



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

FIFTH SECTION

**CASE OF LAPSHIN v. AZERBAIJAN**

*(Application no. 13527/18)*

JUDGMENT

Art 2 (procedural) • Ineffective investigation into prison incident putting the applicant's life at risk • Omissions and unexplained discrepancies in the domestic authorities' conduct • Art 2 applicable given the serious and imminent risk to the applicant's life, his survival due to urgent medical intervention, his ensuing critical condition and constant medical treatment

Art 2 (substantive) • Positive obligations • State's failure to satisfy burden of proof by providing satisfactory and convincing explanation as regards the incident • Court unable to conclude that version of attempted suicide version held up

STRASBOURG

20 May 2021

**FINAL**

**11/10/2021**

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

**In the case of Lapshin v. Azerbaijan,**

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

Síofra O’Leary, *President*,  
Mārtiņš Mits,  
Stéphanie Mourou-Vikström,  
Jovan Ilievski,  
Lado Chanturia,  
Arnfinn Bårdsen, *judges*,

Ceyhun Qaracayev, *ad hoc judge*,  
and Victor Soloveytschik, *Section Registrar*,

Having regard to the application (no. 13527/18) 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 Israeli, Russian and Ukrainian national, Mr Alexander Valeryevich Lapshin (“the applicant”), on 7 March 2018;

the decision to give notice to the Azerbaijani Government (“the Government”) of the applicant’s complaints under Articles 2 and 3 of the Convention;

the decisions of the Russian and Ukrainian Governments not to intervene in the case;

the withdrawal of Lətif Hüseynov, the judge elected in respect of Azerbaijan, from sitting in the case (Rule 28 § 3 of the Rules of Court) and the decision of the President of the Section to appoint Ceyhun Qaracayev to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a));

the parties’ observations;

the respondent Government’s unsolicited submission of 1 April 2021, and the decision not to admit it to the case file;

Having deliberated in private on 6 April 2021,

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

## INTRODUCTION

1. The case concerns mainly the applicant’s complaints under Article 2 of the Convention that there was an attempt to his life in prison, and that the domestic authorities failed to investigate the circumstances of the case.

## THE FACTS

2. The applicant was born in 1976 and lives in Haifa, Israel. The applicant was represented by Ms K.A. Moskalenko and Ms A. Maralyan, lawyers practising in Strasbourg.

3. The Government were represented by their Agent Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

## I. BACKGROUND TO THE CASE

5. The applicant is a blogger and traveller.

6. When working for his blog posts, in April 2011 and October 2012 the applicant travelled to the Nagorno-Karabakh region in a manner considered unlawful in terms of the Azerbaijani law. In this connection, the Azerbaijani authorities issued an international arrest warrant in respect of the applicant.

7. On the basis of the international arrest warrant, in December 2016 the applicant was arrested in Belarus. On 7 February 2017 he was extradited to Azerbaijan.

8. In Azerbaijan the applicant was placed in Kurdakhany prison.

9. On 20 July 2017 the applicant was convicted in Azerbaijan for unlawfully traveling to Nagorno-Karabakh (Article 318.2 of the Criminal Code: Crossing the State border outside the checkpoints). He was sentenced to three years' imprisonment and a mandatory expulsion from Azerbaijan after he has served his prison sentence. Following his conviction, the applicant instituted the relevant proceedings for his transfer to Israel where he would serve the prison sentence.

10. On 11 September 2017 the applicant was pardoned by the President of Azerbaijan. The Government provided two letters, dated 11 and 13 September 2017, allegedly handwritten by the applicant in Russian thanking the President for pardoning him and thanking the prison officers for saving him in prison in the context of the incident of 10 September 2017, described below (see paragraphs 12-19 below). The Government submitted that these two letters had been written on 11 September 2017. The applicant denied writing them (see paragraphs 67, 69 and 90 below).

11. On 14 September 2017, immediately after his discharge from the hospital (see paragraph 19 below), the applicant was expelled to Israel.

## II. THE INCIDENT OF 10 SEPTEMBER 2017

12. According to the applicant, on 10 September 2017, at about midnight, while he was about to fall asleep in his cell in Kurdakhany prison, where he was kept isolated from other inmates, the doors of the cell opened and he was attacked by a group of masked men. One of the attackers held his hands and legs, another one threw something (pillow or blanket) on his face and a third one jumped on him and started strangling him with his hands. The applicant was also beaten during the attack. Soon after the attack began the applicant lost consciousness.

He regained consciousness after spending some two days in an intensive medical care unit. He did not have voice, did not feel his tongue and the

right side of the face, and he had difficulties moving his right foot and hand. He also had hearing impairments and could not at first properly coordinate his movements.

13. According to the Government's version of the events, on 9 September 2017 the applicant was expecting the arrival of his spouse, together with their minor child, to visit him in prison. At the time, he was held in the medical unit due to certain health issues. However, the child got seriously ill in Tbilisi, Georgia, on their way to Baku. On the day of the expected visit, the applicant learned this after talking twice to his wife on the phone. Thereafter the prison officers noticed that the applicant became depressed so the superintendent decided that he should be under constant control in order to prevent him from taking any adverse actions.

On 10 September 2017 at 10.05 a.m. the prison guard A.A. observed that the applicant had gone to the sanitary facility of his cell. A.A. reported this to the superintendent Z.I., who ordered A.A. to control whether the applicant would respond regularly to calls. Approximately three minutes later, A.A. called the applicant and the applicant replied that he was in the in-cell sanitary facility. When A.A. called the applicant for the second time, the applicant did not respond. Thus, approximately at 10.12 a.m., A.A. and Z.I. entered the room and found the applicant hanged on the towel rack on the wall, using a shoulder strap. They immediately took the applicant off the loop and put him on the bed and proceeded with artificial respiration. At 10.42 and 11.35 a.m. two emergency medical service teams attended to the applicant and at 1.05 p.m. he was taken to the medical centre.

14. According to a medical report available to the Court in Azerbaijani and English entitled "Epicrisis" of the Merkezi Clinic in Baku, dated 14 September 2017, the applicant was brought to that clinic on 10 September 2017 at 1.05 p.m. accompanied by a prison doctor. The description of the applicant's condition and his treatment flowing from the report may be summarised as follows.

15. At the moment of the arrival, the applicant was unconscious and could not express any complaints. However, the "surrounding persons" explained that in early hours the prison staff had found him in the cell with "violated consciousness and insufficient breath". He had been immediately given first aid and his life functions had been restored. However, his consciousness had not been completely restored and his condition had not stabilised so he was taken to the Merkezi Clinic.

16. At admission to the Merkezi Clinic the applicant was under sedation, his speech was not clear and a psychomotor agitation was observed. There were no visible changes in his musculoskeletal system. He had a surrounded red spot in the frontal surface area of the throat and his breathing was quickened with crepitation. A further CT examination of the throat revealed that there was a linear break in the left part of the hyoid bone.

17. After the admission, the applicant was immediately taken for intubation in the reanimation unit, where he was connected to the relevant apparatus. Throughout the day his general condition was half-serious and he was sedated. In the morning hours of the next day, 11 September 2017, the applicant's general condition was medium. He started breathing spontaneously but with difficulties. The sedation was discontinued and the applicant was able to answer questions with gestures. He had difficulties talking. He underwent several examinations, including by a psychiatrist. On the same day in the afternoon, at 4 p.m., the applicant's consciousness was clear and he continued breathing spontaneously. He had dysphonia and respiratory tension while talking.

18. On 12 September 2017 the applicant's consciousness was clear and his breathing was satisfactory. However, he had difficulties swallowing so was fed through a venous catheter. On the next day, 13 September 2017, the dysphonia and the swallowing difficulties were still present, so feeding through the venous catheter continued. However, no locomotive limitation was observed in extremities. The applicant was examined by doctor R.C. Some ecchymotic areas at frontal tongue "related to biting" were observed. Problems with vocal chords were also observed.

19. On 14 September 2017 the applicant and his relatives "absolutely refused [further] examination and treatment in general reanimation section, and they return[ed] to Israel."

### III. THE DOMESTIC INQUIRY

20. According to the Government, after the incident of 10 September 2017, an official inquiry was immediately instituted to establish the circumstances of the case. The inquiry was conducted by an investigator of the Sabuncu District Prosecutor's Office.

21. The Government provided to the Court several documents – in the original language and English translations – concerning the inquiry they referred to. These documents may be summarised as follows.

22. According to a Protocol on the examination of the incident scene prepared by a senior investigator of the Sabuncu District Prosecutor's Office, dated 10 September 2017, the inspection of the scene was conducted on the basis of the prison authorities' report of attempted suicide by the applicant in the prison's medical-sanitary department. The Protocol recorded that the applicant's cell was located on the second floor of the department. There was a surveillance camera attached to the ceiling of the corridor. The metal door of the cell was equipped with a peephole and air hole. In the cell, there were several items of personal belongings, namely a notebook, pen, empty envelopes and an electric kettle. There were also two beds that were tidy and the whole cell was tidy too, with no signs of destruction and fighting. The sanitary facility was placed in the corner of the

cell and separated from the remainder of the cell by a plastic door. Inside the sanitary facility there was a wall hook placed at the height of 1,90 m from the ground. To the right of the wall hook there was a tightly fixed nail which was also used as a wall hook. The nail was metal and the length of its visible part was 3 cm. During the inspection, the senior guard Z.I. stated that he had found the applicant hanged on the nail in question with a loop on his neck. The inspection found a belt made of hard material on the junction of the sanitary facility and the entrance door. The belt was 0,9 m long and there was a loop on the belt. There were also two hoops located on the edge of the belt beyond the loop. The Protocol concluded that “[n]o other items, having importance for the case, were found.” The Protocol was accompanied with photographs, which depict, amongst other, a belt tight in a loop positioned on the floor.

23. According to an undated record containing a statement of the senior prison guard Z.I., on the day of the incident he was in charge of supervising the work of two on-duty guards, A.A. and T.A. At around 10.05 a.m., A.A. informed Z.I. that the applicant had entered the in-cell sanitary facility so Z.I. instructed A.A. to report if the applicant would linger in there or would not respond to calls. At around 10.12 a.m., A.A. reported to Z.I. that the applicant had not responded to calls so they immediately entered the cell. In the in-cell sanitary facility they found the applicant hanged with a belt of his bag on the nail designed for hanging towels. He was unconscious. Z.I. started lifting him on his feet and the other guard opened the knot of the belt. Z.I. then started providing artificial respiration to the applicant. The prison doctors were also called in. At around noon the applicant was taken by an ambulance to the specialised hospital. Z.I. could not explain the applicant’s conduct. However, the applicant had told him two days before that he had spoken to his wife who could not come to visit him because their child got sick. The applicant had been in bad mood over this so Z.I. informed the prison’s hierarchy. The head and deputy head of the prison and the head of the medical unit had spoken to the applicant on 9 September 2017. Z.I. also confirmed that the applicant had never before attempted to commit suicide in the prison.

24. According to an undated record containing a statement of the prison guard T.A., he was on duty on the day of the incident with A.A. Their work was supervised by Z.I. A few minutes after 10.05 a.m. A.A. called the applicant, who had entered the in-cell sanitary facility, but the applicant did not answer. They immediately reported that to Z.I. and they entered the cell. They found the applicant hanged with a belt of his bag on the nail for hanging towels. Z.I. lifted the applicant while T.A. and A.A. opened the knot on the belt and hanged the belt [somewhere] in the room. They also provided artificial respiration to the applicant and splashed his face with water. Afterwards the applicant was provided medical aid by doctors and he was taken to the hospital. T.A. did not hear that the applicant had ever

attempted suicide. However, the applicant had said to T.A. that he was worried about and missing his family. Two days before the incident the applicant had learned that his child got sick and was anxious over that. He was thus treated with care in prison.

25. An undated statement of the prison guard A.A. confirmed that on the day of the incident he was on duty with T.A. and under the supervision of Z.I. After he had seen that the applicant entered the in-cell sanitary facility at around 10.05 a.m., A.A. reported the matter to Z.I., who instructed him to report if the applicant would linger in there. A few minutes later, A.A. called the applicant and he answered. However, soon afterwards A.A. again called the applicant and got no reply. A.A. therefore reported the matter to Z.I. and they entered the cell. They saw the applicant hanged with a belt of his bag on the nail for hanging towels. Z.I. immediately started lifting the applicant while A.A. and T.A. opened the knot on the belt. They then put the applicant on the floor and provided artificial respiration. They also splashed water on his face. Afterwards the medical services intervened and the applicant was taken to a specialised hospital. A.A. had no information that the applicant would have ever attempted suicide in prison. The applicant had only told them how he missed his family. A.A. heard that a day or two before the incident the applicant's child had fallen ill so the applicant had been worried about that.

26. By a decision of 4 October 2017, the investigator refused to initiate a criminal case into the incident. In his decision, the investigator referred to the Protocol on the inspection of the scene, the statements of witnesses (Z.I., the head and a doctor of the prison's medical-sanitary department, as well as two medical assistants, and the prison guards T.A. and A.A.) and documents from the prison files. He also referred – without further specification – to a “medical epicrisis issued regarding [the applicant] on 11 September 2019”.

27. On the basis of this evidence, the investigator found that the applicant had attempted to commit suicide in prison and that no elements of criminal responsibility existed in that respect. The investigator also noted that on 8 September 2017 the applicant had spoken to his wife and learned that his child had fallen ill while traveling to visit him in Azerbaijan. The child had a fever and was admitted to a hospital. The applicant had missed his family and had been in a bad mood.

28. The investigator's decision indicated that it should be served on the applicant, who should be advised of the right to appeal before the relevant prosecutor or the court. There is no indication or evidence available to the Court of any steps taken to serve the decision on the applicant.

#### IV. OTHER DEVELOPMENTS CONCERNING THE CASE

##### **A. The applicant's medical examinations and expert evidence**

###### *1. The applicant's medical examinations in Israel*

29. Upon his arrival in Israel, on 14 September 2017 (see paragraph 19 above), the applicant was admitted to the Chaim Sheba Medical Centre in Tel Aviv, where he underwent physical and psychiatric examination.

30. According to a discharge letter of the Chaim Sheba Medical Centre of 14 September 2017, there were indications of a strangulation attempt. However, as it was not clear whether this was the result of a suicide attempt or a violent attack, a psychiatric examination was requested.

31. A report on the psychiatric examination of the same day noted that the applicant had visible signs of strangulation and multiple bruises. In the course of the psychiatric interview, the applicant denied any suicidal thoughts and argued that somebody had tried to kill him in prison. The impression of the psychiatrist was that there was no evidence of psychosis or dangerousness or affective disturbances. A diagnosis of possible acute stress disorder was made.

32. In the next several days the applicant underwent further medical examinations in Israel.

33. According to a medical report of 17 September 2017, the applicant complained that he had been subjected to strangulation by hanging in a prison in Azerbaijan. A neurological examination found that the applicant regained speech and swallowing functions and physical strength, except for the inability to lift the right arm. He had a trace of prick in the right shoulder area with signs of hematoma. He also had hematoma on the right and left forearms.

34. A medical report entitled "Visit summary" of 25 September 2017, issued by the Rambam Medical Campus, noted that the applicant alleged that on 10 September 2017 other inmates in a prison in Azerbaijan had tried to strangle him with a rope. He had ended up in an intensive care unit and started breathing spontaneously only on 13 September 2017. Since then he had difficulties speaking and hardly managed to eat or drink. The "Visit summary" report also referred to a medical examination of 18 September 2017 which had found signs of strangulation on the skin of the applicant's throat. These signs were no longer visible in a follow up examination. In sum, the "Visit summary" report found that the "patient suffered a blunt trauma of the throat two weeks ago".

###### *2. The medical expert reports provided by the applicant*

35. The applicant privately commissioned two medical expert reports concerning his injuries. In this connection, for the purpose of the medical

reports he provided the available documents concerning his medical treatment in Azerbaijan and Israel and a series of photographs apparently depicting the injuries he had sustained in the impugned incident. These photographs, also available to the Court, show bruises and contusions on the applicant's face, tip of the nose, other probably upper parts of the body, left inner forearm, and the right hand.

36. According to a report produced by a team of Russian doctors, undated, the applicant did not try to commit suicide by hanging as many indications of a hanging process were missing such as the lack of spinal fracture on the base of the skull, different characteristic haemorrhages, vomiting and urinary and bowel incontinence. According to the report, there was a simulation of a suicide attempt by unidentified persons, namely strangulation of the applicant and then a simulation of hanging.

37. According to a report produced by a forensic expert from Croatia of 28 February 2018, the applicant sustained a number of blunt force injuries of the face, body and arms. These injuries had been sustained several days before they were mentioned in the medical documentation and several days before the available photographs were taken. These blunt force injuries have been applied by third party(ies). In addition, the applicant was strangled (manual strangulation) that resulted with hyoid bone fracture, laryngeal oedema and ecchymotic haemorrhage in oral cavity at frontal tongue, as well as soft tissue trauma of muscular structure with the consequences of voice weakness and difficulty swallowing. This type of strangulation was caused by third party(ies). It could be classified as an attempted murder. All injuries that the applicant sustained could not be the result of a suicide attempt.

38. The forensic expert further recommended asking for the medical documentation from the prison and a report from the prison staff who found the applicant in his cell providing description on how and where exactly he was found. The expert also recommended clarifying how could it be possible that the first medical documentation from the Merkezi Clinic had not described or even mentioned any injuries while the following one produced by the Chaim Sheba Medical Centre recorded (although without any description) signs of strangulation and multiple bruises.

### *3. The medical expert report provided by the Government*

39. After the notice of the present case was given to the Government, they commissioned an expert report from the Scientific-Practical and Educational Association of Forensic Medical Expertise and Pathological Anatomy of the Ministry of Healthcare of Azerbaijan.

40. On 19 April 2019 a report was prepared by a team of experts. It would appear that the experts had at their disposal various medical and other records and reports concerning the incident at issue, including some of those available to the Court (see paragraphs 14-19, 30-34 and 36 above).

41. The findings of the expert report may be summarised as follows. Where appropriate, reference is made to the documents to which the experts referred in their report.

42. According to a first intervention report of the prison medical team, upon their arrival to the cell they found the applicant on the floor and the prison guards providing him artificial respiration. The medical team immediately administered a comprehensive first medical aid, which included cardiac massage and mouth-to-mouth and mouth-to-nose resuscitation as well as administration of different injections. The applicant had a visible strangulation mark on the neck. A large amount of urinary excretion was also found.

43. In his “explanation” of 10 September 2017 the senior prison guard Z.I. stated that at around 10.15 a.m. he had looked through the peephole of the applicant’s cell and saw that the applicant was not there. Z.I. had therefore entered the cell and opened the door of the in-cell sanitary facility, where he found the applicant trying to commit suicide by hanging himself on a wall hook with the belt of his bag. Z.I. had immediately reported this to his hierarchy and called other guards on duty. Together they had prevented the applicant from committing suicide and afterwards the medical team took over.

44. In an “explanation” of 10 September 2017, the prison guard T.A. stated that at around 10.15 a.m. Z.I. had called him to come to the applicant’s prison cell. Upon his (T.A.’s) arrival there, he had seen that the applicant was trying to commit suicide by hanging himself on a wall hook with the belt of his bag. Together with Z.I. they had prevented the applicant from committing suicide and afterwards the medical team took over.

45. In an “explanation” of 10 September 2017, the prison guard A.A. stated that at around 10.15 a.m. he had called Z.I. to come to the applicant’s cell. When A.A. had entered the cell he saw the applicant in the in-cell sanitary facility hanging himself on a wall hook with the belt of his bag. Together with Z.I. they had prevented the applicant from committing suicide and afterwards the medical team took over.

46. An “explanation” of 10 September 2017 was also provided by the assistant to the chief of the shift A.I. He stated that at around 10.15 a.m. Z.I. had reported to him via internal telephone line that the applicant had attempted to commit suicide by hanging himself on a wall hook with the belt of his bag. A.I. had then informed the medical team, who took over the applicant’s treatment. A.I. also confirmed that the applicant’s security was fully ensured by the prison guards.

47. According to a psychiatric report from the prison of 11 September 2017, the reason for the applicant’s act of self-harm was the fact that his family lived abroad, his child was in hospital and conflict had arisen in the sphere of inter-personal relationship. This psychiatric report was allegedly based on the observations and conversations with the applicant.

48. The expert report also referred to eight photographs depicting the various injuries which the applicant sustained. Three photographs said to have been taken in the Merkezi Clinic on 10 September 2017, while other photographs were taken elsewhere, probably in Israel. According to the experts, the appearance of the traces on the applicant's neck differed when comparing the two groups of photographs. The experts considered the traces depicted on the photographs taken in Israel to be an artefact.

49. The experts also challenged the findings of the expert report provided by the Russian doctors (see paragraphs 36 above), pointing to the alternative conclusions on the dynamic of injuries which the applicant had sustained. In particular, they considered that certain indications confirmed the suicide attempt by hanging, such as information from the initial medical report showing, according to the experts, that the applicant had urinary and bowel incontinence. Moreover, the medical reports recorded a tongue injury, which was often observed in cases of hanging. The visible injuries on the applicant's forearms resulted when the intravenous injections had been administered during the provision of the first aid, while some other injuries could have resulted from convulsions during the hanging and banging against the wall.

50. In conclusion, the experts found that on 10 September 2017 at about 10.15 a.m. the applicant had hanged himself on the wall rack in the in-cell sanitary facility but was saved thanks to the vigilance of the prison guards. In this connection, the experts also noted inconsistencies in the applicant's account of the events as recorded in different medical records. However, they considered that this was confabulation resulting from amnesia (loss of some part of memory), which occurs during hanging.

## **B. The applicant's complaints to the Azerbaijani authorities**

51. On 1 February 2018 the applicant sent an email to the Deputy Prosecutor General of Azerbaijan requesting information about the investigation into the incident of 10 September 2017, which he considered to be attempted murder against him. He also explained that he was not able to travel to Azerbaijan to pursue his complaints as he was on a published list of undesirable persons in Azerbaijan so his entry to the country was prohibited.

52. According to the applicant, as he received no reply, on 17 February 2018 he sent a letter to the Deputy Prosecutor General of Azerbaijan requesting information on the course of investigation into the attempted murder against him (in his letter the applicant described the incident in the manner as noted in paragraph 12 above). The applicant stressed in his letter that on 15 September 2017 he had voiced his allegations of attempted murder in interviews given to several Russian, Israeli, Armenian, Ukrainian, British and American media outlets.

53. The applicant explained that his letter to the Deputy Prosecutor General of Azerbaijan was dispatched from Latvia where he was at the time traveling. In this connection, the applicant provided a postal dispatch slip of the Latvian post indicating that an item was sent on 17 February 2018 to the Prosecutor General's Office of the Republic of Azerbaijan. The applicant also provided a postal delivery report indicating that the same item was delivered at destination on 28 February 2018. However, he never received a reply to his complaints.

54. According to the Government, the Prosecutor General's Office did not receive the applicant's letter. After the notice of the present case was given to the Government, the Prosecutor General's Office instructed an internal inquiry into the matter.

55. On 26 April 2019 the Ministry of Transport, Communications and High Technologies of Azerbaijan reported to the Prosecutor General's Office that a postman had lost the letter in unknown circumstances and that the letter had not therefore been delivered at its destination. This report was accompanied by a statement of the postman explaining that due to serious health issues (not specifying which) and huge workload he had not been able to perform his duties properly at the relevant time. He could not remember in which circumstances he had lost the letter and the absence of the recipient's signature on the delivery note proved this. The postman's statement was supported by a statement of the Deputy Head of the relevant post department.

## V. OTHER RELEVANT FACTS

56. The applicant provided to the Court two CDs allegedly containing audio recordings of the following telephone conversations:

- On 8 September 2017 between the applicant (from prison) and his wife. The applicant's wife informed the applicant that she would not be able to visit him in prison because their daughter was unwell. They also discussed the applicant's anticipated transfer from Azerbaijan and whether that could happen before the end of the month;

- On 11 September 2017 between the applicant's wife and the prison staff. In the conversation, the applicant's wife mentioned that early on that day a "decree" had been signed ordering the applicant's release. She insisted speaking to the applicant but a prison guard said that it was not possible at the moment and reassured her that the applicant was fine.

57. The applicant also provided to the Court a certified English translation of a document issued by the Global Consular Service of the Israeli Ministry of Foreign Affairs, dated 13 February 2019, informing the applicant that the Israeli authorities had received messages from the Azerbaijani authorities stating that in response to the various publications in

the media ascribed to the applicant the Azerbaijani authorities intended to renew criminal proceedings against him, with all the ensuing consequences.

## RELEVANT LEGAL FRAMEWORK

58. Article 318.2 of the Criminal Code proscribes, *inter alia*, crossing of the State border of the Republic of Azerbaijan outside the border checkpoints. Other relevant domestic law has been summarised in *Mustafayev v. Azerbaijan*, no. 47095/09, § 38, 4 May 2017.

## THE LAW

### I. PRELIMINARY ISSUE

59. The Government submitted that the applicant had not been properly represented before the Court. In their view, the contact between the applicant and his representatives was of a formal character and did not allow the applicant to have knowledge of the proceedings. This was clear from some misconceived Facebook posts made by the applicant about the course of the present proceedings before the Court.

60. The applicant insisted that he had duly given a power of attorney to his representatives before the Court and that he was in constant contact with them. This was obvious from the fact that he had provided them with a number of handwritten statements explaining various aspects of the case pending before the Court. The applicant also denied that the Facebook posts had been published on his Facebook account (see paragraph 69 below).

61. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016).

62. In the present case, the applicant is represented before the Court on the basis of a written power of attorney issued to Ms Moskalenko and Ms Maralyan. It is not in dispute between the parties that during the proceedings the representatives had also relied upon and provided to the Court a number of written explanations given by the applicant. There is therefore nothing in the case file that could call into question the representatives' account of their continuous contact with the applicant. This conclusion is not called into question by the Government's arguments as regards the applicant's alleged Facebook posts, which is a matter that the Court will address below in the context of the Government's objection of abuse of the right of individual application (see paragraph 79 below).

63. In view of the above, the Court dismisses the Government's objection.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

64. The applicant complained that there had been an attempt to his life in prison, and that the domestic authorities had failed to investigate the circumstances of the case.

65. The applicant relied on Article 2 of the Convention, which reads as follows:

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

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

### A. Admissibility

#### *1. The parties' arguments*

##### **(a) The Government**

66. The Government submitted that the applicant had failed to exhaust the domestic remedies with respect to the investigator's decision not to open a criminal case into the incident of 10 September 2017 which he could have challenged before a court. They stressed that at the time of the adoption of this decision the applicant had already left Azerbaijan and his whereabouts had been unknown to the Azerbaijani authorities. Nevertheless, it had been open to the applicant to seek that decision from the authorities. In this connection, with respect to the applicant's letter allegedly sent to the Prosecutor General's Office from Latvia, the Government argued that it had been established that this letter had never reached its destination. Moreover, there was no evidence that it was the applicant's letter available now to the Court that had actually been sent from Latvia. The Government further stressed that the applicant had failed to indicate the return address on the letter so it would not have been possible for the Azerbaijani authorities to reach him. The Government also argued that the letter was undated and that one-time attempt to reach the authorities could not satisfy the requirement of necessary diligence to exhaust the domestic remedies.

67. The Government contended that the applicant had abused the right of individual application for several reasons. In particular, he had made on

Facebook disparaging and highly offensive statements concerning the Government's Agent. The medical expert report produced by a group of Russian doctors which the applicant provided to the Court was unreliable and the doctors who produced the report were not experts but simply physicians specialised in paediatrics. The applicant had also misled both the Russian doctors and the Croatian forensic expert by not providing them the relevant information. The applicant sought to mislead the Court by arguing that he had not written the letters sent to the Azerbaijani President. However, the Government had obtained a handwriting expert report finding that he had written the letters. Moreover, the applicant had made various other arguments before the Court which were misleading. He had not provided the proper translation of the letter which he had received from the Israeli authorities. The audio recordings of telephone conversation which he had provided to the Court contained no reference to the date or time when those conversations took place and were thus not admissible as evidence.

**(b) The applicant**

68. The applicant stressed that the investigator's decision not to open a criminal case into the incident of 10 September 2017 had never been served on him. However, the Azerbaijani authorities had been aware of his address in Israel. In any event, they could have sent him that decision electronically. The applicant further pointed out that he had first made his complaints to the Prosecutor General's Office on 1 February 2018 via email. However, as he received no reply, he sent a letter on 17 February 2018 via post from Latvia, where he travelled at the time. Thus, the Government's arguments as regards the second letter that had allegedly been lost could not apply as regards the email sent on 1 February 2018. Moreover, the applicant argued that he had no effective remedies in Azerbaijan. In particular, according to the information provided by the Israeli authorities (see paragraph 57 above), it did not appear possible for him to return back to Azerbaijan. He also contended that he had explained to the Prosecutor General's Office that he had been on a list of undesirable persons in Azerbaijan. Moreover, he was perceived as a supporter of Armenia and an "Armenian spy" and thus any complaint he might have had was without any prospect of success.

69. The applicant submitted that he had duly presented all relevant facts to the Court and that it was the Government who made insulting statements against his honour and dignity, and had sought to mislead the Court. He argued that the Facebook account from which the disparaging statements had been made did not belong to him. It contained incorrect information about his education, place of residence and other personal details. In this connection, the applicant suggested that he had been the target of Azerbaijani media and politicians who sought to discredit him. The applicant insisted that he had provided all available materials he had to the medical experts. He stressed that the Russian doctors who provided the

expert report had been experienced medical doctors and thus qualified as experts, while paediatrics was their additional qualification. The applicant further argued that in one of the recorded telephone conversations his wife made reference to the fact that on that day the applicant had been pardoned. The date of the recording could therefore be established. As regards the Israeli authorities' document, the applicant pointed out that he had provided a certified English translation of it. The applicant further insisted that he had not written the letters of 11 and 13 September 2017 to the Azerbaijani President as that was impossible given his health condition at that time. He also contended that the handwriting expert report could not be accepted as it was one-sided.

## 2. *The Court's assessment*

### (a) **Applicability of Article 2 of the Convention**

70. The applicability of Article 2 in the circumstances of the present case has not been disputed by the parties. However, this being a matter that goes to the Court's jurisdiction and which the Court must establish on its own motion (see, for instance, *Jeanty v. Belgium*, no. 82284/17, § 58, 31 March 2020), it finds it appropriate to note the following.

71. According to the Court's case-law, the protection of Article 2 of the Convention may be invoked not only in the event of the death of the victim of violent acts. Article 2 also comes into play in situations where the person concerned was the victim of an activity or conduct, whether public or private, which by its nature put his or her life at real and imminent risk and he or she has suffered injuries that appear life-threatening as they occur, even though he or she ultimately survived (see, most recently, *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020, with further references).

72. In the present case, the medical and other evidence available to the Court clearly shows that as a result of the incident of 10 September 2017 the applicant's life was at serious and imminent risk and that he survived due to the urgent medical intervention. His situation remained critical for several days after the incident and required constant medical treatment, including reanimation and feeding through a venous catheter (see paragraphs 15-18 above).

73. It therefore follows, leaving aside at this point the parties' different accounts of the circumstances of the case, that Article 2 is applicable, even though the applicant ultimately survived.

### (b) **Exhaustion of domestic remedies**

74. The general principles on exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

75. The Court notes that there is no dispute between the parties that the decision of the investigator of the Sabuncu District Prosecutor's Office not to open a criminal case concerning the incident of 10 September 2017 (see paragraph 28 above) was not served on the applicant. Although it is true that when that decision was adopted the applicant was no longer in Azerbaijan, there is no indication that the Azerbaijani authorities took any measure, such as through the diplomatic channels with Israel to which the applicant was expelled (see paragraph 57 above, concerning the exchange of information between the two countries) or otherwise, to establish his whereabouts and to serve that decision on him.

76. The Court further notes that the applicant attempted to reach the Azerbaijani authorities with a view to obtain information about any investigation concerning his alleged attempted murder. He first sent an email to the Prosecutor General's Office on 1 February 2018 and then, according to him, a letter via post in Latvia on 17 February 2018. In this connection, whatever the circumstances of delivery of the applicant's letter of 17 February 2018 (see paragraphs 54-55 above), it should be noted that the Government did not deny the receipt of the email sent by the applicant on 1 February 2018. It therefore follows that the Azerbaijani authorities had a possibility to contact the applicant and to inform him of the investigator's decision. However, they failed to take any initiative in that regard.

77. In these circumstances, the Court finds that the applicant's complaint cannot be rejected for non-exhaustion of domestic remedies (compare *Shuriyya Zeynalov v. Azerbaijan*, no. 69460/12, §§ 42-44, 10 September 2020). The Government's objection in this regard must therefore be dismissed.

**(c) Abuse of the right of individual application**

78. An application may be rejected as an abuse of the right of individual application in case of use of particularly vexatious, insulting, threatening or provocative language by the applicant directed, *inter alia*, against the respondent government or its Agent (see, for instance, *Petrov and X v. Russia*, no. 23608/16, § 74, 23 October 2018). It may also be rejected on this ground if it was knowingly based on untrue facts. However, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

79. As regards, firstly, the Government's argument that the applicant used offensive language in Facebook posts directed against their Agent, the Court notes that the applicant denied making the impugned posts and argued that they had not been made on his Facebook account. In this connection, he provided details differentiating his Facebook account from several other false accounts apparently opened on his name (see paragraph 69 above). For their part, the Government did not challenge the applicant's explanations.

The Court cannot therefore establish that the applicant used offensive language directed against the respondent Government's Agent and thus abused his right of individual application.

80. With respect to the other arguments made by the Government concerning the relevance and probative value of different items of evidence provided by the applicant, including the credibility of his different submissions, the Court notes, having regard to the material available to it and the applicant's explanations (see paragraph 69 above), that there is nothing allowing it to conclude that the applicant knowingly presented untrue facts and intentionally sought to mislead the Court. The fact that the Government disagree with the applicant on the essential aspects of his submissions and the relevance and probative value of evidence he provided cannot call into question this conclusion.

81. In this connection, it is important to stress that parties can submit arguments and counter-arguments related to their cases and the Court can accept or reject them, but such contentious submissions cannot in themselves be regarded as an abuse of the right of individual application (see *Hoti v. Croatia*, no. 63311/14, § 92, 26 April 2018, with further references). Moreover, the Court is free to assess the admissibility and relevance as well as the probative value of each item of evidence before it. When assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 315, 28 November 2017).

82. It therefore follows from the above that the Government's objection must be dismissed.

#### **(d) Conclusion**

83. The Court notes that the applicant's complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### **B. Merits**

#### *1. The parties' submissions*

##### **(a) The applicant**

84. The applicant argued that the attempt to his life occurred while he was under the full control of the authorities. However, the Government had failed to provide a satisfactory and convincing explanation concerning the circumstances of the event. In this connection, relying on the available audio recording, the applicant pointed out that on 11 September 2017 the prison authorities had concealed to his wife that he was in the reanimation

unit. The applicant had also received a letter from the former Minister of Foreign Affairs of Azerbaijan and a well-known Azerbaijani politician saying that his (the applicant's) experience had shown that his activities in favour of Armenia were not safe. The applicant further pointed out that there were many inconsistencies in the statements of the prison guards as reproduced in the Azerbaijani expert medical report when compared to their statements given to the investigator of the Sabuncu District Prosecutor's Office (see paragraphs 23-25 and 43-46 above). These inconsistencies concerned the critical aspects of the case, which called into question the credibility of the authorities' version of the events.

85. The applicant also argued that the Government's submissions before the Court were inconsistent and misconceived. In particular, he pointed to the fact that the Government had not properly indicated the date on which he had spoken to his wife. Moreover, the Government's suggestion of his emotional disturbance after the conversation with his wife had been unsubstantiated and illogical. The same was true for the Government's suggestion that he – a man weighing around 85 kilograms – could hang himself on a wall nail that was three centimetres long and at height of some 1,90 m above the ground. In any event, the Government provided no explanation on how it was possible that he had had a shoulder strap of a bag in his cell, how would he have managed to cut it off and why no bag was found in the cell following the incident. The Government had also failed to provide all relevant documents concerning his case and the expert report on which they relied was unsubstantiated.

86. In the applicant's view, the above circumstances suggested that the Azerbaijani authorities were at least complicit in the attempted murder against him. They had been aware that he had been under a threat from other prisoners. Moreover, even if it would be accepted that he had attempted suicide, as the Government incorrectly suggested, then it would follow that the authorities had failed to take measures to protect his life. However, the applicant insisted that this was not what had happened.

87. The applicant also argued that the domestic authorities had failed to conduct an effective investigation into the attempted murder against him. He stressed that in reality no investigation had been open. The inquiry that had been conducted was superficial, hastily concluded and ineffective. Thus, in particular, the authorities had failed to clarify the circumstances in which he would have a bag belt in the cell; they had inconsistently recorded the circumstances in which the belt had been found; they had failed to address the inconsistencies in the prison guards' statements about the circumstances of the case; they had failed to interview him (the applicant) or his wife; and there was no evidence that any forensic examination had been conducted.

**(b) The Government**

88. The Government argued that the applicant's allegations had been inconsistent as regards the timing of the event. Moreover, for the reasons already explained (see paragraph 67 above), the medical report produced by a group of Russian doctors was unreliable. As regards the report produced by the Croatian forensic expert, the Government argued that it was inconsistent and incomplete, which was clear from the recommendations made in that report (see paragraph 38 above).

89. On the other hand, the expert report provided by the Government had been produced by a team of experts from Azerbaijan and that report had been complete and reliable (see paragraphs 39-50 above). It had clearly found that the applicant had attempted suicide by hanging in prison and thereby confirmed the authorities' version of the events. This report had also refuted the findings made by the group of Russian doctors. In the Government's view, the report thereby effectively refuted the same findings reached by the Croatian expert. In addition, the Government stressed that the expert report produced by the Azerbaijani experts had taken into account the statements of the prison guards as understandably there had been no photographs of the applicant hanging from the belt. The report had also had regard to the contradictory statements made by the applicant explaining them as a post-hanging confabulation resulting from amnesia.

90. In the Government's view, although the prison staff had been aware of a suicide risk after the applicant had spoken to his wife on 9 September 2017, they had taken all the necessary measures to prevent that risk from materialising. This was confirmed by the applicant himself in the letter written to the Azerbaijani President of 13 September 2017, which an expert from Azerbaijan confirmed as being written by the applicant.

91. The Government also submitted that the domestic inquiry into the incident of 10 September 2017 had been effective. It had been instituted immediately after the event and a number of investigative actions had been taken, notably an inspection of the scene, questioning of witnesses and a forensic examination. The inquiry had been conducted by the relevant prosecutor's office, which was a body independent of the prison service. In his decision not to open a criminal case, the investigator had duly scrutinised the available evidence. This decision, due to the applicant's failure to request its service, had never been challenged before the relevant courts.

**2. The Court's assessment****(a) General principles**

92. The Court refers to the general principles set out in cases under Article 2 concerning suspicious or controversial circumstances of deaths in custody (see, for instance, *Tsintsabadze v. Georgia*, no. 35403/06, §§ 71-76,

15 February 2011; *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, §§ 59-63, 30 January 2020; and *Shuriyya Zeynalov*, cited above, §§ 66-71 and 80-83). These principles are accordingly relevant in the present case where Article 2 is applicable even though the applicant ultimately survived (see paragraph 73 above; and compare *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 145, 25 June 2019).

93. Persons in custody are in a vulnerable position and 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).

94. 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). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, §§ 97-100, ECHR 2000-VII, and *Aktaş v. Turkey*, no. 24351/94, §§ 289-91, ECHR 2003-V (extracts); see also in general on the standard and burden of proof, *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 310-314, 28 November 2017).

95. 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 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).

96. 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 v. Bulgaria*, no. 38361/97, § 120, ECHR 2002-IV).

97. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well established in the Court's case-law. In particular, where it is not clearly established from the outset that the death has resulted from an accident or another unintentional act, and where the hypothesis of unlawful killing is at least arguable on the facts, the Convention requires that an investigation which satisfies the minimum threshold of effectiveness be conducted in order to shed light on the circumstances of the death (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 133, 14 April 2015, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 171, 25 June 2019).

98. In order to comply with the requirements of Article 2 of the Convention, the investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and to the identification and, if appropriate, punishment of those responsible. This is an obligation which concerns the means to be employed and not the results to be achieved. The authorities must take reasonable steps available to them to secure the evidence concerning an incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, as a recent authority, *Vazagashvili and Shanava v. Georgia*, no. 50375/07, §§ 80-81, 18 July 2019, with further references).

99. Furthermore, 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, where appropriate, the identity of those responsible. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175).

100. While compliance with the procedural requirements of Article 2 is assessed on the basis of several essential parameters, including those mentioned above, these elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, when taken jointly, enable the degree of effectiveness of the investigation to be assessed (see *Nicolae Virgiliu Tănase*, cited above, § 171).

101. In this connection, the Court also finds it important to stress that, although it has recognised 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, where allegations are made under Article 2 of the Convention, it has to apply a “particularly thorough scrutiny” even if certain domestic proceedings and investigations have already taken place (see, for instance, *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts), and *Ayvazyan v. Armenia*, no. 56717/08, § 88, 1 June 2017, with further references). In the context of Article 2, the Court has held that any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see, for instance, *Armani da Silva, v. the United Kingdom* [GC], no. 5878/08, § 233 *in fine*, 30 March 2016).

**(b) Application of these principles to the present case**

102. In line with the above-cited case-law, the Court considers it appropriate to start its examination of the merits of the application by first addressing the procedural limb of the applicant’s complaint under Article 2, namely whether or not the domestic inquiry into the circumstances of the case was effective, and then turning to the substantive limb, namely the question of whether the State can be held responsible for the impugned incident.

*(i) The procedural limb*

103. It is undisputed that the incident in question putting the applicant’s life at risk required the domestic authorities to conduct an official effective investigation. It is also undisputed that the domestic inquiry into the circumstances of the incident commenced promptly and that some relevant investigative measures were taken, namely the inspection of the site and the questioning of the prison guards who were on duty at the relevant time (see paragraphs 20-28 above). The Court observes, however, that there were serious deficiencies and inconsistencies in the manner in which the inquiry was conducted and in the investigator’s findings closing the inquiry. Consequently, many obvious questions concerning the incident putting the applicant’s life at risk while in hands of the Azerbaijani authorities remained unanswered.

104. In particular, following the incident the applicant was not examined by a forensic expert and no forensic assessment of his injuries was carried out. The Court has repeatedly stressed the importance of a prompt forensic examination, which is often crucial as signs of injury might disappear rather quickly, resulting in the complete or partial loss of evidence (see, for instance, *Rizvanov v. Azerbaijan*, no. 31805/06, § 59, 17 April 2012). Thus,

a timely forensic examination could have enabled the reaching of crucial conclusions as to the existence, time and nature of the applicant's injuries.

105. It is further noted that the protocol on the examination of the scene indicated that the prison was equipped with video surveillance (see paragraph 22 above). As the Court often remarked in its case-law, footages of video surveillance may be critical evidence to establish the circumstances of the relevant events (see *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 269, 27 August 2019, with further references). However, there is no indication that the investigator sought to obtain the recordings from the video surveillance, which could have clarified who had entered the applicant's cell and what had actually happened on the day of the incident.

106. In this connection, it is noted that there were serious inconsistencies in the prison guards' statements, which were never clarified during the inquiry. Thus, for instance, having regard to their statements given to the investigator, it is not clear whether Z.I. and A.A. alone, or T.A. together with them, entered the applicant's prison cell and who exactly did what in the provision of the first medical aid to the applicant (see paragraph 23-24 above). These inconsistencies are particularly striking when compared to the "explanations" which the prison guards apparently gave on the day of the incident, as summarised in the medical expert report which the Government produced in the proceedings before the Court (see paragraphs 43-46 above). These "explanations", in so far as they were made on 10 September 2017 as the expert report suggests, ought to have been taken into account by the investigator and compared against the statements which the prison guards gave when questioned by him. In other words, in accordance with the Court's case-law, such inconsistencies needed to be ironed out by meticulous comparison of the relevant statements with one another in relation to specific details (see, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, § 68, 3 November 2011). However, the investigator failed to do so.

107. Another striking feature which called for an explanation is the fact that the inspection of the scene found no bag in the applicant's cell from which he had allegedly taken the belt used for his suicide attempt. Indeed, the Protocol on the examination of the scene found and identified different items of the applicant's personal belongings but not a bag (see paragraph 22 above). Moreover, the investigator failed to consider and examine whether it would have been possible for the applicant to have a belt in the prison cell given that such an object can certainly be used as a dangerous item and is normally not available to prisoners. It is also noted that on the day in question the applicant had been under careful surveillance because of an alleged suicide risk (see paragraph 13 above).

108. The Court has also held in its case-law that in some instances reconstruction of the events may be needed in order to clarify suspicious circumstances of injuries or death which occurred at the hands of the

authorities (see, for instance, *Petrović v. Serbia*, no. 40485/08, § 88 *in fine*, 15 July 2014, with further references). In the present case, in the Court's view, it is difficult to accept on the basis of the evidence available that a grown up person – a man weighing 85 kilograms (see paragraph 85 above) – could have hanged himself on a wall nail of 3 cm length and at a height of some 1, 90 m from the ground by using a 0,9 m long belt (see paragraph 22 above). This therefore required further examination and explanation by, for instance, an attempt to reconstruct the event.

109. The above-noted omissions and unexplained discrepancies in the conduct of the domestic authorities are sufficient for the Court to conclude that the inquiry into the incident in prison putting the applicant's life at risk has been ineffective and in breach of the respondent State's procedural obligations under Article 2 of the Convention.

(ii) *The substantive limb*

110. At the outset, it is worth reiterating that the incident in question happened under the exclusive control and knowledge of the authorities. Thus, according to the Court's case-law, it is for the authorities to provide a satisfactory and convincing explanation. Otherwise, the Court may draw strong inferences on the respondent State's responsibility under the substantive limb of Article 2 of the Convention (see paragraphs 94-95 above).

111. In the proceedings before the Court the Government submitted a medical expert report produced by a group of Azerbaijani experts supporting the finding of the suicide attempt reached by the domestic inquiry. This expert report challenged the applicant's allegations considering them to be confabulation resulting from amnesia which occurs during hanging (see paragraphs 39-50 above). On the other hand, the applicant submitted two expert medical reports – one prepared by a group of Russian doctors and another by a Croatian forensic expert – suggesting that he had been victim of a violent attack and strangulation attempt in prison (see paragraphs 35-38 above). The parties also submitted different other pieces of evidence supporting their respective versions of the events.

112. In this regard the Court finds it important to stress that the evidence which the parties put before it, and their diverging views on the circumstances of the impugned incident, are normally a matter to be examined in the domestic proceedings. The role of the Court is not to serve as a first-instance tribunal of fact. Though the Court is not bound by the domestic findings and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it has to work on the relevant findings reached by the domestic authorities, or a lack thereof, and draw the necessary inferences. This is the logic underpinning the Court's subsidiary role and its rules on the standard and burden of proof (see

paragraphs 94-95 and 102 above; see also *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts)).

113. It therefore suffices for the Court to note that the applicant's allegation of attempted murder, with the alleged crime being disguised as attempted suicide, is plausible, despite certain inconsistencies in his recollection of the facts, which may indeed be linked to the psychological effects of the trauma (see paragraph 31 above).

114. The Court notes that even leaving aside the Russian expert report which the Government challenged as not being prepared by the forensic experts, the fact remains that this report reached the same conclusion as the report produced by the Croatian forensic expert, namely that the applicant had been a victim of attempted murder by strangulation (see paragraphs 36-37 above). The expertise of the author of the latter report has not been called into question by the Government. Moreover, that report is sufficiently detailed and substantiated by the documents available to the Court (see paragraphs 35, 37-38 and 88 above).

115. The Court further notes that the Government's attempt to underpin the attempted suicide version with a motive of the applicant's frustration for not being able to see his family for a visit is not convincing. There is no evidence before the Court that before the impugned incident the applicant demonstrated, in prison or otherwise, any suicidal tendencies. While the prison guards' statements were ambiguous suggesting that at the relevant time the applicant had not been in a good mood, the senior prison guard Z.I. explicitly confirmed that the applicant had never before attempted to commit suicide (see paragraph 23 *in fine* above). Moreover, the applicant's psychiatric assessment in Israel, which the Government did not call into question, found no suicide risk (see paragraph 31 above).

116. The only suggestion of the applicant's suicidal tendency was made in the medical expert report provided by the Government in the proceedings before the Court (see paragraph 47 above). However, this seems to be based on a psychiatric assessment of 11 September 2017 that, in so far as it seems to be referring to the conversations with the applicant, can seriously be called into question given the applicant's state of health at the relevant time (see paragraph 17 above). The same is true for the Government's suggestion that on that day the applicant wrote two letters thanking the Azerbaijani President (see paragraph 10 above). This is particularly hard to believe in view of the difficulties which the applicant had with his writing right arm, as recorded in the Israeli medical records (see paragraph 33 above).

117. In any event, it is not convincing that the applicant who was expecting to be transferred from Azerbaijan to Israel would try to commit suicide for not having his family for a visit (see paragraphs 9 and 56 above). It is also noted that in the telephone conversation that took place on 11 September 2017 – the day of the applicant's pardon by the President – the prison staff did not disclose to the applicant's wife that he had allegedly

attempted suicide and was in a life endangering situation, but rather tried to conceal the event and his condition (see paragraphs 10 and 56 above).

118. As regards the medical expert report provided by the Government, it suffices to note that its assessment starts from, and significantly relies on, the prison guards' "explanations", which the Court already found to be inconsistent (see paragraph 106 above). Moreover, not all the documents on which it relies, such as the psychiatric and the first intervention medical team's report, were disclosed to the Court so it is impossible to ascertain the consistency of the findings. It is noted, however, that the expert reports, by relying on the initial medical report, takes as one of the critical indications of hanging the fact that the applicant had urinary and bowl incontinence (see paragraphs 42 and 49 above). At the same time, the Court cannot but note that the Protocol on the examination of the scene recorded no traces of urinary or bowl incontinence at the scene but, on the contrary, it found the whole cell to be tidy (see paragraph 22 above). It is therefore difficult to accept the findings of this report as providing sufficient explanation for the impugned incident.

119. In sum, having regard to the above findings, and its assessment under the procedural limb of Article 2 (see paragraphs 103-109 above), the Court is unable to conclude that the version of attempted suicide holds up. It follows that the respondent State failed to satisfy the burden of proof resting on it to provide a satisfactory and convincing explanation as regards the incident during which the applicant's life was put at risk.

120. There has accordingly been a violation of Article 2 of the Convention under its substantive limb.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. The applicant complained of ill-treatment and humiliation during his transfer from Belarus to Azerbaijan and during his stay in prison in Azerbaijan. He also alleged that he had been kept in solitary confinement for a period of seven months. The applicant relied on Article 3 of the Convention.

122. 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 questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see, for instance, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Gulyan v. Armenia*, no. 11244/12, § 95, 20 September 2018).

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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**

124. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government contested this claim.

126. The Court finds that the applicant has undoubtedly suffered non-pecuniary damage as a result of the violations found. It therefore decides to award him the sum claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

##### **B. Costs and expenses**

127. The applicant also claimed EUR 5,700 for the costs and expenses for his legal representation before the Court. He asked that the award be paid to the account of his representatives.

128. The Government contested this claim considering it unsubstantiated. They suggested that the applicant’s representatives worked free of charge.

129. The Court notes that the applicant failed to produce any contract with his representatives or other relevant documents showing that he had paid or was under a legal obligation to pay the fees charged by his representatives. The Court therefore dismisses the claim for costs and expenses (see *Bagirov v. Azerbaijan*, nos. 81024/12 and 28198/15, § 120, 25 June 2020, with further references).

##### **C. Default interest**

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

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the applicant’s complaint that there was an attempt to his life in prison, and that the domestic authorities failed to investigate the circumstances of the case, under Article 2 of the Convention, admissible;

2. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention under its procedural limb;
3. *Holds*, by 6 votes to 1, that there has been a violation of Article 2 of the Convention under its substantive limb;
4. *Holds*, unanimously, that there is no need to rule separately on the remainder of the applicant's complaints under Article 3 of the Convention;
5. *Holds*, by 6 votes to 1,
  - (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, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik  
Registrar

Síofra O'Leary  
President

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

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VS

## PARTLY DISSENTING OPINION OF JUDGE QARACAYEV

1. In the present case, I have voted in favour of a finding of a violation of Article 2 under its procedural limb because of specific gaps in the Government's arguments and the evidence which they submitted, particularly with regard to the absence of recordings from surveillance cameras in the particular corridor at the Pre-trial Detention Facility.

2. Having said that, I find it difficult to follow the majority's reasoning when it comes to the finding of a violation of Article 2 under its substantive limb, since it contains a number of ambiguities and speculative statements in this regard. In my view, the majority failed to convincingly demonstrate that the applicant had been able to carry out his "mission" as regards sharing the burden of proof.

3. The first of those ambiguities relates to the physical injuries allegedly sustained by the applicant. The medical examination at the Merkezi Clinic in Baku on 10 September 2017 revealed a linear break in the left part of the hyoid bone (paragraph 16), and on 13 September – some ecchymotic areas at frontal tongue "related to biting" (paragraph 18). It appears that no other injuries were observed on the applicant. In Israel, however, a psychiatric examination revealed "multiple bruises" on his body (paragraph 31). It is not clear on which parts of the applicant's body those injuries were discovered. According to the medical report of 17 September 2017, the applicant had "a trace of (a) prick in the right shoulder area with signs of hematoma. He also had a hematoma on the right and left forearms" (paragraph 33). A medical report entitled "Visit Summary" of 25 September 2017, issued by the Rambam Medical Campus, noted that the applicant had alleged that on 10 September 2017, other inmates in a prison in Azerbaijan had tried to strangle him with a rope (paragraph 34) and that he had "suffered a blunt trauma of the throat two weeks (previously)". Sadly, the majority failed to properly assess such obvious discrepancies.

4. Secondly, while the majority noticed the failure of the respondent Government to conduct a prompt and thorough forensic examination of the applicant, they overlooked the facts that the medical staff had examined the applicant on his arrival at the Merkezi Clinic and had monitored his treatment, with relevant observations and conclusions included in his medical record, and, most importantly, that on 14 September 2017 the applicant and his relatives had "absolutely refused further examination and treatment in the general reanimation section, and (had) returned to Israel" (paragraph 19). Moreover, the utmost importance attaches to the fact that the applicant did not request a forensic report from Israeli specialists immediately on his arrival in Israel when his alleged injuries should have still been visible. On the contrary, he did so several months later, requesting such a report in Russia and in Croatia, based on the photographs, allegedly

taken after his arrival in Israel. In this connection, it must be stressed that the majority even failed to notice that no date or location had been given for those photographs. Surprisingly, the Croatian medical expert was able to ascertain, just by looking at the photographs, quite precisely, that the applicant had sustained injuries from a “blunt instrument” “several days before the available photographs” had been taken. Was the Court able to establish a causal link between the “injuries from a blunt instrument” and the alleged “attempted murder”, having regard to the above-mentioned fact concerning the date and location of the photographs taken in Israel? Absolutely not.

5. Thirdly, in paragraph 113, without any detailed analysis, the majority states that the applicant’s allegation of attempted murder is “plausible”. The last sentence of that paragraph attempts to attenuate the said speculative statement. A reference should be made to the Court’s conclusions in *Malik Babayev v. Azerbaijan* (no. 30500/11, 1 June 2017, § 69), stating in quite similar circumstances that “any allegation that the applicant’s son was murdered would be purely speculative” (with further references). The second last sentence of paragraph 114 states that the expertise of the Croatian forensic expert has not been called into question. In my view, that is disputable. Firstly, it appears from the materials in the case file that the Government had drawn the Court’s attention to the above discrepancies in the report (see, paragraph 7 above). Secondly, the forensic report submitted by the Government noted that “the traces depicted on the photographs taken in Israel ... w[ere] an artefact” (paragraph 48). It should be noted that those injuries were absent from the medical record of the Merkezi Clinic, and only appeared in Israel.

6. Fourthly, the majority also casts doubt on the validity of the applicant’s two letters to the Azerbaijani President. That doubt is based on the Israeli experts’ observation concerning the applicant’s inability to raise his right arm (see paragraph 33). In paragraph 116, the judgment elaborates on the findings of the Israeli experts and refers to the applicant’s difficulties with his writing (right) arm. I wonder why a person who is unable to move his hand cannot write a short letter on a hard surface, and the judgment does not attempt to explain that matter. On this last point, I should also note that in his submissions the applicant had not commented on the forensic graphology report submitted by the Government. Therefore, the statement has no meaningful purpose to serve in this context. Accordingly, the last sentence of paragraph 116 that “this is particularly hard to believe because of the difficulties which the applicant had with his writing right arm, as recorded in the Israeli medical records” is to be considered as speculative.

7. Fifthly, the Court should, in my view, avoid such speculative statements as “it is illogical that the applicant who was expecting to be transferred from Azerbaijan to Israel would try to commit suicide” (paragraph 117). Adhering to the facts of the case, we can see that,

according to the documents on file, on 23 August 2017 the applicant had requested a pardon from the Azerbaijani President and had referred the lack of movement in the proceedings concerning his transfer to Israel. Nothing in the materials of the case file and the judgment itself makes it possible to infer or even imply that the applicant had known that a decision on his pardon and/or his possible transfer to Israel would be made in his favour, or that he could even expect any positive news in this regard. Indeed, it is logical to assume that the absence of any indication concerning the applicant's future would have led to his obvious frustration and a conclusion diametrically opposed to the one set out in paragraph 117. On the other hand, given that the Presidential pardon was issued on 11 September 2017, one may assume that some preparatory work had been carried out well before that date, and that several Azerbaijani officials responsible for the case had been involved and therefore had had information about it. Consequently, instead of inserting the above-mentioned categorical statement in paragraph 117, the majority would have done better to ask whether it was logical for the authorities, which had known well in advance that the applicant would be pardoned on or around 11 September 2017, to allow his murder to happen on 10 September 2017. Besides, how logical would it have been for them to let this murder happen, and then suddenly change their mind (in a matter of minutes) and proceed to save his life (and provide him with treatment in one of the best healthcare institutions in Azerbaijan).

8. In conclusion, the ambiguities, discrepancies and speculative statements set out above undermine the credibility of the Court's reasoning, which cannot serve, as it stands, as a sufficient basis on which to find a violation of Article 2 under its substantive limb.