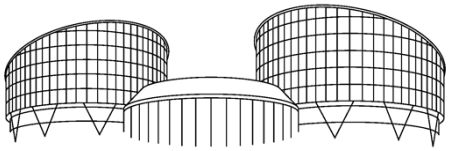

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF YENGIBARYAN AND SIMONYAN v. ARMENIA

(Application no. 2186/12)

JUDGMENT

Art 2 (procedural and substantive) • Manifestly inadequate investigation into the killing of the applicants' husband and son by a police officer during a chase • Not shown "beyond reasonable doubt" that use of force no more than absolutely necessary

STRASBOURG

20 June 2023

FINAL

20/09/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Yengibaryan and Simonyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Armen Harutyunyan,
Ana Maria Guerra Martins*, judges*,
Anne Louise Bormann*, substitute judge*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 2186/12) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Armenian nationals, Mr Sergey Yengibaryan and Ms Anzhela Simonyan ("the applicants"), on 10 December 2011;

the decision to give notice to the Armenian Government ("the Government") of the complaints under Articles 2, 6 § 2 and 13 concerning the death of Mr Arman Yengibaryan, the alleged lack of an effective investigation into his death and the alleged breach of the principle of presumption of innocence, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 and 30 May 2023,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns the killing of Arman Yengibaryan ("Mr Yengibaryan") by a police officer during a police chase.

THE FACTS

2. The applicants were born in 1952 and 1983, respectively, and live in Yerevan. They are the father and the wife of Mr Yengibaryan. They were represented by Mr E. Marukyan and Mr T. Matinyan, lawyers practising in Vanadzor.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

I. THE BACKGROUND FACTS

A. The ongoing investigation into armed robberies

4. Between 11 April and 2 June 2011, eight robberies occurred in Yerevan in which a person claiming to be an employee of the water supply company gained access to apartments, threatened residents with a pistol and stole, or attempted to steal, valuables. The police opened an investigation into the robberies and a facial composite of the perpetrator was constructed.

B. The shooting of Mr Yengibaryan

5. On 14 June 2011, police officer A.A. shot Mr Yengibaryan near Garegin Nzhdehi Square in Yerevan. Mr Yengibaryan was taken to hospital, where he died of his injuries.

6. According to A.A. and his colleague, N.P., they had been in pursuit of Mr Yengibaryan because they had been informed that he had attempted to gain entry to an apartment claiming to be an employee of the water supply company. They had therefore suspected him of being the perpetrator of the recent series of armed robberies (see paragraph 4 above). Mr Yengibaryan had shot at them during the chase, and A.A. had returned fire.

C. The investigation

1. Investigative measures taken on 14 June 2011

7. On the day of the shooting, a criminal investigation against Mr Yengibaryan was opened into attempted robbery and inflicting violence dangerous for life or limb on a public official.

8. A post-mortem examination of Mr Yengibaryan's body was ordered.

9. An Ekol & Voltran pistol containing three bullets was recovered from the scene of the incident together with a single bullet and three bullet shells. A fourth bullet shell was found in a nearby street.

10. A.A.'s Makarov service pistol with four bullets inside was seized.

11. Mr Yengibaryan's apartment was searched. Five gas pistol bullets and a metal object were seized. The licence to carry the Ekol & Voltran pistol was found.

2. The police officers' reports of 14 June 2011

12. Later that day, N.P. and A.A.. submitted separate reports to the chief of the local police. Since the facts are contested, it is necessary to set out these reports in some detail.

(a) N.P.'s report

13. According to N.P., at around 1 p.m. that day he had received a call from G.S., an acquaintance, who had said that a man was knocking on his door and claiming to be an employee of the water supply company. He had described the person as well-built with a round face. N.P. had previously warned his acquaintances, including G.S., that robberies were being committed by an unknown perpetrator who was introducing himself as an employee of the water supply company. The description by G.S. had fitted the facial composite compiled of the perpetrator of the robberies. N.P. had told G.S. not to open the door, to try to buy some time and to follow the man if he left.

14. N.P. and A.A. had informed S., head of the Criminal Investigation Division. Having received the appropriate order, they had headed towards the location near Garegin Nzhdehi square. G.S. had subsequently informed N.P. that the man had left the building and was walking towards Manandyan Street. When the officers arrived, G.S. had pointed the man out and N.P. and A.A. had approached him. They had immediately observed that he strongly resembled the facial composite compiled of the perpetrator of the robberies. N.P. had taken the man's right arm and A.A. had taken his left arm and they had both introduced themselves, explaining that they were from the Criminal Investigation Division. They had asked him to accompany them to the police station to clarify some issues. He had agreed and they had approached the police car together, with A.A. and N.P. still holding his arms.

15. The street had been crowded and when N.P had tried to open the door the man had pushed him and released his arm. N.P. had heard G.S.'s voice from across the street warning them to be careful as the man had a gun. The man had then pushed A.A. and released his other arm, had taken a couple of steps back and had taken out a black Beretta-type pistol hidden in his belt. He had aimed the gun at N.P. and A.A., threatened to shoot and then turned and run in the direction of the underpass. A.A. and N.P. had taken out their service pistols and had shouted to the man to stop or they would shoot. A.A. had fired a warning shot. They had run after the man, still warning him to stop or they would shoot. A.A. had fired a second warning shot but the man had continued to run. They had entered the underpass in pursuit.

16. As the man had exited the underpass, he had shot at N.P. over his left shoulder. N.P. had knelt down as a precaution. He explained that A.A. had probably thought that he had been wounded and so A.A. had shot in the man's direction. The man had continued to run, bending forward a bit. In this position, he had aimed his gun and N.P. had formed the impression that he was going to shoot, or that he had actually shot, again. A.A. had fired a second time and the man had fallen face down on the ground. N.P. and A.A. had seen that he was alive and had called an ambulance.

(b) A.A.'s report

17. According to A.A.'s report, at around 1 p.m. N.P had received a telephone call from his acquaintance, G.S., who had said that a man was knocking on his apartment door and claiming to be an employee of the water supply company. N.P. had told G.S. not to open the door but to try to buy some time until they arrived and to carefully follow the man if he left. N.P. had then called S., who had instructed them to go to the address and check the information, and to call for back-up if necessary.

18. A.A. and N.P. had headed to G.S.'s building. On the way, G.S. had told them that he was following the man, who had left the building and was heading towards Manandyan Street. When A.A. and N.P. had reached the area, G.S. had pointed the man out. They had stopped the car and approached the man, who had resembled the facial composite of the perpetrator of the armed robberies. A.A. had held the man's left arm while N.P. had held his right arm and introduced himself, saying that he was from the Criminal Investigation Division, that there were certain issues requiring clarification and that it was necessary for the man to accompany them to the police station. In response to the man's questions, A.A. and N.P. had replied that they would tell him everything down at the station.

19. The three men had walked towards the police car, with A.A. and N.P. still holding the man's arms. The man had then started to try and free his hands. He had pushed N.P and released his arm. At that moment, A.A. had heard G.S. shouting from across the street that the man had a weapon. The man had taken out a Beretta-type gun from near his belt, stepped back, aimed his gun at the police officers and threatened to shoot. A.A. and N.P had frozen for a second; the man had turned and run towards a nearby underpass.

20. A.A. explained that since they had suspected the man of committing armed robbery and he had resisted getting in the car, had disobeyed a lawful request, had threatened the police officers with a weapon and had then escaped, N.P and A.A. had decided to chase and disarm him. They had taken out their service pistols and A.A. had shouted to the man to stop. When he did not stop, A.A. had fired a warning shot into the air. The man had still not stopped so A.A. had again ordered him to stop or he would shoot, and had fired a second warning shot. But the man had not stopped or slowed down and had entered the underpass. A.A. and N.P. had chased him into the underpass, still shouting at the man to stop.

21. As the man had been leaving the underpass, he had fired a single shot in N.P.'s direction over his left shoulder. A.A. had seen N.P. kneel down and had thought that he had been wounded. A.A. had then shot at the bottom part of the escaping man's back, intending to disarm him and prevent his escape. The man had kept running but was bending forward a bit. In that bent-over position he had aimed his gun and looked like he was going to shoot again or had perhaps actually fired a second shot; because of the echo of A.A.'s shot in the underpass he was not sure if the man had actually fired again or not.

Thinking that his shot had not hit the man, one or two seconds later A.A. had fired again in the direction of the man's back. After this second shot, the man had fallen to the ground face down.

22. The man's weapon and right hand were under his stomach. N.P. and A.A. had immediately approached him and called for an ambulance. Because it had been crowded, they had protected the scene. N.P. had called the chief of police and S. and informed them of what had happened.

3. Witness statements

23. Five eye-witnesses were questioned on the day of the incident and gave the following statements.

(a) The statement of G.S.

24. G.S. explained that earlier that day he had answered the door to a man claiming that he was from the water supply company. G.S. had closed the door again because he was suspicious. When asked by the investigator why he had been suspicious, he replied that the man had had no documents with him and that N.P. had warned him two weeks earlier about a man claiming to be from the water supply company in order to gain entry to apartments to commit robbery. After he had closed the door, he had watched the man approach the door of a neighbouring apartment before leaving. G.S. had then gone into his kitchen and had seen the man exit the building and move towards Garegin Nzhdehi square.

25. At that point, G.S. had telephoned N.P., who had asked him to follow the man. G.S. said that he had quickly dressed and left the building. He had headed towards Garegin Nzhdehi square, where he had spotted the man and started following him.

26. G.S. had subsequently seen N.P. and A.A. approach the man. N.P. had said something and, holding the man's arms, had moved back towards the police car. The man had started to shout that he would lodge a complaint. G.S. had then approached and told the man that if he was from the water supply company he had nothing to worry about. The man had looked back angrily and attempted to free himself and escape. G.S. had then spotted the pistol in his belt and had shouted a warning to the police officers. The man had taken the gun out, pointed it at the officers and warned them that he would shoot. He had then turned and run down through the underpass leading to the subway station. G.S. could not remember if he had fired his gun while running down towards the station.

27. The police officers had then taken out their guns, shouted to the man to stop and shot into the air, but the man had not stopped. They had chased him and G.S. had followed. As the police officers had approached the subway booths, one of them had fired into the air a second time and warned again that they would shoot. The man had turned and fired twice in the direction of the

police. One of the officers had then shot the man and he had fallen to the ground.

(b) The statements of H.S. and L.A.

28. The statement of H.S. and L.A. were in similar terms. They explained that they had met for lunch that day at Garegin Nzhdehi square. At around 1.20 p.m., a car had stopped nearby. Two young men had got out and walked towards the underpass.

29. They had next seen the men holding a third man and taking him to their car. Near the car, the man had started to try and shake his hands loose and to refuse to go with them. The two men were telling him that they would go to the station and everything would be explained to him there. The man being held had then managed to free his arm from the smaller man. A man standing a bit away from the car had shouted a warning that the man had a gun, and H.S. had then seen a gun in the man's waistband. The man had taken the gun out, shaken his other arm free of the grasp of the taller man and aimed at the latter, threatening to shoot. The man had then stepped back and run towards the underpass. The taller man had taken out his gun and shouted to the man to stop or he would shoot, then had fired a shot into the air. But the man had reached the stairs and started to descend. The taller man had shouted a second warning, had run after him and had once again shot into the air. The smaller man had run after them and entered the underpass.

30. H.S. and L.A. had run in that direction and reached the centre of Garegin Nzhdehi square, where an open space near the exit of the underpass to the subway station was visible, just as the man was exiting the underpass there. The two police officers were running after him, shouting to him to stop or they would shoot. The man had fired his gun at the police officers and had continued running. The smaller police officer had bent forward at the moment of the shooting. The other police officer had aimed his gun at the man running away and had fired, after which the man had continued running before looking back again and drawing back his hand. The police officer had fired a second time. The man had fallen face down on the ground.

31. H.S. explained that he did not know who the man was, but he knew the two men in pursuit were police officers because one of them had shouted that they were from the police and had warned the escaping man to stop or they would shoot. L.A. clarified that he and H.S. had realised that the two men were police officers when they had been trying to put the man in their car because they had said that they were taking him to the police station.

32. Overall, H.S. said, maybe 5-6 shots had been fired, of which two had been fired by the police officer "above' and two "below". H.S. said that he clearly remembered that the escaping man had fired at least one shot in the direction of the police officers, but he could not say whether he had fired a second shot. Both H.S. and L.A. said that the taller police officer had been around 3-4 metres from the escaping man.

(c) The statement of A.B.

33. A.B. was a trader in the underpass near Garegin Nzhdehi square. At around 1.30 p.m., he had been in front of his shop when he had noticed a man running by and another man following him shouting at him to stop. A.B. had heard a shot, and had seen that the escaping man had a weapon in his hand. A.B. explained that it had seemed to him that the escaping man had fired first, because he had been aiming his gun towards the man chasing him. The man chasing him, who had also had a gun, had then fired at the escaping man three times. After the first two shots, the escaping man had still been running, but after the third shot he had fallen. The chasing man had shouted in a loud voice that he was from the police and had asked someone to call an ambulance. A.H. (see paragraph 37 below) had given her telephone to the police officer.

34. In response to a question, A.B. said that the distance between the police officer and the escaping man had been around 4-5 metres, and reiterated that, from that distance, the escaping man had fired one shot in the direction of the police officer, after which the latter had fired three shots at the escaping man. A.B. added that earlier, the police officer had been shouting at the man to stop.

35. In response to further questions, A.B. confirmed that he had heard four shots, and that as far as he had seen, the first shot had been fired by the escaping man and the other three shots had been fired by the police officer.

36. Again in response to a question, A.B. said that after the shooting, when the man had fallen to the ground, lots of people had approached him, including A.B. himself.

(d) The statement of A.H.

37. A.H., a vendor at a booth in front of the entrance to Garegin Nzhdehi station, stated that at around 1.30 p.m. she had heard shots. After a moment, she had seen a man chasing another man and shouting at him to stop. She had noticed a gun in the hands of the escaping man. She had then heard three shots, following which the person being chased had fallen to the ground. The chasing man had asked them to call an ambulance and she had done so.

(e) The statement of T.G.

38. T.G. worked in one of the shops in the underpass. She said that at around 1.30 p.m. she had heard some noise and when she had looked out she had seen a man with a pistol in his hand running past the shop. He had been looking back and aiming his gun at a man who was chasing him and shouting at him to stop. The escaping man had then fired the gun, and the man chasing him had shot twice in his direction, as a result of which the escaping man had fallen onto the ground face down. People had gathered right away. The man who had fired the shots had said that he was a police officer and had asked someone to call an ambulance. A.H. had done so.

39. T.G. said that as far as she could remember, the police officer had been shouting at the man to stop or he would shoot. She said that only those two men had been running, one after another, and that there had been no-one else running or escaping. Only those two had had guns. She said when the ambulance had arrived, there had been so many people that nothing had been visible but when they had left, she had seen that there was blood and a gun on the ground.

4. Referral of the case to the Special Investigative Service

40. On 15 June 2011, the investigator decided to send the case to the Special Investigative Service ("SIS"). His decision stated that a legal assessment of the actions of police officers A.A. and N.P. should be made within the framework of the proceedings, and that this was within the exclusive power of the investigators of the SIS.

41. On the same day, investigator G.G. of the SIS took over the investigation. He decided to commence an investigation into murder through use of excessive force under Article 107 of the Criminal Code. He ordered a ballistics examination and submitted to the experts the weapon and bullets discovered at the scene of the incident, A.A.'s service gun, the items found in Mr Yengibaryan's apartment and two bullets removed from his body. The experts were asked to determine the types of weapons submitted to them, their condition, the last time they had been fired and whether the account of events described by A.A. during questioning could be confirmed by the results of the forensic examination.

5. The questioning of the police officers

42. Police officers A.A. and N.P. were questioned on the evening of 15 June 2011. Their statements largely repeated what the two men had already explained in their reports of the evening before (see paragraphs 12-22 above). The following summaries of the statements concern only elements which were either added or clarified.

(a) The statement of A.A.

43. A.A. explained the telephone call from G.S. and the drive to Garegin Nzhdehi square (see paragraphs 17-18 above). He stated that N.P. had introduced himself to the man on Garegin Nzhdehi square as a detective, shown his identification papers and suggested getting into the car to go to the station for some clarifications. A.A. explained that because they believed the man to be the one who had committed crimes and knew that man to have been armed, as a precaution A.A. had held his left arm and N.P. had held his right arm.

44. At first the man had been calmly compliant. When they had reached the car, the man had then become hysterical, saying that he would complain

to the prosecutor's office, struggling and trying to free himself. He had freed his right hand and G.S. had shouted that he had a gun. A.A. then recounted the subsequent events as described in his police report (see paragraphs 19-20 above).

45. As to the pursuit inside the underpass, A.A. explained that he had been running on the right-hand side and N.P. had been on the left-hand side a metre behind. The man had been about 7-10 metres away. He described, as set out in his police report (see paragraph 21 above), the events that had led to the firing of his weapon.

46. Police officers on patrol and police officers assigned to the subway, had then approached. Together they had preserved the scene of the incident. Within five minutes an ambulance had arrived. As the man was being placed on a stretcher, a bullet had been found under him. It was at that moment that A.A. had realised that his weapon was a gas pistol. Until then, he had believed it to be a combat weapon.

47. At the end of the interview, A.A. added that when G.S. had first called them, N.P. had immediately called and informed the head of the Criminal Investigation Division about the call. The latter had ordered them to check the information. This was why he and N.P. had gone to intercept the man and ascertain whether he was the person who had committed the robberies.

(b) The statement of N.P.

48. N.P. explained the background robberies and his warning to his acquaintances (see paragraphs 4 and 13 above). He clarified that a facial composite of the robber had been compiled. He described, as in his report, the telephone call from G.S. and his subsequent call to S. (see paragraphs 13-14 above).

49. In respect of the drive to the location, N.P. clarified that during their last contact by telephone, G.S. had told N.P. to hurry up as the person seemed to have realised that he was being followed. When they arrived, N.P. had introduced himself as a police officer, shown his identification and told the man to accompany them to the police station to clarify certain things. N.P. explained that they had held his arms as a precaution, since according to their information he would be armed.

50. Initially the man had come with them calmly. When they had reached the car, the man had started to resist. He had said that he would complain to the prosecutor's office. A.A. had held his left hand and N.P had held his right. The man had started to struggle and had managed to free himself from N.P.'s hands. N.P. recounted the subsequent events, as described in his report (see paragraph 15 above). He explained that the police officers had continued their pursuit into the underpass and when they had reached the open space in front of the subway doors, the man had turned towards N.P., who had been around 8-9 metres behind him on the left, and had fired at him. N.P. went on to describe the circumstances of the shooting (see paragraph 16 above).

6. The post-mortem examination

51. On 21 June 2011, the post-mortem examination was completed. According to the conclusions of the forensic medical expert, Mr Yengibaryan's death was caused by haemorrhagic-traumatic shock, severe disruption of brain function as a result of acute penetrating ballistic trauma to the head and perforating ballistic trauma to the abdomen.

7. The ballistics report

52. On 22 June 2011, the ballistics examination was completed (see paragraph 41 above). The report confirmed that the Ekol & Voltran pistol found at the scene was not a firearm and that the three bullets inside were not munitions but ammunition used in a gas pistol. The bullet found at the scene also came from a gas pistol. The metal object discovered in the apartment was an accessory of a gas pistol.

53. The report stated that the two bullets recovered from the deceased's body had been fired from A.A.'s pistol. However, the report found that it was impossible to state with certainty that the two bullets corresponded to any of the four bullet shells found at the scene of the incident.

54. The experts considered that the assessment of A.A.'s statements was not within a forensic expert's competence.

8. The first applicant's request to participate in the proceedings

55. On 27 June 2011, the first applicant's lawyer applied to the SIS with a request to involve the first applicant and him in the proceedings, as Mr Yengibaryan's legal heir and his representative. By letter of 1 July 2011, investigator G.G. replied that the request would be considered after a final legal assessment of the actions of the police officers had been made.

56. On 16 July 2011 the first applicant's lawyer lodged a complaint with the General Prosecutor about the refusal to grant the request made. By letter of 21 July 2011, prosecutor V.M. of the General Prosecutor's Office stated that the questions raised in the complaint of 16 July 2011 would be considered after the legal assessment of the police officers' actions.

9. The termination of the criminal proceedings

57. By decision of 21 July 2011, investigator G.G. decided to terminate the criminal proceedings (see paragraphs 7 and 41 above).

58. The decision first summarised the factual background to the incident. It explained that Mr Yengibaryan had formed the intention to rob G.S's property. On 14 June 2011 at around 1.05 p.m., introducing himself as an employee of the water supply company, he had attempted to gain illegal entry to G.S.'s apartment. However, he had not been able to complete the crime because G.S. had not opened the door and had called the police. A.A. and

N.P., having arrived at the scene, had tried to disarm the criminal in accordance with their duties. They had introduced themselves as police officers. However, Mr Yengibaryan had disobeyed the lawful orders of A.A. and N.P. and had attempted to escape. While fleeing, he had fired in the direction of A.A. and N.P., which had amounted to an assault on their lives and limbs. A.A. had shot and caused injuries to the criminal with his service pistol. Mr Yengibaryan had later died.

59. The decision recorded that the two criminal cases – one into the alleged acts of Mr Yengibaryan (see paragraph 7 above) and one into his shooting (see paragraphs 41 above) – had been joined.

60. The decision noted that the investigation had established the following. G.S. had learned from his friend, police officer N.P., that an unknown person was introducing himself as an employee of the water supply company and committing robberies. Hence on 14 June 2011 at around 1.05 p.m., when the unknown man had introduced himself as an employee of the water supply company and attempted to enter his apartment, G.S. had suspected him and had called to inform N.P. N.P. had informed his management, after which he had asked G.S. to follow the man. N.P. and A.A., another police officer, had rushed to the street indicated by G.S., maintaining regular telephone contact with G.S. and checking their current location.

61. At around 1.30 p.m. they had approached the person indicated by G.S., who was Mr Yengibaryan. They had introduced themselves as police officers, shown identification and asked Mr Yengibaryan to accompany them to the police station for clarification. As a precaution, they had held his arms. Having reached the car, Mr Yengibaryan had refused to get in, resisted the police officers, and freed his hands. He had then taken out a gun from his waistband, aimed at the police officers, threatened to shoot, and escaped. The police officers had taken out their guns and A.A. had warned Mr Yengibaryan that he was going to shoot, had fired two warning shots into the air and had, together with N.P., chased Mr Yengibaryan. The latter had turned back during the chase and shot in the direction of the police officers. Immediately after the shot, A.A. had fired in response. Mr Yengibaryan had continued to run and had tried to turn around and shoot again. A.A. had shot him a second time, after which Mr Yengibaryan had fallen face down. Mr Yengibaryan had later died during surgery.

62. The decision explained that these facts had been established on the basis of the statements of A.A. and N.P., the statements of G.S. and other eye-witnesses, the inspection of the scene and a number of expert examinations. The decision then went on to summarise this evidence (see paragraphs 23-39 and 42-54 above).

63. The decision then stated, without further explanation but referring to pages of the criminal case file not submitted to the Court, that it had been established that, since May 2011, Mr Yengibaryan had committed other crimes in various districts of Yerevan, the criminal case in respect of which

was being investigated. Thus it has been established by the investigation that Mr Yengibaryan had used violence dangerous to life and limb against A.A. and N.P. and that the use of firearms by A.A. and N.P. had been lawful. The police officers had acted in accordance with Article 32 of the Police Act (see paragraph 100 below).

64. Investigator G.G. therefore decided not to proceed with the criminal prosecution of A.A. and N.P. in connection with the death of Mr Yengibaryan on the basis that the act which had inflicted the harm was lawful. Mr Yengibaryan would not be prosecuted for having used violence dangerous for life and limb against A.A. and N.P. because he had died. The decision was to be sent to A.A. and N.P. and the Prosecutor General of Armenia.

65. The applicants were not informed of this decision. On 5 August 2011, a media article reported the termination of the proceedings on the basis that the investigation had revealed that the actions of the police officers had been lawful.

D. The termination of the investigation into the series of robberies

66. On 29 October 2011, a decision was taken to terminate the criminal investigation into the series of robberies (see paragraph 4 above). The decision referred to evidence confirming Mr Yengibaryan's involvement in the robberies. In particular, it explained that the victims or the victim's neighbours had been shown photographs of Mr Yengibaryan or his corpse and had confirmed that he was the person who had introduced himself as an employee of the water supply company and had entered the apartments. It further explained that Mr Yengibaryan's fingerprint and palm print matched a fingerprint and a palm print taken from the apartments of two of the victims.

II. COMMENTS AND ACTIONS OF THE CHIEF OF POLICE

67. Meanwhile, on 17 June 2011, the Chief of Police of Armenia confirmed in an interview that Mr Yengibaryan had been armed with a gas pistol. He said that Mr Yengibaryan had fired in the direction of the police officers four times and that it was not until after he had been disarmed that it was discovered that his gun was a gas pistol. He added that he did not blame the police officers since they had acted lawfully.

68. On 23 June 2011, the Chief of Police gave another media interview in which he stated that he had no doubt that Mr Yengibaryan had been involved in several counts of robbery. He said that a number of victims had already identified the criminal and that it was, therefore, to be ruled out that the police officers could have shot the wrong person. He concluded that he felt relieved to know that the criminal who had terrorised the whole city had been disarmed and that in his personal view, as the head of police, everything had been done

in a lawful manner and there had been nothing illegal in the actions of the police officers.

III. THE APPLICANTS' ATTEMPTS TO CHALLENGE THE TERMINATION DECISIONS

A. The decision to terminate the joined criminal investigations opened on 14 and 15 June 2011 (see paragraphs 7 and 41 above)

1. Requests to the investigative authorities and the prosecutor

69. On 5 August 2011, having seen the article announcing the termination of the criminal proceedings (see paragraph 65 above), the first applicant's lawyer asked G.G. to provide a copy of the decision. No reply was received. On 22 August 2011, the first applicant's lawyer complained to the General Prosecutor that G.G. had failed to provide a copy of the decision and had not replied at all to his letter of 5 August 2011.

70. On 5 September 2011, the first applicant's lawyer received a letter from G.G. which stated that there were no grounds to provide him with the copy of the decision to terminate criminal proceedings, citing Article 262 CCP which listed those to whom the decision should be sent (see paragraph 97 below).

71. On 7 September 2011, the first applicant's lawyer complained to the SIS that G.G. had unlawfully refused to provide a copy of the decision, in violation of the first applicant's rights as Mr Yengibaryan's parent and legal heir. He asked to be provided with the decision to terminate the criminal proceedings, together with the materials of the case-file.

72. On 8 September 2011, the first applicant's lawyer complained to the General Prosecutor about G.G. and the decision to terminate the criminal proceedings. He argued that Mr Yengibaryan's killing had not been absolutely necessary within the meaning of Article 2 of the Convention. He said that since the first applicant had unlawfully been denied the status of the victim's legal heir, he was obliged to submit his arguments against the decision to terminate the proceedings without having familiarised himself either with the relevant decision or with the materials of the case-file.

73. On 13 September 2011, G.G. sent a further letter to the first applicant's lawyer stating that there were no grounds to provide him with the copy of the decision in question.

74. By letter of 19 September 2011, prosecutor V.M. informed the first applicant's lawyer that there were no reasons to quash the decision to terminate the criminal proceedings since it was lawful and well-founded. A copy of the decision was enclosed with the letter. On 28 September 2011, the first applicant's lawyer replied that prosecutor V.M. had failed to provide a duly reasoned decision for rejecting his complaint.

2. Application to the District Court

75. On 30 September 2011, the first applicant's lawyer lodged a complaint with the District Court against the decision of 21 July 2011 to terminate the criminal proceedings (see paragraph 57 above). He asked the court to allow access to materials in the case, given that no opportunity to consult the case-file had been given by the investigative body.

76. On 31 October 2011, the second applicant asked to be involved in the proceedings by joining the first applicant's complaint. She indicated that she would like to be represented by the first applicant's lawyer.

77. On an unspecified date the District Court granted access to the case-file.

78. Having consulted the file, on 1 November 2011 the lawyer submitted additional arguments to the effect that the force used by the police officers had been excessive and had therefore not been justified. He further argued that Mr Yengibaryan had unlawfully not been granted the status of "victim" in the criminal proceedings. Since the applicants had not been allowed to participate in the criminal proceedings, had not been provided with the decision to terminate them and in general had not had access to the case-file, the investigation into his death had not been effective. The lawyer also highlighted that A.A. and N.P. had not been questioned immediately after the killing and no measures had been undertaken to prevent them from discussing the incident prior to being questioned. As a result, they had made almost identical statements.

79. Finally, the lawyer argued that the Chief of Police had breached the principle of presumption of innocence in respect of Mr Yengibaryan, referring to the former's public statements (see paragraphs 67-68 above).

80. In its decision of 2 November 2011, the District Court rejected the complaints. It did not address the second applicant's request to be involved in the proceedings or the further arguments lodged on 1 November 2011 (see paragraphs 78-79 above).

3. Appeal proceedings

81. On 11 November 2011, the applicants lodged an appeal, reiterating their arguments before the District Court. They also complained that the District Court had not involved the second applicant in the proceedings and had not properly addressed their submissions, including the further arguments of 1 November 2011 (see paragraphs 78-79 above).

82. In three separate letters of 24 November 2011, the Criminal Court of Appeal notified the first applicant, the second applicant and their lawyer, respectively, that it would examine their appeal on 8 December 2011. It appears that the Court of Appeal did not, however, officially involve the second applicant as a party to the proceedings.

83. By decision of 20 December 2011, the Criminal Court of Appeal fully upheld the decision of the District Court of 2 November 2011. It did not address the additional arguments made (see paragraphs 78-79 above).

84. On 11 January 2012 the applicants lodged an appeal on points of law relying on the grounds previously advanced. On 24 February 2012 the Court of Cassation declared the appeal inadmissible for lack of merit.

B. The decision to terminate the criminal investigation into the series of armed robberies (see paragraphs 4 and 66 above)

1. Requests to the investigative authorities and the prosecutor

85. On 12 January 2012, the applicants submitted a written request to the police noting that during a court hearing concerning Mr Yengibaryan's death, a prosecutor had announced that the criminal investigation into the robberies had been terminated. They asked for a copy of that termination decision. On 1 February 2012, having received no reply, they repeated their request in correspondence with the police and the General Prosecutor's Office.

86. On 14 February 2012, the General Prosecutor's Office informed the applicants that the prosecutor had ordered the police to provide them with the decision requested. On 20 February 2012, the police provided the decision.

87. On 29 February 2012, the applicants lodged a complaint with the General Prosecutor arguing that the decision to terminate the criminal case was unlawful. They requested that they be granted legal status as Mr Yengibaryan's relatives. On 15 March 2012, the Yerevan Prosecutor's Office replied that as Mr Yengibaryan's relatives did not have legal status in the case, they were not able to appeal the decision to terminate the proceedings.

2. Application to the District Court

88. On 17 April 2012, the applicants lodged a complaint with the District Court appealing the decision to terminate the criminal investigation into the armed robberies (see paragraph 66 above) and challenging the lawfulness of the actions of the Yerevan Prosecutor's Office. The appeal and challenge were rejected by the District Court on 18 May 2012.

RELEVANT LEGAL FRAMEWORK

89. The following summary of the legal framework outline the provisions that were in force at the relevant time. Both the Criminal Code and the Code of Criminal Procedure have now been superseded.

I. THE CRIMINAL CODE

90. Article 42 provided that an act committed in necessary defence against an attacking person would not be deemed a crime, provided that the limits of necessary defence were not exceeded. Harm inflicted in the course of countering life-threatening violence could amount to any degree of health damage, even death. The use of arms against an armed assault would not be deemed to constitute a transgression of the limits of necessary defence and would not engage criminal liability.

91. Article 107 provided that murder of a person who had committed a crime through the use of excessive measures when capturing him was punishable by up to three years' imprisonment.

92. Article 316 § 2 prohibited assault against a public official that threatened their life or limb.

II. THE CODE OF CRIMINAL PROCEDURE ("CCP")

93. Article 11 of the CCP provided that everyone detained or arrested would be informed promptly of the reasons for his detention or arrest and the factual circumstances and legal description of the offence of which he was suspected. The Article prohibited the taking into custody and deprivation of liberty on grounds or pursuant to a procedure other than those stipulated in the CCP.

94. Article 34 § 1 provided that a body of inquiry, an investigator or a prosecutor could arrest and question a person suspected of having committed an offence.

95. Articles 58 provided that victim status was given to a person who had directly suffered moral, physical or property damage from an act forbidden by the Criminal Code. Article 80 enabled the status of the victim's legal heir to be assigned to his or her next-of-kin where the victim had died.

96. Article 62 § 1 provided that a suspect was the person (a) who had been arrested upon a suspicion of having committed an offence; or (b) in whose respect, prior to bringing a charge, a decision had been adopted to impose a preventive measure. Article 63 enumerated the range of rights enjoyed by a suspect, including the right to be informed about the reasons for his arrest.

97. Article 262 § 1 of the CCP provided that the investigator was to send the decision to terminate criminal proceedings to the suspect, the accused, the defence lawyer, the victim and his representative, the plaintiff and defendant in the civil claim and their representatives and the representatives of physical and legal persons whose report had been the basis for instituting the criminal case, informing them of their right to consult the case-file and the procedure and deadline for appeal.

98. Article 262 § 3 provided that those mentioned in Article 262 § 1 had the right to consult the case-file in accordance with the law.

III. THE POLICE ACT (2001)

99. According to Article 29 of the Police Act, a police officer resorts to physical force, special tools and firearms in cases and in the manner prescribed by the Act in so far as it is necessary for the performance of his duties, if the performance of those duties is not possible by other means. A police officer should strive to minimise the harm caused to an offender.

100. According to Article 32 a police officer has the right to use a firearm, *inter alia*, in defence of citizens from an assault that threatens their life or health, to resist an attack when his life or health is endangered, and to prevent the attempted escape of a person who has been apprehended while committing a serious offence against life, health or property.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

101. The applicants complained that the killing of Mr Yengibaryan by the police constituted a violation of Article 2 of the Convention in that it was not absolutely necessary within the meaning of this provision. They further complained under the same Article that the authorities had failed to conduct an adequate and effective investigation into his death. They also maintained that they had not been provided with an effective remedy under Article 13 of the Convention in respect of their complaints under Article 2 because the investigative bodies and the courts had refused to recognise Mr Yengibaryan's status as a victim, which had deprived them of the possibility of exercising their rights as his legal heirs in the proceedings, and because the courts had not addressed the second applicant's request to be involved in the proceedings.

102. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers it appropriate to examine the applicants' complaints solely from the standpoint of Article 2 of the Convention, the relevant parts of which read as follows:

> "1. Everyone's right to life shall be protected 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; ..."

A. Admissibility

103. The Government did not contest the admissibility of the applicants' complaints under Article 2 of the Convention. The Court notes that they are neither manifestly ill-founded nor inadmissible on any other ground. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

104. The applicants argued that the use of force applied by A.A. had not been absolutely necessary since Mr Yengibaryan had not presented any critical threat. They contended that it had not been proved by the criminal case materials that the person who had tried to enter the apartment of G.S. was Mr Yengibaryan. The only evidence to this effect was the statement of G.S. They noted that G.S. had not contacted the police but had instead called his friend. A.A. and N.P. had arrived at the scene in plain clothes driving their own personal vehicle. It was not suggested that Mr Yengibaryan had at any point been informed of his status (as a witness or as a suspect) or that any reason had been given for the restriction of liberty applied to him.

105. The applicants pointed to certain contradictions in the witness statements. For example, the police officers claimed in their statements to have introduced themselves and shown their badges, but this was not corroborated by any of the other witnesses and the officers themselves had not claimed in their initial reports prepared on the day of the shooting to have shown their badges (see paragraphs 12-39 and 42-50 above). G.S. spoke of having been next to the police officers and Mr Yengibaryan (see paragraph 26 above), whereas A.A.'s report referred to him being on the opposite side of the street (see paragraph 19 above). A number of the witnesses (see paragraphs 33-39 above) only saw one police officer chasing Mr Yengibaryan, and not two as the police officers claimed. None of the witnesses aside from the police officers referred to N.P. having kneeled down after Mr Yengibaryan had fired a shot.

106. The applicants further claimed that the police officers ought to have realised, given their proximity to Mr Yengibaryan when he took out his gun and the sound of the shot he subsequently fired, that he had a gas pistol and thus did not present a serious risk to life or limb. They claimed that the bullet casings from the warning shots allegedly fired by A.A. had never been found and that there was no explanation in the case-file for their absence. Even assuming that warning shots had been fired, since on the police officers' own evidence Mr Yengibaryan was running away at the time it was not surprising that he had shot back at the officers since he likely believed that the shots had

been fired directly at him. The applicants were also not satisfied with the explanation given by A.A. for firing a second time at Mr Yengibaryan.

107. The applicants further submitted that the investigation by the authorities into the death of Mr Yengibaryan was inadequate. They argued, first, that the authorities had not taken reasonable steps to secure the evidence. They highlighted the inconsistencies in witness evidence (see paragraph 105 above) and the fact that the spent bullets from the warning shots had never been found. The police officers had been interviewed only the evening after the shooting (see paragraph 42 above), which had given them time to discuss the incident between themselves or with their superiors. As a result, the investigative measures were not adequate and had not been carried out with sufficient promptness.

108. Moreover, the respondent State had failed to involve the family of Mr Yengibaryan in the investigation and provide them with access to relevant documents in the case-file (see paragraph 55-56 and 69-74 above). The fact that they had been granted access to the case-file during the later court proceedings was not sufficient, since the court had failed to consider the complaint lodged (see paragraphs 78-80 and 83 above).

109. The applicants also alleged that the investigative body lacked independence and impartiality. The language used in the decisions ordering investigative measures had been inappropriate and had already presumed Mr Yengibaryan's guilt and the lawfulness of the actions of the police. Thus the investigation had not been independent and impartial since the entire case had been based on these same premises.

(b) The Government

110. The Government argued that the death of Mr Yengibaryan had resulted from a use of force by officer A.A. that had been "absolutely necessary" for the protection of the lives of the two officers and of other citizens from unlawful violence and accidental shooting, under Article 2 § 2 (a) of the Convention, and to effect a lawful arrest, under Article 2 § 2 (b).

111. They underlined that at the time of the incident Mr Yengibaryan had been suspected of having committed violent offences. The officers had received reliable information from G.S. that Mr Yengibaryan was the person who had tried to enter his flat, and Mr Yengibaryan had resembled the facial composite of the perpetrator of the previous string of robberies. The officers had therefore believed that Mr Yengibaryan was the dangerous suspect they were searching for. His behaviour had increased the danger, since he had refused to obey the lawful order of the police, had resisted the police officer and had escaped. He had subsequently fired in the direction of the policemen. In these circumstances, the police had assessed the situation as dangerous to their lives and the lives of nearby citizens. When N.P. had knelt down, A.A. had believed that he had been wounded and had considered that the use of his

firearm was the only way to neutralise the danger presented by Mr Yengibaryan. He had fired two warning shots and had asked Mr Yengibaryan to stop a number of times before shooting him. The policemen had therefore acted strictly in accordance with Article 29 of the Police Act (see paragraph 99 above). They had had an honest belief that Mr Yengibaryan had committed a violent offence and, if not arrested, would continue to represent a danger to them or to third parties. The use of force had accordingly been "absolutely necessary" and "proportionate". As regards the applicable legal framework, the Government pointed out that Article 32 of the Police Act clearly defined the circumstances in which the police were entitled to use firearms (see paragraph 100 above).

112. In respect of the applicants' complaint under the procedural aspect of Article 2, the Government submitted that the investigation had been in conformity with that Article. Immediately after the incident, urgent investigative measures had been taken. An examination of the scene had been undertaken the same day, forensic medical expertise had been requested, Mr Yengibaryan's apartment had been searched, eyewitnesses had been interrogated and a ballistic examination of the weapons and bullets seized had been ordered (see paragraphs 7-11, 23-39 and 41 above). The police officers concerned had been interrogated the following day, as soon as the criminal proceedings had been formally initiated (see paragraphs 42-50 above). Moreover, immediately after the incident, the officers involved had submitted separate reports to their superiors in which they had described in detail all the events and factual circumstances (see paragraphs 12-22 above). As a result, all the relevant circumstances of the incident had been established.

113. Moreover, the investigation in the present case had been independent. It had been conducted by the SIS, a separate public authority independent in performing its functions. There was no hierarchical or institutional connection between those who carried out the investigation and those who were its subjects.

114. As to the applicants' participation in proceedings, the Government relied on Articles 58 and 80 of the CCP which defined who could be a victim and a victim's successor (see paragraph 95 above). Importantly, it had to be established that there had been a deed forbidden by the Criminal Code in order for there to be a victim. Until the legal assessment of the actions of the police officers had been concluded, there could be no "victim" under Article 58 and thus no right for the victim's successors under Article 80 to be involved in the proceedings. In the present case it had been established that the shooting of Mr Yengibaryan had been lawful, so no deed forbidden by the Criminal Code had been established. In respect of the failure of the domestic courts to address the second applicant's request to be involved in the legal proceedings, the Government argued that she had never clearly requested to be involved with a clear procedural status. In any event, she had been involved in substance.

2. The Court's assessment

(a) General principles

115. It is well-established that the use of force by the authorities which results in the deprivation of life falls within the scope of Article 2 (see, for example, *Ayvazyan v. Armenia*, no. 56717/08, § 73, 1 June 2017). As the text of Article 2 § 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. For this to be the case, the use of force must be no more than "absolutely necessary" for, and strictly proportionate to, the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of that Article (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 94, ECHR 2005-VII; *Ayvazyan*, cited above, § 73; and *Yukhymovych v. Ukraine*, no. 11464/12, § 71, 17 December 2020). There can in principle be no such necessity where it is known that a person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see *Nachova*, cited above, § 95 and the authorities cited there).

116. Whatever the legitimate aim invoked under Article 2 § 2, the use of force by agents of the State must be based on an honest belief which is perceived, for good reasons, to be valid at the time even if it subsequently turns out to be mistaken (see *Yukhymovych*, cited above, § 72). To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see *Bubbins v. the United Kingdom*, no. 50196/99, § 138, ECHR 2005-II (extracts); and *Ayvazyan*, cited above, § 74). In addressing this question, the Court will consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable, it is likely that the Court would have difficulty accepting that it was honestly and genuinely held (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 244-48, ECHR 2016; and *Yukhymovych*, cited above, § 72).

117. The Government bear the burden of proving that the force used by the police officers was justified, that it did not go beyond what was absolutely necessary and that it was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention (see *Cangöz and Others v. Turkey*, no. 7469/06, § 106, 26 April 2016; and *Yukhymovych*, cited above, § 75). In all cases where the Court is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations. If the Government fail to do so, the Court may then draw strong inferences (see *Yukhymovych*, cited above, § 74).

118. Where deliberate lethal force is used, all the surrounding circumstances, including such matters as the planning and control of the actions under examination, must be taken into consideration, and not only the actions of the agents of the State who actually administered the force (see *Makaratzis v. Greece* [GC], no. 50385/99, § 59, ECHR 2004-XI). In determining whether the force used is compatible with Article 2, it may be relevant whether a law enforcement operation has been planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins*, cited above, § 136; *Ayvazyan*, cited above, § 75; and *Yukhymovych*, cited above, § 73).

119. In assessing evidence, the Court applies the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ayvazyan*, cited above, § 89; and *Yukhymovych*, cited above, § 74).

120. Article 2 of the Convention also contains a procedural obligation to carry out an effective investigation into alleged breaches of its substantive limb (see *Ayvazyan*, cited above, § 76, and, for a summary of the relevant general principles, *Armani Da Silva*, cited above, §§ 229 *et seq.*; and *Yukhymovych*, cited above, §§ 63-66). Of particular relevance in the present case is the requirement that an investigation has to be adequate, meaning capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (*Armani da Silva*, cited above, § 233). Article 2 requires that the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (ibid, § 234). A further relevant requirement to which the Court referred in *Armani Da Silva* is that the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests (ibid, § 235).

(b) Application of the general principles to the facts of the case

121. It is not contested that the death of Mr Yengibaryan resulted from the use of lethal force by the police. It is therefore for the Government to show that the force used by the police officers was justified, that it did not go beyond what was absolutely necessary and that it was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention (see the case-law quoted in paragraph 117 above). However, the Court considers it necessary to first address the procedural aspect of the complaint under Article 2 because examination of whether the investigation was capable of leading to the establishment of the facts and the determination of whether the force used was justified in the circumstances

(see the case-law quoted in paragraph 120 above) is relevant to the Court's assessment of whether the Government have satisfactorily discharged their burden to justify the killing (see *Cangöz and Others*, cited above, § 115; and *Bişar Ayhan and Others v. Turkey*, nos. 42329/11 and 47319/11, § 51, 18 May 2021).

(i) Procedural limb

122. The Court notes that a number of investigative measures were taken by the police, beginning on the day on which Mr Yengibaryan was shot and killed. Evidence from the scene was secured immediately and a post-mortem was ordered (see paragraphs 7-10 above). A.A. and N.P. submitted reports to their hierarchy (see paragraphs 12-22 above). A number of eye-witnesses were immediately interviewed (see paragraphs 23-39 above). A criminal investigation into Mr Yengibaryan's death was opened the day after the shooting, a ballistics examination was ordered and the two police officers, were interviewed (see paragraphs 41-50 above). The results of the post-mortem and the ballistics examination were quickly available (see paragraphs 51-54 above).

123. However, it is unfortunate that the investigating body did not interview the two police officers, who were key witnesses to the incident and in a position to shed the most light on what had happened, immediately to avoid the risk of collusion.

124. It is also noteworthy that the investigator appears to have failed to inquire at all into whether steps were taken by the police officers or their superiors to minimise risk to life (see the case-law quoted in paragraph 118 above). The Court underlines that it is not faced here with a random operation in which police officers were unexpectedly confronted with a violent situation and had to react without any prior reflection (see, for instance, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Celniku v. Greece*, no. 21449/04, § 56, 5 July 2007; and compare *Makaratzis*, cited above, § 69). Some degree of planning and organisation, commensurate with the general context, the urgency and the way in which the situation was developing, could and should have taken place. It was for the domestic investigation, in the first instance, to explore the scope for planning the police operation in all the circumstances and to assess any shortcomings in this respect.

125. As regards the initial stages of the police operation, it is noteworthy that there is no assessment by the investigator of whether there were procedural failings in this respect and, if so, what was their impact on the police operation as a whole.

126. The Court further observes that no formal record of the precise instruction given by S. to A.A. and N.P. appears in the investigation file provided to the Court. According to A.A.'s report and statement, they were told to go to the address and check the information (see paragraphs 14, 17 and 47 above). The instruction does not appear to have been an instruction to

arrest the individual, nor does it appear to have been taken as such by the two police officers. However, the police officers, in their reports and statements, neither offered nor were asked for further details of their interaction with S. No statement from S. has been provided.

127. It is also significant that the investigator did not explore with the police officers what was their intention when heading to Garegin Nzhdehi square, what they considered Mr Yengibaryan's status at that time to be and what plan, if any, had been agreed (see paragraph 13-22 and 42-50 above). The decision to terminate the criminal proceedings does not address the purpose and scope of the police operation or make any relevant findings on these issues**,** notwithstanding their relevance to the assessment of the ultimate use of force by A.A. in this case (see paragraphs 57-64 above).

128. In terms of the organisation and conduct of the operation, there are other elements in the reports and statements of A.A. and N.P. which call for further explanation. For example, N.P.'s request to G.S. to follow the man (see paragraphs 13 and 25 above) appears somewhat unusual, given that he was suspected to be armed and potentially dangerous (see paragraph 4 above). The Government have not expressed any view as to whether the steps taken by the police officers were appropriate and in accordance with the applicable police procedures and regulations regarding operational work.

129. The Court further considers that the circumstances of the officers' approach of Mr Yengibaryan are not entirely clear**.** It appears from the case-file that the police officers arrived at the scene, some twenty minutes after the telephone call with G.S. (see paragraphs 13 and 28 above), in plain clothes and driving a vehicle which was not obviously a police car (see paragraphs 28 and 31 above). The only evidence that they introduced themselves as police officers when they first approached Mr Yengibaryan is in the reports and statements of the police officers themselves. The Court is moreover sceptical of the claim by A.A. and N.P. in their statements, not made in their initial reports, that they showed their identification documents to Mr Yengibaryan (see paragraphs 43 and 49 above). G.S. in his statement records the men speaking but does not suggest that the police officers showed any papers to Mr Yengibaryan (see paragraph 26 above). Neither officer claimed to have explained to Mr Yengibaryan whether he was under arrest, whether he was being otherwise detained or what his rights were. A.A. explained in his report that in response to questions from Mr Yengibaryan, the officers said they would tell him everything at the police station (see paragraph 18 above). According to the material before the Court, the investigator does not appear to have sought clarifications in this respect, to better elucidate the circumstances in which Mr Yengibaryan was approached and the extent of the information provided to him.

130. The investigation file reveals that the police officers physically restrained Mr Yengibaryan (see paragraphs 14, 18, 26 and 29 above). Their authority for doing so was unclear, since the Government have not argued

that Mr Yengibaryan was at that stage under arrest or subject to other authorised preventive measures and, as explained above, the police officers did not claim to have arrested him and notified him of his rights (see paragraphs 93-94 and 96 above). The decision terminating the criminal proceedings did not address the question whether there were legal grounds to restrain Mr Yengibaryan and, if so, whether all procedural requirements under Armenian law had been complied with. In their statements, but not in their initial reports, the police officers said that they had restrained him as a precaution because they knew he would be armed (see paragraphs 43 and 49 above; compare paragraphs 13-22 above). However, despite restraining him and believing him to be armed, the officers did not immediately search Mr Yengibaryan with a view to removing the pistol which, if he was the person who had sought to gain entry to the apartment of G.S. and an armed robber, as suspected, he was known to have on his person (see paragraph 4 above). There is no evidence that the investigation examined this aspect of the conduct of the operation, even though it appears from the case-file that the situation deteriorated rapidly when Mr Yengibaryan freed his arms and accessed his weapon.

131. The response of the police officers to the deteriorating situation is plainly relevant to the use of lethal force, but there is no evidence that the investigation inquired into whether the developments that occurred were foreseeable and whether the police response was appropriate. The Court notes that after Mr Yengibaryan made his escape, there is no suggestion that the officers called for back-up, as they had been instructed to do in case of need by their superior officer (see paragraph 17 above). However, it emerges from A.A.'s statement that there were police officers on patrol in the vicinity as well as police officers assigned to the subway (see paragraph 46 above), who could potentially have provided assistance in apprehending Mr Yengibaryan had they been asked to intervene. The investigator does not appear to have explored whether there was scope to call for back-up in the circumstances of the case and whether, had back-up been requested, the use of lethal force might have been averted.

132. As to the circumstances of the use of force itself, there would appear to be a potentially significant discrepancy between the witnesses' and the officers' accounts of the distance between Mr Yengibaryan and A.A. at the time of the shooting (compare paragraphs 32 and 34 above with paragraphs 45 and 50 above). This may have had some bearing on whether the shot itself was proportionate to the risk then present. There further seems to have been no real discussion of whether the officers' failure to recognise Mr Yengibaryan's weapon as a gas pistol was reasonable in the circumstances. As a result, there remains a real lack of clarity about the precise circumstances in which the shots were fired.

133. On account of the failure of the investigator to explore all of the above issues, the Court is not persuaded that the investigation was capable of

clarifying the facts so as to enable a determination of whether appropriate steps had been taken in order to minimise any risk to life and whether the force used was justified in the circumstances.

134. It is moreover apparent from the documents submitted and from the Government's submissions that the applicants were not involved in the investigation, were not notified out its outcome and were not automatically entitled to see the decision terminating the criminal proceedings or consult the evidence file (see paragraphs 55-56, 65-69 and 74 above). The Government have not sought to deny that the investigation was not accessible to the applicants. Instead, they explained that this was because domestic law did not permit the next-of-kin to be involved unless and until it had been established that there was a "victim" of an unlawful act (see paragraph 114 above). However, the Court emphasises that Article 2 requires procedures applicable to the investigation of a death resulting from the use of force by the authorities to envisage the involvement of the next-of-kin (see the case-law quoted in paragraph 120 *in fine* above). In so far as this was not a possibility because of the way that the domestic law was framed (see paragraph 95 above), this is itself not compatible with the requirements of Article 2. It follows that the investigation was not accessible to the applicants to the extent necessary to safeguard their legitimate interests.

135. These reasons are sufficient for the Court to conclude that there has been a violation of the procedural limb of Article 2 in the present case. It is therefore not necessary for the Court to examine whether the investigation was independent and impartial (see paragraphs 109 and 113 above).

(ii) Substantive limb

136. The Court reiterates that in the case of the use of the lethal force by State agents, it is for the Government to prove beyond reasonable doubt that appropriate steps were taken in order to minimise, to the greatest extent possible, any risk to life and that the force used was justified and did not go beyond what was absolutely necessary (see paragraphs 117, 118 and 121 above).

137. The Court finds, in view of the considerations outlined above (see paragraphs 123-132), that the investigation conducted at the national level was so manifestly inadequate and left so many obvious questions unanswered that it is not capable of establishing the true facts surrounding the killing and the Court is unable to rely on the conclusion reached at the end of that investigation (see *Cangöz and Others*, cited above, § 138, and *Vardanyan and Khalafyan v. Armenia*, no. 2265/12, § 96, 8 November 2022). The Government, in their submissions before the Court, simply relied upon the findings of the domestic investigation. They did not provide any further information or materials clarifying the circumstances surrounding the organisation and conduct of the operation and the use of lethal force in this case.

138. In these circumstances, the Government have failed to discharge the burden of proof incumbent on them to show beyond reasonable doubt that the killing of Mr Yengibaryan resulted from a use of force that was no more than absolutely necessary to meet one of the aims set out in Article 2 § 2 (see, *mutatis mutandis*, *Cangöz and Others*, cited above, § 138; and *Bişar Ayhan and Others*, cited above, § 74). There has accordingly been a violation of the substantive limb of Article 2 of the Convention in the present case.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

139. The applicants complained that the public statements of the Chief of Police constituted a breach of the principle of presumption of innocence in respect of Mr Yengibaryan, as provided in Article 6 § 2 of the Convention which states:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

140. The Government argued that the applicants could not claim to be victims of an alleged violation of Article 6 § 2. They did not satisfy any of the criteria laid down by the Court for allowing close relatives to bring proceedings before the Court in respect of such a complaint. The applicants argued that they could claim to be victims of the alleged violation since they had shown a moral interest in having Mr Yengibaryan exonerated of any finding of guilt and in protecting their own reputation and that of their family; and a material interest on the basis of the direct effect on their pecuniary rights.

141. Having regard to the facts of the case, the submissions of the parties, and its findings under Article 2 of the Convention, the Court considers that it has examined the main legal question raised in the present application and that it is not necessary to examine the admissibility and merits of the complaint under Article 6 § 2 (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. 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

143. The applicants claimed 28,000 euros (EUR) in respect of pecuniary damage and EUR 40,000 (EUR 20,000 for each applicant) in respect of non-pecuniary damage. The pecuniary damages sought represented loss of earnings between Mr Yengibaryan's death and the date of submission of the applicants' just satisfaction claim. Mr Yengibaryan had left behind a widow and two small children, who were now reliant of the first applicant to support them financially.

144. The Government argued that the applicants had failed to substantiate their claim for pecuniary damages. They had submitted no documents to support their allegations that they had suffered any damage of a pecuniary nature, or that such damage amounted to EUR 28,000. The Government further considered the sum sought in respect of non-pecuniary damage to be excessive and unsubstantiated in view of the absence of any documents showing the alleged mental suffering of the applicants.

145. The Court observes that the applicants have failed to submit any documents substantiating their claim in respect pecuniary damage. The claim is accordingly rejected as unsubstantiated. On the other hand, having regard to the violations of the substantive and procedural limbs of Article 2, the Court awards the applicants jointly EUR 39,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

146. The applicants also claimed EUR 2,000 for the costs and expenses incurred before the Court. They explained that on account of their low income, their legal representatives had agreed to their request that they pay for legal services provided after the judgment of this Court.

147. The Government considered that the claim was not justified and was entirely unsubstantiated since the applicants had failed to submit any documents whatsoever to support their claim. In these circumstances it was not possible to determine an appropriate sum in respect of legal costs and the claim ought to be rejected in its entirety.

148. 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. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them. Accordingly, the fees of a representative who has acted free of charge are not actually incurred. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017).

149. In the present case, the applicants did not submit documents showing that they are under a legal obligation to pay the fees charged by their legal representatives or the expenses incurred by them. In the absence of such documents, the Court therefore finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred by them. It follows that the claims must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 2 of the Convention admissible;

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

3. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 6 § 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 39,000 (thirty-nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 20 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Gabriele Kucsko-Stadlmayer
Registrar	President