr Mamikon Khojoyan did not submit an application himself cannot be held against the applicants. The Court accordingly considers that Ms Hasmik Khojoyan, Mr Haykaz Khojoyan and Ms Heghine Vardazaryan had the requisite legal interest as next of kin to introduce an application raising complaints related to their father's life allegedly having been put at risk.

(c) Ms Tehmina Khojoyan's pursuance of the application

33. As concerns Mr Haykaz Khojoyan's daughter, Ms Tehmina Khojoyan, the Court – noting that the assessment of who may continue an application following an applicant's death does not coincide with the assessment of who may apply to the Court in the first place (see, for example, *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts)) – considers that she, as his heir and close relative, has a legitimate interest in pursuing the application in his place following his death in 2019, even though Mr Haykaz Khojoyan was already an "indirect" victim with regard to the complaint under Article 2 of the Convention. The Court accordingly rejects the respondent Government's objection to her pursuing the application on the ground that she does not hold "victim" status pursuant to Articles 34 and 35 of the Convention and does not find, either, that there are grounds for striking out the application in accordance with Article 37.

(d) Applicability of Article 2 of the Convention

34. With regard to the applicability of Article 2 of the Convention, the Court reiterates that that provision also comes into play in situations where the person concerned was the victim of an activity or conduct, whether public or private, which by its nature put his or her life at real and imminent risk and he or she has suffered injuries that appear life-threatening as they occur, even though he or she ultimately survived (see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49 and 54, ECHR 2004-XI; and *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020). In the instant case, the Court takes note that medical examinations upon Mr Khojoyan's release revealed multiple injuries to his head, ribs, arms and other parts of his body (see paragraph 11 above). The report of the forensic medical experts of 27 March 2014 later pointed out a large number of serious injuries, including contusions on the head and fractures on the ribs inflicted by blunt firm objects, and injuries from a shot to Mr Khojoyan's arm, which the experts concluded had caused "grievous bodily harm dangerous to life" (see paragraph 12 above). The Court notes that the report was supported by photos to show the injuries. The chemical forensic examination showed the existence of petroleum and a psychotropic

medicine in Mr Khojoyan's blood and urine (see paragraph 13 above). On the basis of the said medical evidence, in the context of its examination of the admissibility of the complaint, the Court considers that the life of Mr Khojoyan, at the time a 77-year old man, had been put at serious and imminent risk allegedly through actions imputable to the respondent Government and that Article 2 is accordingly applicable, even though his injuries did not lead to his immediate death. Whether the respondent Government is responsible for Mr Khojoyan's life having been put at that risk, is a matter which belongs to the merits.

(e) Conclusion

35. Lastly, the Court considers, in the light of the parties' submissions, that this complaint 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 it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

B. Merits

1. The parties' and third-party's submissions

36. The applicants submitted that potentially lethal force had been used against their father and that he had been subjected to other physical injuries of a gravity to threaten his life, in violation of Article 2 of the Convention. The applicants also maintained that there had been a breach of the procedural limb of Article 2 in so far as the respondent Government had not investigated Mr Khojoyan's death. Article 2 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."

37. The respondent Government submitted that nothing suggested that the applicant's father had been killed by the respondent State or its agents. They also maintained that the authorities of the respondent State had not been in any position to initiate any investigation into the death of the applicant's father in his home almost three months after he had been handed over.

38. The Armenian Government, third-party intervener, concurred with the applicant's submissions and submitted that although their father had not directly been killed by State agents of the respondent Government, he had been injected with substances and imposed injuries that, together with diseases he suffered from, had led to his death.

2. The Court's assessment

39. The general principles regarding the right to life under Article 2 of the Convention can be found in, 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. The general principles concerning the requirement of an effective official investigation when someone has died in suspicious circumstances can be found in, for example, *Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010, with further referenes; *Šilih v. Slovenia* [GC], no. 71463/01, §§ 154 and 158, 9 April 2009; and *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 221-223 and 225, ECHR 2004-III, with further references. Furthermore, the Court refers to its case-law concerning the applicability of Article 2 and, accordingly, the said general principles, to cases where the individual survived, cited above (see paragraph 34).

40. As regards the burden of proof, the Court points out that it follows from the general principles referred to in the preceding paragraph 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.

41. Turning to the facts of the case, it is undisputed that Mr Khojoyan was in captivity in the respondent State from 28 January 2014 to 4 March 2014 (see paragraphs 4-5 above). As to his state of health before his capture there were no indications of physical injuries when he left from his home, as would also appear to be confirmed by the video of 28 January 2014 (see paragraph 9 above).

42. There is disagreement among the parties about what happened on the day when Mr Khojoyan was captured and the parties have also adduced different contradictory medical reports in order to shed light on the circumstances of his detention.

43. Both parties have adduced materials that show that a gunshot wound had been inflicted on one of Mr Khojoyan's arms (see paragraphs 12 and 18 above). While it is undisputed that he had been shot by Azerbaijani forces, the respondent Government's position was that that happened at a moment when he had tried to flee.

44. However, the Court considers that the evidence before it and, notably, the video of 28 January 2014, on which no gunshot wound is visible on Mr Khojoyan, appears sufficient to exclude the possibility that he had been shot before the filming of that video and, therefore, before his capture. The Court notes that the respondent Government have not contested the veracity of the video or otherwise commented on it. While the Court cannot exclude that Mr Khojoyan tried to flee at some point after that and that the potentially lethal force that led to the gunshot wound was considered by the Azerbaijani forces to be necessary to recapture him, it nevertheless finds that the account of these events provided by the respondent Government is too general and lacks important details. In particular, there is no explanation as to how Mr Khojoyan managed to attempt an escape after having been captured and why it was considered necessary to use firearms to prevent a 77-year old man from fleeing.

45. The Court therefore finds that the respondent Government have not provided a plausible explanation about the circumstances in which Mr Khojoyan was shot in the arm. In that connection the Court also observes, firstly, that the gunshot wound was described as "grievous bodily harm dangerous to life" in the report of 27 March 2014 (see paragraph 12 above) and bears in mind that it has on several occasions emphasised that events that are potentially lethal and put applicants' lives at risk may raise issues under Article 2 of the Convention (see, for example, *Alkın v. Turkey*, no. 75588/01, § 29, 13 October 2009; and *Kotelnikov v. Russia*, no. 45104/05, § 98, 12 July 2016). In addition, as the applicants' father in the instant case had been shot at, the general risk involved in the use of firearms must in this case also be taken into account (see, for example, *mutatis mutandis*, *Cangöz and Others v. Turkey*, no. 7469/06, § 106, 26 April 2016). The failure by the respondent Government to furnish a plausible explanation about the gunshot wound and the use of firearms is therefore also a relevant element to be taken into consideration.

46. The applicants have also adduced documents to show that the medical examinations immediately after the handover revealed multiple other injuries to Mr Khojoyan's head, ribs, arms and other parts of his body (see paragraph 11 above). In the forensic report of 27 March 2014, it was similarly stated that a large number of wounds had been observed. It was also concluded that several of the injuries had been inflicted by blunt, firm, objects (see paragraph 12 above). Moreover, the applicants have adduced the report of a chemical forensic examination, dated 7 April 2014, according to which petroleum and Apaurin had been found in Mr Khojoyan's blood and urine (see paragraph 13 above). In the post-mortem forensic report of 17 June 2014 it was stated that Mr Khojoyan had suffered from a number of injuries and diseases during his life which, taken together, had led to his death. The cause of death was, according to the report, a general intoxication of the organism (see paragraph 15 above).

47. The respondent Government have adduced documents to show that surgery was carried out in respect of the gunshot wound and that blood and biochemical tests, electrocardiogram and an examination of possible infectious diseases were also made, and that Mr Khojoyan thereafter was attended to through periodical medical examinations and treatment until the day before his release (see paragraph 18 above).

48. The Court takes particular note that the medical evidence presented by the applicants was supplemented with photographs showing Mr Khojoyan's state at the time of his release, and which substantiate their claim that he suffered from multiple injuries to different parts of his body when he was released from detention. It considers that these injuries must have been visible to the Azerbaijani authorities, including those who conducted the handing over of 4 March 2014. Against this background, the lack of investigations by Azerbaijani authorities (see paragraphs 50-54 below) regarding the origin of these injuries gives cause for concern. The Court also notes that the submissions of the respondent Government in respect of the medical evidence presented by the applicants have been very brief. They have not commented on the substance of any of the medical documents, including the conclusion drawn by the forensic medical experts that many of the serious injuries they identified had been inflicted by "blunt, firm, objects" (see paragraph 12 above).

49. The Court infers from the respondent Government's lack of providing any reasonable explanations, that there are merits to the applicants' allegations that Mr Khojoyan's injuries had been inflicted on him while in detention and further refers to its above finding that the injuries – which included multiple injuries to his head, ribs, arms and other parts of his body – had posed a serious and imminent risk to his life (see paragraph 34). It therefore concludes that there has been a violation of Article 2 of the Convention in its substantive limb.

50. As regards the complaint regarding the procedural limb of that provision, in so far as Mr Khojoyan died in Armenia, around two and a half months after he had been returned from the respondent State, and after he had been hospitalised in Armenia, the Court does not find that liability can be allocated to the respondent State on account of it not having instituted *ex officio* an investigation into Mr Khojoyan's death in May 2014. In the instant case, there are also no grounds for allocating liability to the authorities of the respondent State on the basis of any failure in response to a request for assistance to investigation (see, *mutatis mutandis*, *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925, § 236, 29 January 2019).

51. The Court considers, however, that the treatment of Mr Khojoyan while in detention was dangerous by its very nature and put him at real and imminent risk, and that the risk appeared real and imminent and his injuries appeared life-threatening when they occurred. When such a matter comes to the attention of the authorities, this imposes on the State *ipso facto* an

obligation under Article 2 to carry out an effective investigation (see, for example, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 145, 25 June 2019).

52. In this case, referring in particular to the medical reports concerning Mr Khojoyan's health at the time of release and its above conclusions with regard to the substantive limb of Article 2 (see paragraphs 46 and 48), the Court finds that the authorities of the respondent State should have undertaken an investigation as there were sufficiently clear indications that Mr Khojoyan's life had been put at risk during his detention.

53. The Court also takes into account that Mr Khojoyan was an Armenian citizen who was detained on the ground that he was a member of an armed group/a "saboteur". In this connection, the Court cannot overlook the general context of hostility and tension between Azerbaijan and Armenia (see, for example, *Saribekyan and Balyan*, cited above, §§ 39-40). In the Court's view, these circumstances also indicated that an investigation should have been carried out by the authorities of the respondent State on their own motion, including as to whether ethnic hatred had played a role in the treatment of Mr Khojoyan which had put his life at risk (see, *mutatis mutandis*, *Saribekyan and Balyan*, cited above, §§ 72 and 86).

54. The Court accordingly finds that there has been a violation of Article 2 of the Convention also in its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF MR KHOJOYAN

A. Admissibility

55. The Azerbaijani Government's objections to the admissibility of the application on the grounds that domestic remedies had not been exhausted and that Ms Tehmina Khojoyan had no right to pursue the application following Mr Haykaz Khojoyan's death extended also to the complaint under Article 3 of the Convention regarding Mr Khojoyan. The applicants and the Armenian Government, third-party intervener, made the same submissions as they had made with regard to Article 2.

56. The Court finds that its reasoning on the admissibility of the complaint under Article 2 of the Convention with regard to the requirement of exhaustion of domestic remedies; with regard to the three original applicants' standing; with regard to Ms Tehmina Khojoyan's intention to pursue the application; and with regard to it not being manifestly ill-founded, applies equally to the complaint under Article 3 regarding Mr Khojoyan (see paragraphs 29-33 and 35 above) and that the latter complaint is accordingly admissible.

B. Merits

1. The parties' and third-party's submissions

57. The applicants submitted that their father had been subjected to torture being under exclusive control of the respondent Government and by the latter's agents by injuring him with a firearm, inflicting severe pain on his body and suffering on him and causing him multiple injures to various parts of his body during his detention, detaining him in inhuman conditions, and failing to provide necessary and qualified medical assistance. They relied on Article 3 of the Convention, which reads as follows:

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

58. The applicants also submitted that there had been a breach of the procedural limb of Article 3 in so far as there had been no investigation into the circumstances of the alleged ill-treatment of their father.

59. The respondent Government denied any allegations of ill-treatment conducted in respect of the applicants' father. They emphasised that the ICRC had conducted regular visits and that information about his injuries and medical treatment had immediately been given to the public and the ICRC. There had been no investigation as there had been no allegations of ill-treatment while Mr Khojoyan had been in detention.

60. The Armenian Government, third-party intervener, concurred with the submissions of the applicants and submitted that it had been established beyond reasonable doubt that Mr Khojoyan had been tortured.

2. The Court's assessment

61. The Court has set out the general principles regarding Article 3 of the Convention in, *inter alia*, *Ireland v. the United Kingdom*, 18 January 1978, §§ 162-163, Series A no. 25; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-42, 10 January 2012; *Idalov v. Russia* [GC], no. 5826/03, §§ 91-95, 22 May 2012; *Georgia v. Russia (I)* [GC], no. 13255/07, § 192, ECHR 2014, and recently reiterated them in *Georgia v. Russia (II)* [GC], no. 38263/08, § 240, 21 January 2021.

62. Furthermore, the general principles in respect of the standard and burden of proof relating to allegations of ill-treatment contrary to Article 3 of the Convention may be found in, among other authorities, *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 82-83, ECHR 2015).

63. In the instant case, the Court has found above that the respondent Government have not convincingly accounted for the circumstances relating to Mr Khojoyan's detention. It has in that context examined the evidence adduced by the parties concerning the circumstances of Mr Khojoyan's captivity, in particular the medical documents (see paragraphs 46-48 above), and considers that the applicants by virtue of it have established a *prima*

facie case also that Mr Khojoyan was ill-treated during his time in the respondent State's captivity. The Court has also in that connection taken particular note of the findings in the report 27 March 2014 to the effect that multiple injuries had been inflicted on Mr Khojoyan's head, ribs, arms and other parts of his body (see paragraph 11 above) and also the conclusion that several of the injuries had been inflicted by blunt, firm, objects (see paragraph 12 above). In the Court's assessment the respondent Government have not either with regard to the complaint under Article 3 of the Convention by way of their response provided a satisfactory and convincing explanation. They have not produced evidence establishing facts which cast doubt on the account of events given by the applicants as concerns the treatment of Mr Khojoyan and the Court infers from that failure that there are merits to the applicants' allegations to the effect that he suffered ill-treatment during his captivity.

64. As to whether the treatment of Mr Khojoyan amounted to torture, as also alleged by the applicants, the Court must have regard to the distinction embodied in Article 3 of the Convention between this notion and that of inhuman or degrading treatment. Thus, it must ascertain whether a special stigma to deliberate inhuman treatment causing very serious and cruel suffering can be attached to the conduct of authorities (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 426, ECHR 2004-VII). The "severity" of treatment is, like the "minimum severity" required for the application of Article 3, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 100, ECHR 1999-V). Keeping in mind these criteria, and taking into account the facts that have led the Court to conclude that Article 2 was violated (see, in particular, paragraphs 43-49 above), the Court finds that the ill-treatment to which Mr Khojoyan, at the time a 77 year-old man, was subjected during his captivity from 28 January to 4 March 2014, amounted to torture.

65. As to the applicants' complaint concerning the failure to investigate the torture of Mr Khojoyan, the Court notes that the substance of that complaint has been examined by the Court under the procedural aspect of Article 2 of the Convention (see paragraphs 51-52 above).

66. The Court does not therefore consider it necessary to make a separate finding under Article 3 of the Convention concerning the lack of investigation into Mr Khojoyan's torture**.**

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE APPLICANTS PERSONALLY

A. Admissibility

67. The respondent Government's objection to the admissibility of the application on the grounds that domestic remedies had not been exhausted as required by Article 35 of the Convention included the applicants' complaint under Article 3 in respect of them personally. As did their objection to Ms Tehmina Khojoyan's intention to pursue the application in the late Mr Haykaz Khojoyan's stead.

68. The Court finds that its reasoning on the admissibility of the complaints under Articles 2 and 3 of the Convention in respect of Mr Khojoyan with regard to the requirement of exhaustion of domestic remedies; with regard to Ms Tehmina Khojoyan's intention to pursue the application; and with regard to it not being manifestly ill-founded, also applies to the complaint under Article 3 in respect of the applicants personally (see paragraphs 29, 33, 35 and 56 above) and that the latter is accordingly admissible.

B. Merits

1. The parties' and third-party's submissions

69. The applicants argued that there had been a violation in respect of them personally as they had been deprived of information about their father, while at the same time they had witnessed his injuries and state of health by way of reports on television and the Internet.

70. The respondent Government denied any allegations of ill-treatment conducted in respect of the applicants' father. They emphasised that the ICRC had conducted regular visits and that information about his injuries and medical treatment had immediately been given to the public and the ICRC. There had been no investigation as there had been no allegations of ill-treatment while Mr Khojoyan had been in detention.

71. The Armenian Government, third-party intervener, submitted that the applicants had suffered mental pain and anguish when seeing their father with one hand in gypsum and one eye in blood, before later having become even more distressed and harmed by the severity of the treatment to which he had been subjected.

2. The Court's assessment

72. As concerns the Court's case-law with regard to mental suffering of a victim's relatives, it refers to *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 177, ECHR 2013; and *Bitiyeva and Others v. Russia*, no. 36156/04, § 105, 23 April 2009, with further references.

73. With regard to the facts of this case, the Court notes that information about Mr Khojoyan's captivity emerged on the same day as he disappeared (see paragraph 4 above). The Court does not call into question the hardship of the applicants when they learned of their father's captivity and in the light of the information dispersed by television and the Internet. Nor does the Court doubt the suffering relating to Mr Khojoyan's detention's not having been investigated by the respondent State or relating to his health subsequent to his release.

74. At the same time the Court observes that the applicants were not witnesses as such, and that the other aspects of their own claim under Article 3 of the Convention largely relate to the same aspects that have led the Court to conclude that there were violations of Articles 2 and 3 in respect of Mr Khojoyan's rights under those provisions, including that no investigation of how he had been treated was carried out (see paragraphs 48 and 50-54 above). In accordance with its case-law on such claims (see for example, *Saribekyan and Balyan*, cited above, § 90) it thus considers 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.

75. For the above reasons, the Court concludes that there has been no violation of Article 3 of the Convention in respect of the applicants personally.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

A. Admissibility

76. The Court reiterates at the outset that the rights enshrined in Article 5 of the Convention belong to the category of non-transferable rights. However, a next of kin might exceptionally have standing to lodge a complaint under Article 5 § 1 if connected to a complaint under Article 2 relating to the victim's death or disappearance engaging the State's liability (see, for example, *Khayrullina v. Russia*, no. 29729/09, § 91, 19 December 2017). In the circumstances of the instant case, taking note that the complaints under Article 2, 3 and 5 of the Convention are interlinked and given the particular circumstances of the case that have led the Court to conclude that the applicants had standing to lodge the complaints under Articles 2 and 3 with regard to Mr Khojoyan (see paragraphs 31 and 56 above), the Court concludes that the applicants had standing to lodge a complaint also under Article 5. As concerns Ms Tehmina Khojoyan's intention to pursue the application lodged by Mr Haykaz Khojoyan, the Court refers to its reasoning above (see paragraphs 33, 56 and 68), which it finds applies also to this complaint.

77. The respondent Government's objection to the admissibility of the application on the grounds that domestic remedies had not been exhausted as required by Article 35 of the Convention included the applicants' complaint under Article 5. On the same grounds as provided in respect of the complaints under Articles 2 and 3 (see paragraphs 29, 56 and 68 above) and noting, in addition, that the respondent Government have not presented any decision ordering Mr Khojoyan's detention against which he could have appealed, the Court rejects the objection with regard to the complaint under Article 5.

78. Lastly, the Court considers that this complaint is not, either, manifestly ill-founded or inadmissible for any other reason (see paragraphs 35, 56 and 68 above).

B. Merits

1. The parties' and third-party's submissions

79. The applicants maintained that the deprivation of Mr Khojoyan's liberty had not fallen within any of the sub-paragraphs of Article 5 § 1 of the Convention, nor had he been afforded the procedural guarantees as set out in paragraph 2 and 3 of that provision, which in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other

officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. ..."

80. The respondent Government submitted that the applicants' father had been detained as a prisoner of war and held according to the 1949 Geneva Convention on prisoners of war. They submitted that the applicants' claim that Mr Khojoyan had lost his way while looking for grapes in the area at the border with the State with which military conflict had occurred, was highly doubtful.

81. The Armenian Government, third-party intervener, concurred with the applicants' submissions and submitted that the respondent Government had not disputed that Mr Khojoyan had been deprived of his liberty or produced any evidence of him having been afforded his procedural rights in that connection.

2. The Court's assessment

82. As to general principles, the relevant passage from *El-Masri*, cited above, § 241, reads as follows:

"230. The Court notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal*, cited above, § 118). This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *Quinn v. France,* 22 March 1995, § 42, Series A no. 311)."

83. In applying those principles to the facts of this case, the Court notes that the respondent Government have not put forward any materials or concrete information to show that Mr Khojoyan was to be regarded as a prisoner of war. It is also for that reason that the Court above has dismissed the respondent Government's argument that the Convention as a whole is inapplicable (see paragraphs 22 and 25). No other arguments have been advanced to the effect that Article 5 of the Convention does not apply to the case in respect of Mr Khojoyan, and the respondent Government have not argued that his detention was in conformity with any of the sub-paragraphs in Article 5 § 1 or that Mr Khojoyan was afforded any of the procedural guarantees in the following paragraphs. Nor have they adduced any decision ordering Mr Khojoyan's detention that could have been appealed against. In the circumstances of the instant case, the foregoing observations suffice for the Court to conclude that there has been a violation of that provision, too.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. The applicants submitted that they had not been given at their disposal any domestic remedy for their complaints under Articles 2, 3 and 5 of the Convention, contrary to Article 13, and that they and their father had suffered discrimination in the enjoyment of their rights under Articles 2, 3 and 5 of the Convention on the ground of their Armenian origin, contrary to Article 14.

85. The Court notes that the complaints under Articles 13 and 14 of the Convention are based on the same facts as those under Articles 2, 3 and 5. Moreover, the Court has regard to the reasoning which led it to find violations of Articles 2 – in its substantive as well as procedural aspects – and 3, notably that the respondent Government had not discharged their burden of proof with regard to the applicants' allegations that Mr Khojoyan had been subjected to ill-treatment which had amounted to torture and had put his life at immediate risk, and that the respondent State's authorities did not carry out any investigation in respect of Mr Khojoyan's treatment while in captivity, notwithstanding that the situation so required (see paragraphs 41-54 and 63-66 above). Moreover, the Court bears in mind its having taken into account the general context of hostility and tension between Azerbaijan and Armenia as part of that reasoning (see paragraph 53 above). Against that background, the Court considers that it has examined the main questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints (see, for instance, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 158, ECHR 2014).

VII.APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicants claimed non-pecuniary damage fixed at the Court's discretion.

88. The respondent Government submitted that the applicants' father had deliberately crossed the border into Azerbaijan and known that he was facing the risk of being captured. Moreover, they reiterated that they could not bear any responsibilities for his later death in Armenia. Therefore, they considered that a finding of a violation would constitute sufficient

reparation in respect of any non-pecuniary damage allegedly suffered by the applicants.

89. Having regard to its finding of violations of Articles 2, 3 and 5 of the Convention and ruling on an equitable basis, the Court awards EUR 40,000 in compensation for non-pecuniary damage jointly to Ms Hasmik Khojoyan, Ms Heghine Vardazaryan and Ms Tehmina Khojoyan, who pursued the application lodged by Mr Haykaz Khojoyan.

B. Costs and expenses

90. The applicants also claimed EUR 6,667.64 and 8,085.44 pound sterling (GBP) for the costs and expenses incurred before the Court.

91. In support of their claim, the applicants presented time-sheets showing outstanding professional fees for Mr Vahe Grigoryan amounting to GBP 4,362.50; for Mr Jarlath Clifford amounting to GBP 1,775.00; for Ms Kristina Gevorkyan amounting to EUR 3,883; and for Ms Larisa Alaverdyan amounting to EUR 1,600. They further claimed EUR 120 for four hours work by a case and project support officer at the European Human Rights Advocacy Centre. Moreover, they submitted invoices for stationary issued by Banner and Supplies Team to Middlesex University and for telefax use issued by j2 Global to the European Human Rights Advocacy Centre. They also submitted "fee notes" relating to translations carried out by Ms Tamara Barbakadze and Ms Margarita Galstyan, issued to the European Human Rights Advocacy Centre and amounting to GBP 1,631.70 and an invoice for postal expenses amounting to 54,000 Armenian drams. Furthermore, they submitted contracts in respect of expert opinions on the psychological state of Ms Heghine Vardazaryan, Ms Hasmik Khojoyan and and Mr Haykaz Khojoyan, entered into between the experts and the Foundation Against the Violation of Law, and receipts to show that the contracts had been paid.

92. The respondent Government submitted that the applicants had failed to submit any contracts with their lawyers and that the indicated costs for the lawyers were exaggerated and not reasonable. They submitted that it had not been necessary to engage and pay four different lawyers from Armenia and the United Kingdom. They also submitted that translation cost and costs allegedly incurred for psychological opinions could not be considered as reasonably and necessarily incurred. The respondent Government considered that the applicants could claim EUR 3,000 in total under this head.

93. 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 were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them. In this case the applicants did not submit

documents showing that they had paid or were under a legal obligation to pay the fees charged by their representatives or the expenses incurred by them or others in the course of the proceedings. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred by them (see, similarly, *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 371-72, 28 November 2017).

94. It follows that the claim for costs and expenses must be rejected.

C. Default interest

95. 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 a majority, the complaint under Article 2 of the Convention admissible;

2. *Declares*, unanimously, the complaints under Articles 3 and 5 of the Convention regarding Mr Mamikon Khojoyan and the complaints under Article 3 regarding the applicants personally admissible;

3. *Holds*, by five votes to two, that there has been a violation of the substantive limb of Article 2 of the Convention in respect Mr Mamikon Khojoyan;

4. *Holds*, by five votes to two, that there has been a violation of the procedural limb of Article 2 of the Convention in respect of Mr Mamikon Khojoyan;

5. *Holds*, by six votes to one, that there has been a violation of the substantive limb of Article 3 of the Convention on account of Mr Khojoyan's torture;

6. *Holds*, by five votes to two, that there is no need to examine separately the complaint under the procedural aspect of Article 3 of the Convention regarding Mr Mamikon Khojoyan;

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

8. *Holds*, unanimously, that there has been a violation of Article 5 of the Convention in respect of Mr Mamikon Khojoyan;

9. *Holds*, unanimously, that there is no need to examine the admissibility and merits of the remaining complaints;

10. *Holds*, by six votes to one,
    (a) that the respondent State is to pay Ms Hasmik Khojoyan, Ms Heghine Vardazaryan and Ms Tehmina Khojoyan, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 40,000 (forty-thousand euros), plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage;
    (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;

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

Done in English, and notified in writing on 4 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Victor Soloveytchik
Registrar

Síofra O'Leary
President