



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

FIFTH SECTION

CASE OF SHURIYYA ZEYNALOV v. AZERBAIJAN

(Application no. 69460/12)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Death in custody from alleged pulmonary embolism • Failure of Government to explain origin of serious injuries seen on body • Discrepancy between forensic report and video-recording of the deceased's body filmed before funeral ceremonies • Conclusion to be drawn from recurrence of serious omissions in post-mortem forensic reports • Court not excluding injuries resulting from acts of torture despite insufficient proof

Art 2 (substantive) • Life • Failure of authorities to convincingly account for circumstances of death • Undisputed deceased not suffering from any life-threatening illness on admission to custody • Forensic report, failing to record injuries on body or analyse question of causal link between death and injuries, not considered reliable proof • Investigative authorities failure to provide information to family or to cooperate with European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Art 2 and 3 (procedural) • Lack of effective investigation • No action taken by authorities following dissemination of video-recording showing injuries not mentioned in forensic report • Refusal to provide family with copy of forensic report or inform them of progress and outcome of investigation • Strong inferences of attempt to prevent effective investigation being drawn from authorities accusation of defamation against family of deceased

STRASBOURG

10 September 2020

FINAL

10/12/2020

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

In the case of Shuriyya Zeynalov v. Azerbaijan,

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

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Mattias Guyomar, *judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having regard to:

the above 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 an Azerbaijani national, Mr Shuriyya Mahmud oğlu Zeynalov (*Şüriyyə Mahmud oğlu Zeynalov* – “the applicant”), on 16 October 2012,

the parties’ observations,

Having deliberated in private on 7 July 2020,

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

INTRODUCTION

1. The applicant alleged that his son had died in detention as a result of torture by agents of the Ministry of National Security (“the MNS”) of the Nakhchivan Autonomous Republic (“the NAR”), and that the domestic authorities had failed to carry out an effective investigation in that regard, in violation of Articles 2 and 3 of the Convention.

THE FACTS

2. The applicant was born in 1938 and lives in Nakhchivan. He was represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers based in Azerbaijan.

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

I. THE ARREST AND DEATH OF THE APPLICANT’S SON

4. The applicant’s son, Turaj Zeynalov (T.Z.) who was born in 1980, worked as a driver at Nakhchivan International Airport at the time of the events in question.

5. According to the Government, on 24 August 2011 T.Z. was invited to the MNS of the NAR where he was questioned as a witness. The

questioning began at 10.15 a.m. and ended at 12.40 p.m. On the same day at 4.30 p.m. he was arrested as a suspect and he was allowed to make a phone call informing his father and brother of his arrest. On the same day, from 5.25 p.m. until 6.35 p.m., T.Z. was questioned as a suspect in the presence of a State appointed lawyer. Following the questioning, he was taken to the Pre-trial Detention Facility of the Ministry of Internal Affairs of the NAR. On 26 August 2011 he was taken to the MNS of the NAR where he was charged with the criminal offence of high treason as provided for by Article 274 of the Criminal Code and was questioned as an accused. It appears from the documents in the case file that he was accused of collaboration with the Iranian intelligence service. On the same day following the questioning he was taken to the Nakhchivan City Court which ordered his pre-trial detention. From 26 to 28 August 2011, he was detained at the Pre-trial Detention Facility of the Ministry of Justice of the NAR.

6. According to the Government, on 28 August 2011 the applicant was taken to the premises of the MNS of the NAR for questioning. However, he suddenly felt ill and an ambulance was called. T.Z. was provided with first aid, but his state of health continued to deteriorate and the ambulance took him to hospital. He died on his way to hospital. His family was immediately informed of his death. In support of their version of events, the Government relied on a record of a request for medical aid (*tibbi yardımın çağırılması barədə protokol*) prepared by an investigator at the MNS of the NAR and an explanation (*arayış*) from the emergency service of the Ministry of Health of the NAR. The record of a request for medical aid was dated 28 August 2011 and indicated that it was drawn up from 11.30 a.m. until 11.55 a.m.

7. Following T.Z.'s death, a video-recording of his body was given to the media by members of his family, who had filmed the corpse before the funeral ceremonies. From the video-recording, it appears that there were a number of visible bruises on T.Z.'s shoulders, elbows, knees and buttocks. Several tumours on various parts of T.Z.'s body were also visible. The incident was widely covered and commented on in the media.

II. CRIMINAL INQUIRY

8. The documents submitted by the Government in their observations indicate that on 28 August 2011 an investigator ordered a post-mortem examination of T.Z.'s body, which was carried out on the same day and, therefore, only several hours after his death. The expert drew up report no. 10 dated 5 September 2011 in which he concluded that the cause of death had been pulmonary embolism as a result of vascular thrombosis of the lower limbs (*aşağı ətrafların venalarının trombozu hesabına əmələ gəlmiş ağciyər arteriyasının tromboemboliyası*). The expert found that there was no injury or trace of injury or damage to T.Z.'s body or clothing, but noticed seven tumours (*törəmə*) on various parts of his body. He also

indicated that post-mortem lividity (*meyit ləkələri*) had developed on the back of the corpse (*gövdənin arxa səthində*).

9. The documents submitted by the Government in their observations further indicate that by a decision of 9 September 2011 an investigator at the Nakhchivan City Prosecutor's Office declined to institute criminal proceedings in connection with T.Z.'s death. The decision relied on the conclusions of report no. 10 and statements given by agents of the MNS. The decision also referred to statements given by the applicant, T.Z.'s wife and his two brothers, who had stated that there had been tumours on T.Z.'s body because he had been suffering from skin cancer and had been operated on several times because of this.

10. According to the applicant, on an unspecified date in 2011 T.Z.'s family asked the MNS to investigate the circumstances of his death.

11. On an unspecified date in 2011 T.Z.'s family was provided with a document entitled "extract from decision" and dated 26 November 2011. By means of this document, the chief investigator at the MNS of the NAR informed the family that on 24 August 2011 T.Z. had been arrested within the framework of criminal proceedings instituted under Article 274 of the Criminal Code, and on 26 August 2011 he had been charged with the criminal offence of high treason. However, on 8 September 2011 the criminal proceedings in question had been discontinued owing to T.Z.'s death. The document was silent as to the circumstances of T.Z.'s death.

12. On 12 December 2011 the lawyer of T.Z.'s spouse wrote to the Prosecutor General and the MNS of the NAR, asking them to provide him with all documents relating to the investigation into T.Z.'s death, such as forensic reports and procedural decisions, as well as the documents concerning the criminal proceedings instituted against T.Z.

13. On 19 December 2011 the lawyer wrote to the Prosecutor General of the Republic of Azerbaijan and the Ombudsman, noting that T.Z.'s family had not been informed of any investigation into T.Z.'s death, and had not been provided with any document relating to the investigation into his death.

14. On 29 December 2011 the chief investigator at the MNS of the NAR sent a letter to the lawyer in which, without replying to the lawyer's requests, he accused the lawyer and the deceased's family of spreading defamatory information about the activity of the MNS.

15. By a letter of 30 December 2011, the Ombudsman informed the lawyer that following an investigation carried out by the prosecuting authorities of the NAR, it had been established that T.Z. had not been ill-treated by agents of the MNS and had died of a pulmonary embolism. In this connection, the Ombudsman relied on report no. 10 dated 5 September 2011. However, the Ombudsman did not provide T.Z.'s family with a copy of the above-mentioned forensic report or any other document relating to the investigation into T.Z.'s death.

16. On 5 March 2012 the lawyer wrote to the Prosecutor General and the MNS of the Republic of Azerbaijan, asking for documents relating to the investigation into T.Z.'s death.

17. On 19 March 2012 the Prosecutor General's Office informed the lawyer that his request had been examined and he could apply to the prosecuting authorities of the NAR in order to obtain the relevant documents.

18. Relying on the letter of 19 March 2012 from the Prosecutor General's Office, the lawyer applied to the Prosecutor General of the NAR, asking him to provide the deceased's family with the relevant documents. However, he did not receive any reply to his request.

19. On 3 May 2012 the chief investigator at the MNS of the NAR sent a letter to the applicant, accusing him of defamation on account of the content of a complaint that he had sent to the President of the Republic of Azerbaijan concerning the activity of the MNS. The investigator further noted that T.Z. had not been ill-treated and had died of a pulmonary embolism. In this connection, he relied on report no. 10, but failed to provide the applicant with a copy of the report in question or any other document relating to the investigation into T.Z.'s death.

20. By a letter of 16 May 2012, the Prosecutor General's Office informed the applicant that T.Z. had not been ill-treated in the MNS and his death had resulted from pulmonary embolism. It was also indicated that by a decision of 9 September 2011 the Nakhchivan City Prosecutor's Office had declined to institute criminal proceedings in connection with T.Z.'s death. However, the Prosecutor General's Office did not provide the applicant with a copy of the decision in question.

21. On 21 May 2012 the lawyer of T.Z.'s spouse lodged an application with the Sabail District Court, asking the court to declare unlawful the domestic authorities' failure to provide T.Z.'s family with the documents relating to the investigation into his death, and to order them to provide the family with the relevant documents.

22. On 24 May 2012 the Sabail District Court refused to accept the application for examination. It found that it had been incorrectly lodged under the procedure for judicial review of prosecuting authorities' actions or decisions, as provided for by Articles 449-450 of the Code of Criminal Procedure ("the CCrP"). The court held that this type of complaint should be made in line with the procedure for administrative courts, in accordance with Article 2 of the Code of Administrative Procedure.

23. On 22 June 2012 the Baku Court of Appeal upheld the first-instance court's decision.

24. On 12 October 2012 the applicant, represented by the same lawyer who had previously represented T.Z.'s spouse, lodged an application against the Prosecutor General's Office and the MNS of the NAR with the Nakhchivan Administrative Economic Court. He asked the court to order

the respondent parties to provide him with the documents relating to the investigation into the death of his son, and to declare their inaction in that regard unlawful.

25. By a letter dated 17 October 2012 and signed by its president, the Nakhchivan Administrative Economic Court informed the applicant that his application was outside its jurisdiction and that he could lodge a complaint with the relevant court under the procedure for judicial review of prosecuting authorities' actions or decisions, in accordance with the CCrP.

26. On 2 November 2012 the applicant appealed against this letter to the Supreme Court of the NAR, reiterating his previous complaints. The applicant did not receive any reply to his appeal.

III. ALLEGATIONS PUBLISHED IN THE MEDIA CONCERNING THE CIRCUMSTANCES OF T.Z.'S DEATH

27. In December 2012 I.M., a person who claimed to be a former agent of the MNS of the NAR and who was in Russia at that time, stated in the media that T.Z. had been tortured on the premises of the MNS in Nakhchivan from 24 to 27 August 2011, and that he had died as result of torture.

28. In January 2013 I.M. applied for asylum in Russia, claiming to be a key witness to T.Z.'s death. The domestic proceedings giving rise to the refusal of his asylum request and an extradition request by the Azerbaijani authorities within the framework of criminal proceedings instituted against I.M. for fraud were the subject matter of the Court's decision in *Ibragim Musayev v. Russia* (no. 55091/13, 23 September 2014).

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

29. The relevant provisions of the CCrP are described in detail in the Court's judgment in *Huseynova v. Azerbaijan* (no. 10653/10, §§ 61-62, 13 April 2017).

II. RELEVANT INTERNATIONAL MATERIAL

30. On 18 July 2018 the Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment ("the CPT") published the report on the visit to Azerbaijan carried out by the CPT from 13 to 20 December 2012. The relevant parts of the report read as follows:

"F. The Z. case

56. On 9 September 2011, the CPT wrote to the Azerbaijani authorities concerning the death in August 2011 of T. Z. (aged 31) who, at the time, was remanded in

custody in the Nakhchivan Autonomous Republic of Azerbaijan. The Committee had received allegations that Mr Z. had died as a result of injuries inflicted by officials of the Ministry of National Security.

This was the first in a series of letters from the CPT on the same subject, aimed at obtaining detailed information on investigations carried out into the death of Mr Z. as well as copies of all relevant medical/autopsy reports. Some of the information requested was subsequently provided by the Azerbaijani authorities but certain documents of a medical nature remained outstanding. As already indicated, much of this remaining information – and in particular the autopsy report – was finally provided during the 2012 visit.

57. According to the information provided by the Azerbaijani authorities, a protocol of detention was drawn up in respect of Mr Z. in the afternoon of 24 August 2011 and he was placed in the temporary detention facility of the Ministry of Internal Affairs of the Nakhchivan Autonomous Republic of Azerbaijan. He was subsequently remanded in custody on 26 August and transferred the same day to the Pre-trial detention facility of the Ministry of Justice. Apart from some skin deformations in the chest and navel areas, no marks were observed on his body on his admission to the facility, and the diagnosis during the preliminary examination carried out on 27 August after Mr Z.'s admission to the Pre-trial detention facility was "practically healthy". At approximately 9.00 on 28 August, Mr Z. was transferred from the Pre-trial detention facility to the Ministry of National Security of Nakhchivan "for the purposes of conducting necessary investigative activities", following a written request from an investigator of that Ministry. Mr Z. began to feel unwell en route to the Ministry of National Security and, on his arrival there, he was not able to make a statement. An ambulance was called and he was transferred to Nakhchivan City Medical Diagnostic Centre; on his arrival at the Diagnostic Centre, he was found to be dead (confirmed by a certificate issued by the Centre at 13.35 the same day).

A pre-investigative inquiry was opened by the Prosecutor's Office of the City of Nakhchivan on 28 August 2011. An autopsy of Mr Z.'s body was carried out at the "Forensic Medicine and Pathological Anatomy Unification" of the Nakhchivan Autonomous Republic of Azerbaijan on the same day (between 17.00 and 18.30). According to the autopsy's conclusions dated 8 September: no signs of injury were found on the body or clothes of Mr Z.; the cause of his death was "thrombosis of lower parts veins resulting in thromboembolism of lung artery"; the time of death was 28 August. On 9 September, the prosecutor's office closed the pre-investigative inquiry with the decision not to initiate a criminal case.

58. The autopsy report and those photographs provided have been examined by forensic doctors within the Committee. Video footage of the body of Mr Z., apparently taken by his relatives after the body had been returned to them, has also been examined. This material gives rise to the following observations:

- in the photographs provided to the delegation, only the upper part of the body is undressed; in order for a proper assessment to be made, the photographs of the undressed lower part of the body should also have been provided;
- in the video footage, visible lesions can be observed on both gluteal regions and in the right coccygeal region, in the form of bluish violet discoloration of the skin, clearly distinct from post-mortem lividity and indicative of bruises and haematomas; no description of such lesions is provided in the autopsy report;
- pathological findings described in the autopsy report and notably:

- (external examination) thromboses in the lower extremities (“Thrombus are detected at the both lower areas”);
- (internal examination) thrombotic embolus in the pulmonary artery (“At the cut of the lung artery there was freely disposed thrombus mass at reddish-grey colour was detected”) and sub-epicardial haemorrhages (“Few dot alike haemorrhages are detected at the epicardium”) are not documented in the photographs made available to the delegation;
- in the autopsy report, no reference is made to incisions having been made through the soft tissue of the lower extremities to enable examination of superficial and deep veins; and such incisions are not apparent on the video footage;
- the results of the toxicological analyses and of the histological examination of sampled organs have not been included in the autopsy report and have not been otherwise provided to the delegation.

59. The CPT considers that on the basis of the forensic examination carried out it is not possible to conclude that the cause of Mr Z.’s death was that referred to in the autopsy report (“thrombosis of lower parts veins resulting in thromboembolism of lung artery”). To reach such a conclusion would require a detailed examination of veins on both lower extremities including histological assessment of any thrombus found for evaluation of eventual vein pathology and maturity of the thrombus.

Further, taking into account the circumstances of Mr Z.’s death, i.e. rapid deterioration of the health of a young man while in detention, other possible causes of death should have been fully explored, in particular through examination of sub-cutaneous tissues by full exposure of the soft tissues and musculature on the back of the body including the extremities (so-called “peel-off” procedure). Finally, the CPT notes that none of the principal findings in the autopsy report, notably the absence of injuries to the body (and more specifically the lower part), the finding of a thrombus in the lower extremities and of thrombotic embolus in the pulmonary artery, are supported by photographic evidence.”

31. On 18 July 2018 the CPT published the report on the visit to Azerbaijan carried out by the CPT from 29 March to 8 April 2016. The relevant parts of the report read as follows:

“6. ... The delegation also noted with regret that some of the information provided in the responses to previous CPT reports turned out to be untrue –for example as regards ... the failure to re-open the inquiry into the death of T. Z. **The CPT must again stress that the principle of co-operation encompasses the obligation to provide accurate information to the Committee and refrain from deceptive action of the kind referred to above.**”

THE LAW

I. LEGAL CHARACTERISATION OF THE APPLICANT’S COMPLAINTS

32. The applicant complained under Articles 2 and 3 of the Convention that his son had been subjected to torture by agents of the MNS of the NAR, that he died as a result and that the domestic authorities had failed to conduct an effective investigation in that regard.

33. Articles 2 and 3 of the Convention, relied on by the applicant, read as follows in so far as relevant:

Article 2

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

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

34. The Court considers that in the specific circumstances of the case, having regard to the evidence before it and the parties’ submissions, the question whether the applicant’s son was ill-treated in custody contrary to Article 3 must be examined separately from the complaint under Article 2 that he died as a result of such alleged ill-treatment. In order to follow the chronological order of the events, it will therefore start with examining the above-mentioned complaint under the substantive aspect of Article 3 and proceed after that with analysis of the related complaint under Article 2.

35. On the other hand, as to the procedural limb of those two provisions, in so far as the complaints concerning the investigation into the alleged ill-treatment and into the death of the applicant’s son concern the same alleged deficiencies and the same domestic proceedings, it is appropriate to examine them jointly under Articles 2 and 3.

II. ALLEGED ILL-TREATMENT IN VIOLATION OF ARTICLE 3

A. Admissibility

1. The parties’ submissions

36. The Government submitted that the application should be declared inadmissible because the applicant had failed to exhaust domestic remedies. In particular, they noted that all the complaints sent to the domestic authorities, including the complaints lodged with the Sabail District Court and the Baku Court of Appeal, had been submitted by T.Z.’s wife and not by the applicant. The applicant had lodged complaints with only the administrative courts, and that could not be regarded as a remedy in respect of his complaints. Therefore, without discussing the relevance of the decisions of the Sabail District Court and the Baku Court of Appeal, the Government submitted that the applicant had failed to exhaust domestic remedies.

37. The applicant disagreed with the Government’s submissions. He submitted that he had lodged a complaint with the administrative courts because the Sabail District Court and the Baku Court of Appeal had expressly ruled in their decisions that his complaints should be examined by

the administrative courts. He also pointed out that he and T.Z.'s wife had been represented by the same lawyer, Mr A. Mustafayev, in the domestic proceedings, and that both of them could act as T.Z.'s legal heirs before the domestic authorities.

2. *The Court's assessment*

38. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should be made first to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, although there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports of Judgments and Decisions* 1996-IV; *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI; and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-73, 25 March 2014).

39. The Court further reiterates that the object and purpose of the Convention, a treaty for the collective enforcement of human rights and fundamental freedoms, requires that its provisions be interpreted and applied in the light of its special character and so as to make its safeguards practical and effective (see *Yaşa v. Turkey*, 2 September 1998, § 64, *Reports of Judgments and Decisions* 1998-VI).

40. Turning to the circumstances of the present case, the Court observes at the outset that it is clear from the documents in the case file that the authorities considered both of them, the applicant and T.Z.'s wife, to be entitled to pursue complaints and proceedings in relation to T.Z.'s death and the alleged ill-treatment. At no point did any of the authorities involved object to the *locus standi* of either of them (see paragraphs 8-26 above).

41. As to the Government's argument that it had been T.Z.'s wife and not the applicant who had pursued most of the complaints, the Court observes that T.Z.'s family, including the applicant and T.Z.'s wife, asked the MNS to investigate the circumstances of T.Z.'s death and were the addressees of letters and decisions sent to them by the authorities (see paragraphs 10-20 above). They, therefore, apparently acted in concert with the aim to obtain justice for the alleged ill-treatment of T.Z. and his death. Furthermore, the same lawyer acted for the applicant and T.Z.'s wife. It is also evident that, having regard to the powers vested in the MNS and the prosecuting authorities, the applicant and T.Z.'s wife clearly brought their complaints to the attention of the relevant domestic authorities and provided

them with the opportunity to investigate, establish the facts and, in case of criminal behaviour on the part of State agents, punish them in accordance with the law.

42. The Court further notes that, in the present case, the Government submitted that the applicant had failed to exhaust domestic remedies because he had not lodged complaints with the Sabail District Court and the Baku Court of Appeal, without specifying what kind of complaints the applicant should have lodged with those courts. Even assuming that the Government was referring, in their objection, to the possibility of challenging the actions or decisions of the investigating authorities before the domestic courts in accordance with Article 449 of the CCrP, the Court notes that in the present case, the applicant was never provided with a copy of the Nakhchivan City Prosecutor's Office's decision of 9 September 2011 declining to institute criminal proceedings in connection with T.Z.'s death. In those circumstances, the Court does not see which decision or action by the prosecuting authorities the applicant should have challenged before the domestic courts before lodging his application with the Court.

43. The Court also cannot overlook the fact that the applicant, having no access to the material in the case file during the course of the investigation, could not have effectively challenged the investigating authorities' decisions or actions in court (compare *Estamirova v. Russia*, no. 27365/07, § 94, 17 April 2012, and *Huseynova v. Azerbaijan*, no. 10653/10, § 82, 13 April 2017).

44. For the above reasons, the Court finds that the applicant's complaint cannot be rejected for non-exhaustion of domestic remedies, and that the Government's objection in this regard must be dismissed.

45. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicant contested the official version of events, maintaining that his son had been tortured in detention. In that connection, he relied on the statements made by I.M. to the media and the video-recording of his son's body filmed before the funeral ceremonies.

47. The Government contested the applicant's submissions, stating that his son had never been ill-treated or tortured in detention.

2. *The Court's assessment*

(a) **General principles**

48. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2, even in the event of a public emergency threatening the life of the nation. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; and *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015).

49. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Assessment of this minimum level 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 *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92). In determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Gäfgen v. Germany* [GC], no. 22978/05, § 90, ECHR 2010).

50. As to the distribution of the burden of proof, the Court reiterates that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Where an individual is taken into police custody in good health but is found to be injured afterwards, it is incumbent

on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87, and *Mustafa Hajili v. Azerbaijan*, no. 42119/12, § 36, 24 November 2016).

51. In assessing evidence, the Court adopts 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, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 155, ECHR 2012). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see *Avşar*, cited above, §§ 283-84, and *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009).

(b) Application of these principles to the present case

52. The Court notes at the outset that it is undisputed that T.Z. did not have any bruises on his body when he was arrested on 24 August 2011. No such claim has been made by the Government.

53. The Court further observes that, although the forensic expert who examined T.Z.’s body several hours after his death did not refer, in his report no. 10 dated 5 September 2011, to any injury or trace of injury to T.Z.’s body (see paragraph 8 above), the applicant has presented a video-recording of T.Z.’s body filmed before the funeral ceremonies showing serious injuries.

54. The authenticity of the video-recording was never disputed by the domestic authorities or the Government. In particular, the Government have not contested that the video-recording had been made within a very short time after T.Z.’s death, that it showed T.Z.’s body and that it depicted injuries visible on T.Z.’s shoulders, elbows, knees and buttocks. In these circumstances, the question whether T.Z. had been injured while in police custody hinges on the reliability of the forensic report.

55. In assessing this question, the Court cannot overlook the fact that despite numerous requests neither the applicant nor other family members of T.Z. were provided with a copy of forensic report no. 10 dated 5 September 2011. As a result, the applicant or other family members were refused information about the circumstances and causes of the death of their close relative and, moreover, prevented from disputing the findings of the forensic expert. Such a refusal can constitute a flagrant disregard by the authorities of their procedural obligations under Articles 2 and 3 of the

Convention, which require accessibility and public scrutiny of an investigation as an element of its effectiveness (see, as regards the procedural complaint, paragraphs 82 and 86 below). For purposes of the substantive limb of Article 3, the Court finds particularly striking that instead of providing full information to T.Z.'s family regarding the circumstances of his death, the authorities repeatedly accused them of defamation, which could be understood as entailing a threat to open proceedings against them, in response to their attempts to exercise their procedural rights (see paragraphs 14 and 19 above). A strong inference about an attempt to prevent an effective investigation can therefore be made.

56. The Court also observes that in the case of *Mammadov v. Azerbaijan* ([Committee], no. 36837/11, § 41, 14 February 2019), it found that bruises on the body of the applicant's son were not mentioned in the forensic report established after his death. Other serious omissions during post-mortem forensic examinations were noted in another case against Azerbaijan (see *Gasimov v. Azerbaijan* [Committee], no. 8937/09, § 81, 10 November 2016). While it is not the Court's task in the present case to make general observations about the manner in which post-mortem forensic examinations are conducted in Azerbaijan, the recurrence of serious omissions noted in the above cases is a relevant fact to be taken into consideration.

57. The foregoing is sufficient, in the Court's view to conclude that the forensic report no. 10 cannot be considered reliable proof that T.Z. had no injuries on his body following his stay in police custody. In these circumstances, the Court cannot but conclude that the injuries which were visible in the video-recording of T.Z.'s body filmed before the funeral ceremonies were sustained by T.Z. in custody between 24 and 28 August 2011.

58. In this regard it is not necessary for the Court to express an opinion on the statements made by I.M. and their evidentiary value (see paragraph 27 above).

59. There having been no explanation on the part of the Government as to the origin of these injuries, the Court finds that the respondent Government have failed to discharge their burden of proof and concludes that the applicant's son was subjected to ill-treatment in custody between 24 and 28 August 2011.

60. As to the applicant's allegation that his son was subjected to torture in detention, the Court notes that bruises were observed on T.Z.'s shoulders, elbows, knees and buttocks. Having regard to the context of T.Z.'s arrest and the subsequent attempts to prevent an effective investigation, it cannot exclude that those injuries resulted from acts of torture (see *Gäfgen*, cited above, § 90). There is, however, insufficient proof in that regard.

61. It is nonetheless clear that the ill-treatment of the applicant's son must have caused him physical pain and suffering. The ill-treatment in question caused him actual bodily injury and its consequences must have

also caused him considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

62. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb on account of the ill-treatment of the applicant's son between 24 and 28 August 2011.

III. ALLEGED RESPONSIBILITY OF THE RESPONDENT STATE UNDER ARTICLE 2 OF THE CONVENTION FOR T.Z.'S DEATH

A. Admissibility

63. The Court observes that the parties' submissions in this regard are identical to those concerning the admissibility of the complaint that T.Z. was subjected to ill-treatment contrary to Article 3. It considers that the same principles as those set out above apply and refers to its conclusion above that the Government's objections concerning exhaustion of domestic remedies must be rejected (see paragraphs 38-44 above). It further considers that the complaint under Article 2 is not manifestly ill-founded or inadmissible on any other grounds – therefore admissible.

B. Merits

1. The parties' submissions

64. The applicant contested the official version of events concerning the death of his son. In that connection, he disputed the conclusions of forensic report no. 10 dated 5 September 2011 concerning the death of his son. He also submitted that his son had undergone a medical examination shortly before his death, and he had not had any health problems. The applicant further argued that even assuming that there had been vascular thrombosis of T.Z.'s lower limbs, such thrombosis could have resulted in death as a result of kicks or some other painful impact.

65. The Government contested the applicant's submissions. They submitted that the cause of the death of the applicant's son had been pulmonary embolism as a result of vascular thrombosis of the lower limbs, as indicated in forensic report no. 10 dated 5 September 2011. They also submitted that T.Z. had not requested any medical care or assistance while in detention. His health situation had deteriorated suddenly and an ambulance had been called immediately.

2. *The Court's assessment*

(a) **General principles**

66. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324; *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV; and *Mustafayev v. Azerbaijan*, no. 47095/09, § 52, 4 May 2017).

67. The first sentence of Article 2 § 1 enjoins the States not only to refrain from the intentional and unlawful taking of life, but also lays down a positive obligation on the States to take appropriate steps to safeguard the lives of those within their jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII; and *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 104, 31 January 2019). The Court has previously had occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts); *Geppa v. Russia*, no. 8532/06, § 70, 3 February 2011; and *Karsakova v. Russia*, no. 1157/10, § 48, 27 November 2014).

68. It is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent when an individual dies (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII; *Shumkova v. Russia*, no. 9296/06, § 89, 14 February 2012; and *Çoşelav v. Turkey*, no. 1413/07, § 53, 9 October 2012).

69. As regards the standard of proof in these matters the Court refers, *mutatis mutandis*, to the case-law cited in paragraph 51 above in relation to Article 3. The Court also deems it necessary to reiterate that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Salman*, cited above, §§ 97-100, and *Aktaş v. Turkey*, 24351/94, §§ 289-291, 24 April 2003).

70. The Court further reiterates that, in all cases where it 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 exhibit solid evidence that can refute the applicant's allegations. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. If the authorities then fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation, strong inferences may be drawn. The Court's reliance on evidence obtained as a result of the domestic investigation and on the facts established within the domestic proceedings will largely depend on the quality of the domestic investigative process, its thoroughness and consistency (see *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017).

71. The conduct of the parties when seeking evidence may be taken into account (see *Wolf-Sorg v. Turkey*, no. 6458/03, § 63, 8 June 2010). The Court has attached significant weight to situations in which the police or investigating authorities behaved in a suspect manner or accepted the credibility of certain evidence despite the existence of serious indices pointing to the need for caution (see *Anguelova*, cited above, § 120).

(b) Application of these principles to the present case

72. The Court observes at the outset that, although the parties differ in their view as to the cause of T.Z.'s death (see paragraphs 64 and 65 above), it is undisputed that T.Z. had been kept in detention from 24 to 28 August 2011 and he had not been suffering from any life-threatening illness at that time. Moreover, the Court has already found that T.Z. had been subjected to ill-treatment in custody between 24 and 28 August 2011 resulting in injuries on his shoulders, elbows, knees and buttocks, pointing out serious omissions in the forensic examination and concluding that forensic report no. 10 cannot be considered reliable proof (see paragraphs 52-62 above). Those omissions in the forensic examination are particularly relevant in the context of Article 2 of the Convention, since as the forensic expert failed to record the injuries on T.Z.'s body, he did not analyse the question whether there may have been a causal link between those injuries and T.Z.'s death.

73. In any event, in the particular circumstance of the present case, the impossibility to establish a clear causal link between the death of the applicant's son and his ill-treatment in detention, does not preclude the Court from finding that the respondent State's responsibility should be engaged for the death of the applicant's son in detention. The Court reiterates that, while it generally requires proof "beyond reasonable doubt", in situations where knowledge of the events in issue lie wholly, or in large part, with the authorities, as in the case of persons in detention, strong

presumptions of fact will arise in respect of injuries and death occurring during that detention. It is then for the respondent Government to provide a satisfactory and convincing explanation as regards the circumstances of the death and to exhibit solid evidence capable of refuting the applicant's allegations (see paragraphs 69 and 70 above). However, in the present case the Government's explanation concerning the cause of T.Z.'s death is based on forensic report no. 10 which cannot be accepted by the Court as reliable proof for the reasons set out above. In that connection, the Court also attaches particular weight to the CPT's findings that "on the basis of the forensic examination carried out it is not possible to conclude that the cause of Mr Z.'s death was that referred to in the autopsy report" (see paragraph 30 above).

74. The Court furthermore cannot lose sight of the investigating authorities' behaviour in the conduct of the criminal investigation into T.Z.'s death in detention. The domestic authorities denied access to the relevant evidence, accused T.Z.'s family of defamation for their legitimate request for an effective investigation, failed to take any action following the dissemination of the video-recording (see paragraphs 85-87 below) and continued to fail to cooperate with the CPT, not providing it with accurate information about the investigation (see paragraph 31 above).

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

76. Accordingly, there has been a violation of the substantive limb of Article 2 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION WITH REGARD TO THE INVESTIGATION

A. Admissibility

77. The Court has already found that the applicant's complaints concerning the substantive aspect of Articles 2 and 3 of the Convention cannot be rejected for non-exhaustion of domestic remedies (see paragraphs 44 and 63 above). It considers that its findings in this connection are equally pertinent for the purposes of the examination of procedural aspect of Articles 2 and 3 of the Convention. The Court also considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

78. The applicant maintained that the criminal investigation into the death and ill-treatment of his son had been ineffective.

79. The Government submitted that the criminal investigation had been effective and had complied with the procedural guarantees provided by the Convention. The domestic authorities had carried out all the relevant investigative actions, such as questioning the witnesses and conducting various forensic examinations.

2. *The Court's assessment*

80. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when a person dies in suspicious circumstances (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015, and *Mustafayev*, cited above, § 71). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II, and *Malik Babayev v. Azerbaijan*, no. 30500/11, § 79, 1 June 2017).

81. The investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63).

82. The Court also reiterates that the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case. The requisite access of the public or the victim's relatives may, however, be provided for in other stages of the procedure (see *Mustafa Tunç and Fecire Tunç*, cited

above, § 179, and *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 219, 29 January 2019).

83. The Court notes that the general principles concerning the State's procedural obligations under Article 2 of the Convention to which it refers in paragraphs 80-82 above are equally pertinent within the context of the State's procedural obligations under Article 3 of the Convention.

84. Turning to the circumstances of the present case, the Court notes that a criminal inquiry was launched by the domestic authorities immediately after the death of the applicant's son, and on 9 September 2011 the Nakhchivan City Prosecutor's Office declined to institute criminal proceedings in connection with T.Z.'s death.

85. However, the Court observes that the investigating authorities failed to take all reasonable steps available to them to secure evidence concerning the death of the applicant's son (see paragraph 72 above). In particular, even though the video-recording of T.Z.'s body which was made before the funeral ceremonies indicates that there were bruises on various parts of his body (see paragraph 7 above), these injuries were not mentioned in forensic report no. 10 dated 5 September 2011 (see *Mammadov*, cited above, § 41). The domestic authorities failed to take any further action following dissemination of the video-recording in question in the media and did not at any stage reconsider the decision of 9 September 2001 not to investigate further or institute criminal proceedings relating to the circumstances of T.Z.'s detention and subsequent death.

86. Moreover, the Court has already found that the prosecuting authorities failed to inform the applicant of the progress and outcome of the investigation by failing to provide him with the relevant decisions taken within the framework of the criminal proceedings at any stage of the domestic proceedings (see paragraphs 42 and 55 above). In particular, the applicant did not obtain copies of forensic report no. 10 dated 5 September 2011 and the investigator's decision of 9 September 2011 refusing to institute criminal proceedings until the Government submitted their observations to the Court. The Court deems it necessary to reiterate that this situation deprived the applicant of the opportunity to safeguard his legitimate interests, and prevented any scrutiny of the investigation by the public (see *Slimani*, cited above, §§ 44-48; *Beker v. Turkey*, no. 27866/03, § 49, 24 March 2009; *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 79, 31 July 2014; and *Huseynova*, cited above, § 113). The Court emphasises in this connection the importance of involving the families of the deceased or their legal representatives in the investigation and of providing them with information as well as enabling them to present other evidence (see *Adalı v. Turkey*, no. 38187/97, § 232, 31 March 2005).

87. The Court also held that a strong inference about an attempt to prevent an effective investigation can be made from the accusation of

defamation made against the applicant and his lawyer by the chief investigator at the MNS of the NAR (see paragraph 55 above).

88. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to carry out an effective investigation into the circumstances surrounding the death of the applicant's son. Accordingly, it holds that there have been violations of Articles 2 and 3 under their procedural limbs.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

91. The Government submitted that the applicant's claim was unsubstantiated and excessive.

92. The Court considers that the applicant has suffered non-pecuniary damage for which he cannot be compensated solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 35,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

93. The applicant also claimed EUR 3,400 for the costs and expenses incurred before the domestic courts and the Court. In support of his claim, he submitted a contract agreed with one of his representatives before the Court, Mr R. Mustafazade. The applicant also requested that any award under that head be paid directly into his representative's bank account.

94. The Government considered that the claim was excessive and asked the Court to adopt a strict approach to the applicant's claim. They also pointed out that the amount claimed for the costs and expenses incurred before the domestic courts was unsubstantiated, since although the contract submitted to the Court had been concluded between the applicant and Mr R. Mustafazade, the applicant had been represented in the domestic proceedings by Mr A. Mustafayev.

95. 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. In the present case, it is clear from the documents in the case file that the applicant was not represented by Mr R. Mustafazade in the domestic proceedings. Therefore, the amount claimed for the costs and expenses incurred before the domestic courts was not supported by any documentary evidence. In these circumstances, having regard to the documents in its possession, the Court considers it reasonable to award the sum of EUR 2,000 covering costs for the proceedings before the Court, to be paid directly into the bank account of the applicant's representative, Mr R. Mustafazade.

C. Default interest

96. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in respect of the ill-treatment of the applicant's son in custody;
3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb in respect of the death of the applicant's son in custody;
4. *Holds* that there have been violations of Articles 2 and 3 of the Convention under their procedural limbs;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, Mr R. Mustafazade;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Deputy Registrar

Síofra O'Leary
President