



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

FIFTH SECTION

CASE OF FARMANYAN AND OTHERS v. ARMENIA

*(Applications nos. 15998/11 and 8 others –
see appended list)*

JUDGMENT

Art 2 (substantive) • Life • Deaths of the applicants' relatives as a result of injuries sustained during the mass protests after the 2008 presidential elections • Use of lethal force attributable to the respondent State resulting in the deaths of seven of the nine victims not "absolutely necessary" • Deaths resulted from a badly planned and executed operation involving the improper use of crowd-control weapons and the indiscriminate and disproportionate use of lethal force • Court unable to establish that one of the victims was killed as a result of the use of that force • Lack of sufficient evidence for finding a violation in relation to the remaining victim

Art 2 (procedural) • Failure to carry out an effective investigation into all the deaths

Art 38 • Non-compliance with State obligation to furnish all necessary facilities

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 September 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Farmanyan and Others v. Armenia,

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

Kateřina řimáčková, *President*,

María Elósegui,

Georgios A. Serghides,

Tim Eicke,

Diana Sârcu,

Mykola Gnatovskyy, *judges*,

Anna Margaryan, *ad hoc judge*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 15998/11, 15964/11, 16015/11, 16024/11, 16030/11, 16035/11, 16046/11, 16055/11 and 16060/11) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seventeen Armenian nationals, Mr Vachagan Farmanyan, Ms Lyudmila Farmanyan, Ms Vardanush Farmanyan, Ms Varduhi Baghdasaryan, Mr Vahan Antonyan, Ms Mariam Hovhannisyan, Ms Ruzanna Harutyunyan, Ms Jemma Vardumyan, Mr Hovsep Khachatryan, Ms Alla Hovhannisyan, Mr Aram Khachatryan, Ms Lilya Minasyan, Ms Gayane Hovhannisyan, Mr Edik Harutyunyan, Mr Sargis Kloyan, Ms Azatuhi Manukyan and Ms Ruzanna Hunanyan (“the applicants”), on 28 February 2011;

the decision to give notice to the Armenian Government (“the Government”) of the complaints under Articles 2 and 13 of the Convention concerning the deaths of the applicants’ relatives and the alleged failure of the authorities to conduct an effective investigation into the circumstances of their deaths, and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The case concerns the deaths of the applicants’ relatives as a result of injuries received during the mass protests which took place in Yerevan on 1 and 2 March 2008. It raises issues under Article 2 of the Convention. The applicants also relied on Article 38 of the Convention.

THE FACTS

2. The applicants, whose details are set out in the appendix, are the relatives of nine people who died as a result of injuries received during the above-mentioned protests. More specifically:

(a) The applicants Vachagan, Lyudmila and Vardanush Farmanyan (application no. 15998/11) are the father, mother and sister of Mr Armen Farmanyan, who died on 1 March 2008, aged 33;

(b) The applicants Hovsep Khachatryan, Alla Hovhannisyan and Aram Khachatryan (application no. 16035/11) are the father, mother and brother of Mr Tigran Khachatryan, who died on 1 March 2008, aged 23. After notice of the application was given to the respondent Government, Aram Khachatryan informed the Court that he had acquired Belgian nationality;

(c) The applicants Sargis Kloyan, Azatuhi Manukyan and Ruzanna Hunanyan (application no. 16060/11) are the father, mother and wife of Mr Gor Kloyan, who died on 2 March 2008, aged 28;

(d) The applicants Lilya Minasyan and Gayane Hovhannisyan (application no. 16046/11) are the wife and daughter of Mr Hovhannes Hovhannisyan, who died on 1 March 2008, aged 47;

(e) The applicant Jemma Vardumyan (application no. 16030/11) is the mother of Mr Davit Petrosyan, who died on 2 March 2008, aged 32;

(f) The applicants Varduhi Baghdasaryan and Vahan Antonyan (application no. 15964/11) are the wife and uncle of Mr Grigor Gevorgyan, who died on 1 March 2008, aged 27;

(g) The applicant Edik Harutyunyan (application no. 16055/11) is the father of Mr Samvel Harutyunyan, who died on 11 April 2008 from injuries sustained on 1 March 2008, aged 28;

(h) The applicant Mariam Hovhannisyan (application no. 16015/11) is the sister of Mr Zakar Hovhannisyan, who died on 2 March 2008, aged 30;

(i) The applicant Ruzanna Harutyunyan (application no. 16024/11) is the mother of Mr Tigran Abgaryan, who died on 11 April 2008 from injuries sustained on 1 March 2008, aged 19.

3. All of the deceased were civilians, with the exception of Tigran Abgaryan, who at the material time was a conscript performing his compulsory military service with the Police Troops of Armenia (*ՀՀ ոստիկանության զորքեր*).

4. The applicants were represented by Ms J. Evans, Ms J. Gavron, Mr V. Grigoryan, Mr P. Leach, Ms K. Levine and Ms J. Sawyer, lawyers from the European Human Rights Advocacy Centre (EHRAC) based in London, and by Mr T. Yegoryan, a lawyer practising in Yerevan.

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

6. The facts of the case may be summarised as follows.

I. 19 FEBRUARY 2008 PRESIDENTIAL ELECTION AND POST-ELECTION EVENTS

A. Presidential election and post-election demonstrations

7. On 19 February 2008 a presidential election was held in Armenia. The main candidates were the then Prime Minister, Mr Serzh Sargsyan, who represented the ruling party, and the main opposition candidate, Mr Levon Ter-Petrosyan.

8. Immediately after the preliminary results of the election were announced, Mr Ter-Petrosyan called on his supporters to gather at Freedom Square in central Yerevan to protest against alleged irregularities in the election process, announcing that it had not been free and fair. From 20 February 2008 onwards, daily protest rallies were held across the country by Mr Ter-Petrosyan's supporters, their main meeting place being Freedom Square and the surrounding park in Yerevan. It appears that the rallies at Freedom Square at times attracted tens of thousands of people, while several hundred demonstrators stayed in that area around the clock, having set up a camp. According to the Government, the authorities addressed the demonstrators gathered at Freedom Square on numerous occasions, informing them of the unlawful nature of their ongoing demonstrations.

9. The Government alleged that on 28 February 2008 the National Security Service ("NSS") had obtained intelligence information, which it had passed on to the police the same day, that large quantities of weapons, including metal bars, wooden bats, firearms, grenades and explosives, were to be distributed to the protestors at Freedom Square in order to incite provocative actions and instigate mass disorder in Yerevan. The Chief of the Armenian police (hereinafter "the Chief of Police") ordered his two Deputies to examine that information. On 29 February 2008 the head of the Main Department of Criminal Intelligence of the Armenian police reported to the Chief of Police that intelligence information had been gathered during the preceding few days that the demonstrators were planning to destabilise the situation and that they had been seen to be in possession of firearms, explosives, metal bars, Molotov cocktails, wooden bats and other dangerous objects, including specially assembled metal devices with a spiked shape called "hedgehogs". He then ordered that a "site inspection" be conducted at Freedom Square at 7 a.m. on 1 March 2008 for the purpose of verifying that information. An operational meeting was held, chaired by the Deputy Chief of Police, to discuss and approve the plan for that operation, including an estimate of the number of main and backup forces to be deployed. The "site inspection" was assigned to a group of 133 police officers, led by the Deputy Chief of Police and including members of the police operational service. The backup police forces consisted of 602 police officers, including the patrol service regiment, and were deployed in the areas adjacent to Freedom Square

to ensure security in case the situation deteriorated. Members of the Public Order Unit of the Police Troops of Armenia (see paragraphs 152-156 below) were not involved in the “site inspection” and were kept as a reserve at a nearby location.

10. The applicants stated that none of the above allegations made by the Government were supported by any evidence.

B. Events of 1 and 2 March 2008 and the deaths of the applicants’ relatives

1. The early morning police operation and subsequent developments

(a) Dispersal of the assembly at Freedom Square and gathering of the demonstrators near the Myasnikyan monument

11. On 1 March 2008, apparently at some point between 6 and 7 a.m., the police forces arrived at Freedom Square.

12. The applicants alleged that at least a 300 strong police force, without prior warnings or orders to disperse, had brutally attacked the several hundred demonstrators camped at the square and started beating them with rubber batons, causing them bodily injuries and destroying their tents. Within minutes the square was cleared of all the demonstrators and sealed off, while Mr Ter-Petrosyan was escorted by the police to his home, where he was effectively placed under house arrest.

13. The Government contested the above allegations and claimed that the purpose of the police operation had been to conduct the “site inspection” ordered the previous day (see paragraph 9 above). Both the main and backup police forces that participated in the police operation were all unarmed and without any means of personal protection, with the exception of 250 officers of the patrol service regiment who were equipped with shields, rubber batons and helmets. The main police forces entered the square and requested the protestors to allow them to inspect the location, but around 800 to 900 angry demonstrators, who were already aware of the arrival of the police, attacked the police officers with wooden bats, metal bars, stones and other random objects. An operational decision was made to immediately quell the resistance and to call in the backup police forces, including the patrol service. The police operation lasted for about half an hour and a corridor was created for the demonstrators to leave the square. After the square had been cleared of all the demonstrators, the police conducted the site inspection, during which they found numerous weapons stashed. These included three pistols, ammunition, grenades, metal bars, wooden and rubber bats, “hedgehogs” (see paragraph 9 above), Molotov cocktails, gas masks and knives.

14. The applicants contested the allegation that the demonstrators had been carrying any weapons or that weapons would be distributed among them. The alleged site inspection was not supported by any photographic or other convincing evidence and there was no evidence linking any of the

weapons allegedly found at Freedom Square to the demonstrators. The sole purpose of the police operation at Freedom Square was to disperse the demonstrators camping there and prevent the continuation of the rallies.

15. The applicants further alleged that for two hours following the dispersal of the assembly at Freedom Square the demonstrators who had fled from there had been chased through the streets of Yerevan by the police. Some of them relocated to the area of the Myasnikyan monument, about 1.7-2 km from Freedom Square, where a number of foreign embassies were located, including the French, Italian and Russian embassies, as well as the Yerevan mayor's office, in the belief that they would be safe there. As news of the early morning violent police intervention and the house arrest of the main opposition candidate spread, thousands of people poured into the streets of Yerevan to voice their discontent, many of whom headed to the area of the Myasnikyan monument. From around 10 a.m. a large crowd started to form there, soon reaching several thousand people.

16. It appears that the epicentre of the gathering was the square in front of the Myasnikyan monument ("Myasnikyan Square") and the surrounding area. It further appears that at some point the demonstrators started building barricades using a derailed trolleybus and gradually adding other vehicles, including cars and possibly a refuse truck. The applicants alleged that the protestors had done so to protect themselves from another possible police attack.

17. According to the Government, following the police operation at Freedom Square the patrol service regiment was divided into smaller groups, which were ordered to secure order in Yerevan and not to allow any new gatherings of protestors in the city centre. At 11 a.m. information was received from one of the groups that around 300 aggressively behaving demonstrators had assembled near the French embassy, where they had been guided by the leaders of the opposition. Fifty officers of the patrol service were immediately dispatched to that area, where a decision was made to thwart the unlawful actions of the uncontrollable crowd. The demonstrators attacked the police, throwing stones and various other objects in their direction. A number of streets leading to Myasnikyan Square were closed by the police.

18. The applicants disputed the Government's account and submitted that no violence had been committed by the demonstrators during the whole period of the demonstration near the French embassy. It was the police that committed numerous acts of violence towards the demonstrators, who remained peaceful even in the face of police brutality.

19. It appears that around 12 noon several opposition leaders and activists, including members of parliament, arrived at the scene and were able to address the crowd by loudhailer. The police forces, led by two Deputy Chiefs of Police and the head of the Main Department for the Fight Against Organised Crime, entered into negotiations with those opposition leaders

about the possibility of moving the demonstration to an area outside the centre, but these ended unsuccessfully at around 2.20 p.m. since the demonstrators refused to move to the location proposed by the police. It further appears that at around this time an incident happened involving a police car which – allegedly accidentally – drove into the crowd of demonstrators, injuring at least two of them. This infuriated some of the demonstrators, who attacked and set fire to the police car after the officers driving it had fled.

20. The Government alleged that the demonstrators had refused to move to another location because they had been told by some of the opposition leaders and activists to stay put. At around the same time the demonstrators derailed another trolleybus and used it to block one of the entrances to the square. One of the active members of the opposition allegedly gave a speech over loudspeakers urging the demonstrators to arm themselves “whichever way possible” and prepare for resistance.

(b) Subsequent developments as alleged by the Government

21. The Government made the following allegations regarding the subsequent course of events.

22. At 3 p.m. a new order was given to reinforce the police units in the vicinity of the President’s residence, the government building and the Public Television building, which involved 200 police officers of the Department of State Protection of the Armenian police and 300 servicemen of the Police Troops. The other police forces were ordered to go to Freedom Square. Another 150 police officers of the Department of State Protection were ordered to block the northern part of the demonstration in order to prevent access to Republic Square, where the government building was situated.

23. At around 3.40 p.m. a group of protestors stole shields and batons from a police car and at around 5.30 p.m. a group of young protestors tore off pieces of iron pipe from pavement railings and a nearby construction site.

24. At 6 p.m. the aggressive part of the crowd closed off the sections of the road leading to the Yerevan mayor’s office and Mashtots Avenue, bringing traffic to a standstill, while cars that happened to be approaching those sections were hijacked, looted and used to build barricades. There was a gradual movement of the aggressive part of the crowd towards Mashtots Avenue and Republic Square.

25. From around 7.45 p.m. the protestors, armed with stones, metal bars, wooden bats and Molotov cocktails and launching repeated attacks on the police, tried to advance down Grigor Lusavorich Street towards its intersection with Mashtots Avenue and Paronyan Street. According to the Government, their intention was to continue up Paronyan Street and eventually reach the President’s residence and the National Assembly building, which were situated a few kilometres in that direction. In order to stop them moving forward, the Police Troops formed a chain and started

advancing, equipped with shields, rubber batons and helmets. Non-commissioned officers of the Police Troops were positioned at the rear, equipped with “special means” (such as non-lethal equipment for crowd control), including tear-gas launchers. The demonstrators threw stones, Molotov cocktails and other objects at them.

26. At around 8.15 p.m. the first shots were fired and the first grenades thrown from the crowd, as a result of which some police officers received their first injuries, one of which, caused by shrapnel, proved fatal. To protect his officers, the Commander of the Police Troops decided to withdraw them, use special means, including tear gas, and fire blank cartridges for psychological impact. The protestors hid behind cars and responded by throwing stones and Molotov cocktails.

27. The Commander of the Police Troops decided to send forward a barbed wire installing vehicle to try to install barbed wire. However, the onslaught of the crowd forced the driver and others in the vehicle to abandon it. Five minutes later a similar action was carried out at the intersection of Mashtots Avenue and Grigor Lusavorich Street, which also failed since the crowd charged and the barbed wire remained half open. Part of the aggressive crowd managed to capture some police vehicles, including the two barbed wire installing vehicles, a bus and other vehicles, some of which were set fire to on the spot. The rest were used to attack the police lines and were later burnt at the intersection of Leo Street and Paronyan Street.

28. At around 10 p.m. three water cannons were put to use. They temporarily repelled the crowd and prevented it from advancing, but were forced to retreat once the water ran out. The crowd again advanced down Grigor Lusavorich Street towards Paronyan Street, attacking the water cannons and throwing metal bars, stones and Molotov cocktails at police officers and servicemen of the Police Troops. In view of the possible loss of officers as a result of clashes with the crowd, the police decided to form a battle array and to retreat towards Leo Street. In order to stop the attacks, seven officers of the Police Troops armed with assault rifles fired tracer bullets in the air to exert psychological pressure on the protestors. Approximately 200 officers of different police units formed a chain blocking Paronyan Street.

29. At 11 p.m. the President of Armenia declared a state of emergency in the city of Yerevan. Despite that, the mass disorder continued and included the breaking into and looting of shops in the area.

30. As a result of the mass disorder ten people died, including eight civilians and two servicemen of the Police Troops. Thirty-five civilians and 186 police officers and servicemen were injured, ninety-two public and private vehicles were damaged and twelve commercial premises were looted.

(c) Subsequent developments as alleged by the applicants

31. The applicants contested the Government's account of events and alleged that until 5 p.m. the police had not called on the protestors to disperse. The leaders of the opposition present called on the protestors to stay calm and not provoke the police. The protestors built barricades to prevent the police from attacking them and called for Levon Ter-Petrosyan to make an appearance.

32. From 7.30 to 8 p.m. the police forces, armed with firearms, launched their first aggressive attack on the protestors gathered at Myasnikyan Square but then retreated, provoking the protestors to break through the barricades in the direction of Mashtots Avenue, Paronyan Street and Leo Street.

33. Shortly after 9 p.m., without prior warning, the police forces started firing tracer bullets intensively into the air, apparently intending to intimidate the demonstrators and make them disperse. The first firing of tracer bullets lasted about ten to fifteen minutes. After the first protestor was shot, the resistance of the protestors intensified. Half an hour later, police in riot gear began approaching from the direction of Paronyan Street and Leo Street. Organised in four to five rows, they advanced towards the demonstrators, accompanied by the second firing of tracer bullets.

34. Facing resistance from the demonstrators, the police retreated, leaving the large crowd gathered at Myasnikyan Square alone, and regrouped at the intersection of Paronyan Street and Leo Street, several metres from an arch that led to the central district police station. There they were confronted by several dozen demonstrators, most of them young, who were chanting "Levon, Levon!" and throwing stones at the police from a distance of 15 to 20 metres. Some demonstrators were also armed with iron bars and wooden sticks. It appears that the police used tear gas in response and clashes ensued.

35. Eyewitnesses described several instances of police targeting protestors with either sub-machine guns or using tear gas, as well as instances of random firing of Makarov pistols and opening indiscriminate fire at protestors. The police also attacked and beat civilians and ill-treated protestors indiscriminately.

36. It appears that the situation started to deescalate after the declaration of a state of emergency and the clashes in the Mashtots Avenue and Grigor Lusavorich Street, Paronyan Street and Leo Street slowly subsided, although it appears that some public buildings were damaged and some shops were broken into and looted before the disorder finally stopped. The main rally at the Myasnikyan monument involving several thousand people (see paragraph 16 above) apparently continued until around 3 a.m. on 2 March 2008.

2. The deaths of the applicants' relatives

(a) The death of Armen Farmanyan (application no. 15998/11)

37. Armen Farmanyan was fatally wounded on Paronyan Street at around 9 p.m. on 1 March 2008, according to a parliamentary inquiry into the events (see paragraphs 125-131 below). It appears that at 9.50 p.m. his body, with firearm wounds to the head, was taken to the morgue for a forensic medical examination, which was performed the next day.

38. According to the results of the forensic medical examination (see paragraph 67 below), the cause of death was an injury to the left side of his head. There were foreign bodies inside the skull and multiple bruises to the tissue and muscles of the head, the soft membrane and dura mater, the brain tissue and brain cavities. The dura mater was torn and the brain was partially crushed, accompanied by a secretion. Two foreign bodies were removed from Armen Farmanyan's right cerebral hemisphere: a cylindrical metal object measuring 3.9 x 1.85 cm and a cylindrical whitish plastic object measuring 2.35 x 1.9 cm.

39. According to the results of the forensic ballistic examination (see paragraph 72 below), the metal and plastic objects removed from Armen Farmanyan's body were parts of a fired Cheremukha-7 type cartridge canister, namely a tear-gas grenade and its detached plastic cap, intended to be fired from a KS-23 (23 mm carbine). The shot marks on the canister were characteristic of a KS-23. There was a deformation and a crack in the front part of the cap, which could have been caused by collision with a hard object or having passed through an obstacle.

40. The Government alleged, and the applicants disputed, that the investigation had established that Armen Farmanyan had recruited participants in the mass disorder, distributed metal bars and Molotov cocktails to them and directed their actions (see paragraphs 97 and 100 below).

(b) The death of Tigran Khachatryan (application no. 16035/11)

41. Tigran Khachatryan was fatally wounded at the intersection of Leo Street and Paronyan Street at some point after 8 p.m. on 1 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). At 10 p.m. his body was taken by ambulance to the morgue for a forensic medical examination, which was performed the next day.

42. According to the results of the forensic medical examination (see paragraph 67 below), Tigran Khachatryan received an open and blunt head injury. He died as a result of a serious malfunction of the vital functions of the brain resulting from the head injury. During the post-mortem examination, a metal object was removed from his skull.

43. According to the results of the forensic ballistic examination (see paragraph 72 below), the metal object removed from Tigran Khachatryan's

body was a tear-gas grenade of a fired Cheremukha-7 type cartridge without its plastic cap, intended to be fired from a KS-23 (23 mm carbine). Since the plastic caps of the gas canisters rubbed against the walls of the carbine bores during firing, it was impossible to determine the type of weapon from which the gas grenade in question had been fired. The plastic caps had most likely become detached due to collision with a hard object or having passed through an obstacle.

(c) The death of Gor Kloyan (application no. 16060/11)

44. Gor Kloyan was wounded at the intersection of Grigor Lusavorich Street and Mashtots Avenue at around 9 p.m. on 1 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). It appears that at around 9.30 p.m. he was transported by a group of unidentified people to Yerevan Clinic no. 3 with a wound in the area of the left side of his groin. It appears that he underwent surgery and that a metal object was removed from that area. It further appears that six 1 mm black particles were also removed from his body. Gor Kloyan died at 4.30 a.m. on 2 March 2008. On the same day a forensic medical examination was carried out.

45. According to the results of the forensic medical examination (see paragraph 67 below), Gor Kloyan had a crushed fragmented injury in the area of the left side of the groin involving an avulsion of the femoral artery, damage to the femoral veins and a fracture of the pubic bone. The injury was accompanied by acute blood loss and resulted in his death.

46. According to the results of the forensic ballistic examination (see paragraph 72 below), the metal object removed from Gor Kloyan's body was a fired Cheremukha-7 cartridge canister, namely a tear-gas grenade together with its plastic cap, intended to be fired from a KS-23 (23 mm carbine). The shot marks on the plastic cap were characteristic of a KS-23. There was a deformation and a crack on the plastic cap which could have been caused by collision with a hard object or having passed through an obstacle. There were also six 1 mm black particles removed from his body but, given their small size and lack of necessary features, it was impossible to determine what they were.

(d) The death of Hovhannes Hovhannisyan (application no. 16046/11)

47. Hovhannes Hovhannisyan was shot dead on Mashtots Avenue at around 9 p.m. on 1 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). The applicants stated that it was alleged in an investigative documentary concerning the events of 1 and 2 March 2008 that the incident had happened at 10.05 p.m. It appears that his body, with a gunshot wound to the chest, was transported by a group of unidentified people to Yerevan Medical Centre no. 2 at around 9.40 p.m. on 1 March 2008. At 12.20 a.m. on 2 March 2008 his body was taken by ambulance to the morgue

for a forensic medical examination, which was performed the same day. A 5.45 mm bullet was removed.

48. According to the results of the forensic medical examination (see paragraph 67 below), the cause of death was a blunt gunshot wound to the chest and internal bleeding.

49. According to the results of the forensic ballistic examination (see paragraph 72 below), the bullet removed from Hovhannes Hovhannisyan's body was part of a 5.45 mm ball cartridge. Such cartridges were intended to be used with AK-74 assault rifles, RPK-74 machine guns or their modified models. The shot marks on the bullet were characteristic of bullets fired from 5.45 mm AK-74 assault rifles, RPK-74 machine guns or their modified models.

(e) The death of Davit Petrosyan (application no. 16030/11)

50. Davit Petrosyan was shot on Paronyan Street shortly after 9 p.m. on 1 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). The applicants stated that it was alleged in the above-mentioned investigative documentary (see paragraph 47 above) that the incident had happened at 10.10 p.m. It appears that at around 10.30 p.m. Davit Petrosyan was taken by a group of unidentified people to Yerevan Hospital no. 2 with a gunshot wound to his back, after which he was transported to Margaryan Hospital where it appears that surgery was performed and a 9 mm bullet was removed from his body. Davit Petrosyan died in hospital at 12.30 a.m. on 2 March 2008 from his injuries. His body was then taken for a forensic medical examination, which was performed the same day.

51. According to the results of the forensic medical examination (see paragraph 67 below), there was a gunshot entrance wound on the right rear side of Davit Petrosyan's chest and penetrating injuries to the right kidney, liver, diaphragm and right lung which had been caused while he was alive and which were the result of a gunshot. The cause of death was acute blood loss.

52. According to the results of the forensic ballistic examination (see paragraph 72 below), the bullet removed from his body during surgery was part of a 9 mm cartridge. Such cartridges were intended for PM (Makarov pistol) and APS type guns. The shot marks on the bullet were characteristic of a PM pistol. There were scratches on the bullet primarily on the front part, caused by collision with a hard object, possibly a ricochet, or having passed through an obstacle.

(f) The death of Grigor Gevorgyan (application no. 15964/11)

53. Grigor Gevorgyan went to the area of the mass protests with his brother-in-law, R.B., at around 8 p.m. on 1 March 2008. It appears that they

lost each other at the intersection of Grigor Lusavorich Street and Zakyan Street at around 9 p.m. because of the chaotic situation. According to the parliamentary inquiry (see paragraphs 125-131 below), at around 9.15 p.m. he went with a group of other protestors to the intersection of Paronyan Street and Leo Street, where he was shot in front of a shoe repair shop and died instantly. On 2 March 2008 a forensic medical examination was performed.

54. According to the results of the forensic medical examination (see paragraph 67 below), Grigor Gevorgyan died from a penetrating gunshot wound to the head, which entered in the nasal area and exited the left part of the forehead, damaging the brain. The entrance wound measured 0.5 x 0.4 cm. There were no additional gunshot elements in the area of the entrance wound, such as traces of ash, burns and burnt or half-burnt gunpowder particles, which meant that the shot had been fired beyond the limits of such additional elements typical of the firearm in question.

55. The bullet that killed Grigor Gevorgyan was never found.

(g) The death of Samvel Harutyunyan (application no. 16055/11)

56. Samvel Harutyunyan received a head injury at the junction of Grigor Lusavorich Street and Mashtots Avenue at around 9 p.m. on 1 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). It appears that at around 10 p.m. he was taken by a group of unidentified people to Yerevan Clinic no. 3 unconscious and with an open wound to his skull. He was then transported to the Armenia Medical Centre, where he died on 11 April 2008 from his injuries without regaining consciousness. A forensic medical examination was carried out on 13 April 2008.

57. According to the results of the forensic medical examination (see paragraph 67 below), Samvel Harutyunyan received an open, blunt and penetrating injury to the skull, involving a contusion in the left parietotemporal area with an avulsed defect of the dura mater, crushing and secretion of the brain, and multi-fragmented fractures of the left parietal and temporal bones. The injuries had been caused by a blunt object while he was alive.

(h) The death of Zakar Hovhannisyan (application no. 16015/11)

58. Zakar Hovhannisyan was shot by the market on Mashtots Avenue, about 100-150 metres from the intersection of Mashtots Avenue and Grigor Lusavorich Street at around 1.30 a.m. on 2 March 2008, according to the parliamentary inquiry (see paragraphs 125-131 below). It appears that at 2 a.m. a group of unidentified people took him to Yerevan Clinic no. 3 unconscious and with a gunshot wound to the abdomen. It appears that a 9 mm bullet was removed from his body. He died during surgery from his injuries and at 2.55 a.m. his body was taken by ambulance to the morgue for a forensic medical examination, which was performed the same day.

59. According to the results of the forensic medical examination (see paragraph 67 below), there was a gunshot entrance wound on the front surface of Zakar Hovhannisyan's abdomen, as well as penetrating injuries to the liver, diaphragm, lower part of the left lung and waist muscle. A haemorrhage in the left part of the waist was also recorded. The cause of death was acute blood loss.

60. According to the results of the forensic ballistic examination (see paragraph 72 below), the bullet removed from Zakar Hovhannisyan's body was part of a 9 mm cartridge. Such cartridges were intended for PM (Makarov pistol) and APS type guns. The shot marks on the bullet were characteristic of a PM pistol.

(i) The death of Tigran Abgaryan (application no. 16024/11)

61. Tigran Abgaryan was on duty at around 7 p.m. on 1 March 2008 at Grigor Lusavorich Street as a serviceman of military unit no. 1033 of the Police Troops of Armenia. According to the parliamentary inquiry, he received a penetrating gunshot wound to his neck at around 11 p.m. on Leo Street in front of a shop called Svin, (see paragraphs 125-131 below). The applicants stated that it was alleged in the above-mentioned investigative documentary (see paragraph 47 above) that the incident had happened at 10.25 p.m. He was then transported to a hospital, where surgery was performed. He remained paralysed and on a ventilator, but in the following weeks his condition deteriorated and he died on 11 April 2008. A forensic medical examination was carried out the next day.

62. According to the results of the two forensic medical examinations (see paragraph 67 below), Tigran Abgaryan died of a failure of the vital functions of the spinal cord as a result of his injury. The wound was caused by a bullet which had passed from front to back on the right side of his neck, accompanied with explosion-type complications. The entrance wound on the front of his neck measured 3 x 3 cm. The forensic medical expert noted that there were no traces of additional effects of being shot at close range, but that that question could be answered definitively after conducting a trace evidence examination of the clothing. He also added that, as regards determining the type of firearm and the calibre of the bullet, these questions were outside his competence.

63. The bullet that killed Tigran Abgaryan was never found.

II. CRIMINAL PROCEEDINGS

A. The opening of the criminal cases and the forensic examinations

64. On 1 March 2008 criminal case no. 62202508 was instituted by the Special Investigative Service ("the SIS") under Article 225.1 §§ 1 and 2, Article 235 §§ 1 and 2 and Article 316 § 2 of the Criminal Code (see

paragraphs 138, 140 and 141 below) in connection with the events at Freedom Square. That decision instituting the case stated:

“After the announcement of the preliminary results of the presidential election of 19 February 2008, the presidential candidate Levon Ter-Petrosyan, members of parliament [K.S. and S.M.], the editor-in-chief of the *Haykakan Zhamanak* daily newspaper [N.P.] and others organised and held mass public events at Yerevan’s Freedom Square in violation of the procedure prescribed by law and incited disobedience of the decisions ordering an end to the events held in violation of the procedure prescribed by law, while a number of participants in the mass events were in illegal possession of and carrying illegally obtained weapons and ammunition.

On 1 March 2008, at around 6 a.m., when the police took measures aimed at forcibly ending the public events held in violation of the procedure prescribed by law, in compliance with the requirements of section 14 of the Assemblies, Rallies, Marches and Demonstrations Act, the organisers and participants in the events, disobeying the lawful orders of the [police officers], who were carrying out their official duties, committed a life-threatening and health-threatening assault on them with bats, metal bars and other adapted objects which they had in their possession for that purpose, causing the police officers injuries of varying severity.”

65. On 2 March 2008 another criminal case, no. 62202608, was instituted under Article 225 § 3 and Article 235 § 2 of the Criminal Code (see paragraphs 139 and 140 below). That decision stated:

“[Ter-Petrosyan], the candidate running for President at the presidential election of 19 February 2008 and his followers and supporters, [namely] members of parliament [K.S. and S.M.], the editor-in-chief of the *Haykakan Zhamanak* daily newspaper [N.P.] and others, unwilling to admit defeat in the election, with the aim of casting doubt on the election, instilling mistrust in the results among large sections of the population, creating illusions of public discontent and revolt and discrediting the election and the authorities, from 1 March 2008 in the area of the Yerevan mayor’s office and central streets organised mass disorder involving murder, violence, massacres, arson, destruction of property and armed resistance to public officials, using firearms, explosives and other adapted objects.”

66. On the same date the SIS investigator decided to join criminal cases no. 62202508 and no. 62202608 under the latter number on the grounds that the events and the offences in question had involved the same individuals. It appears that at least 140 people, including four opposition MPs and numerous other opposition leaders and supporters, were charged within the scope of the joint criminal case (some of these cases were later brought before the Court, see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, 20 September 2018; *Myasnik Malkhasyan v. Armenia*, no. 49020/08, 15 October 2020; *Jhangiryan v. Armenia*, nos. 44841/08 and 63701/09, 8 October 2020; *Smbat Ayvazyan v. Armenia*, no. 49021/08, 8 October 2020; *Mikayelyan v.*

Armenia [CTE], no. 1879/10, 31 August 2021; *Arzumanyan v. Armenia* [CTE], no. 63845/09, 31 August 2021; and *Pashinyan v. Armenia*, [CTE], nos. 22665/10 and 2305/11, 18 January 2022). It further appears that dozens of injured police officers were recognised as victims for the purposes of that criminal case.

67. On the same date the SIS investigator ordered forensic medical examinations of the deceased, namely Armen Farmanyanyan, Tigran Khachatryan, Gor Kloyan, Hovhannes Hovhannisyan, Davit Petrosyan, Grigor Gevorgyan, and Zakar Hovhannisyan which were conducted the same day by experts of a forensic medicine centre under the authority of the Ministry of Health. The relevant expert conclusions were produced in late March to early April 2008 (see paragraphs 38, 42, 45, 48, 51, 54 and 59 above). Similar examinations were ordered in respect of Tigran Abgaryan on 11 March and 12 April 2008 and Samvel Harutyunyan on 13 April 2008, with the relevant expert conclusions being produced on 14 March and 22 and 23 May 2008 respectively (see paragraphs 57 and 62 above).

68. On 4 March 2008 the Prosecutor General gave a press conference in which he stated that “it [was] obvious that the actions of the law enforcement bodies [had been] proportionate to the purpose of preventing the mass disorder”. He further referred to the concepts of “self-defence” and “absolute necessity” in criminal law, in which case a person was absolved from criminal prosecution, and stated that the investigation had obtained numerous video-recordings and photographs of the events. Lastly, the Prosecutor General stated that there was sufficient evidence to believe that the mass disorder had been organised and aimed at usurping power at any cost, the cost in this case being eight human lives.

69. On the same date the SIS investigator ordered a forensic ballistic examination of the metal and plastic objects removed from the bodies of Armen Farmanyanyan, Tigran Khachatryan and Gor Kloyan, as well as the bullets removed from the bodies of Hovhannes Hovhannisyan, Davit Petrosyan and Zakar Hovhannisyan (see paragraphs 39, 43, 46, 49, 52 and 60 above). He further ordered a joint forensic ballistic and chemical examination of the clothing of Gor Kloyan, Hovhannes Hovhannisyan, Davit Petrosyan and Zakar Hovhannisyan.

70. By a letter of 7 March 2008 the Prosecutor General gave the following instructions to a senior investigator at the SIS:

“Taking into account the need for full disclosure of the circumstances of all the cases of death and physical injuries ... I instruct:

1. Within the scope of the investigation of this criminal case, to clarify in a comprehensive, complete and objective manner:

1.1 All the circumstances of the use of physical force, special means and firearms by the police officers, including the reasons and grounds for their use or non-use in each particular case;

1.2 The [identity of] the individuals subjected to physical coercion or the use of force;

1.3 If special means were used, their type, manner of use, the consequences and the actions of the people subjected to coercion at the time when physical force or another type of coercion was applied;

1.4 In each case of the use of firearms, the type, calibre, serial number and place of registration of the firearm, the place and time of receipt and return of the firearm and

ammunition, the place and time of use of the firearm, the mode, target and direction of the shots, the number of cartridges allocated and fired, the consequences of the use of the firearm, if known to the shooter.

2. During the interviews concerning the above issues and the questions arising from them, as well as [during] the interviews of police officers and military conscripts who did not use physical force, special means or firearms, or [who did not] carry such special means or firearms, it is necessary to clarify what kind of physical or psychological violence they were subjected to during the group attacks and mass disorder, what kind of weapons or ammunition were used against them or, in their presence, against other police officers or servicemen, what information they have regarding the use of weapons, ammunition or other devices designed to cause destruction or arson by the participants in the mass disorder and the consequences of such use.

3. When interviewing people suspected or accused of participating in mass disorder, it is also necessary to invite them to testify about the circumstances known to them of use of firearms, ammunition or other means mentioned above by police officers and servicemen, as well as by people in civilian clothing.

4. It is necessary to carry out an investigation among the eyewitnesses to the events, especially those living in the area where the events related to the disturbances took place, in connection with the same circumstances, issuing a prior order to the Armenian police to identify eyewitnesses and summon them for questioning pursuant to the procedure prescribed by law.

5. To clarify as soon as possible, by comparing the results of the investigation into the above circumstances and the conclusions of the relevant forensic examinations (or the experts' preliminary official conclusions), whether the injuries which are similar were inflicted in the same location or locations.

To clarify by all means, in the case of [wounds caused by] firearms or extraordinary bodily injuries, whether the police officers or servicemen used firearms of the calibre and type corresponding to the injuries in question or ammunition causing such injuries.

6. To make, within a short period of time, official inquiries with the Armenian police, the Ministry of Defence and [the NSS] with the aim of checking the completeness of their ammunition and the possibility of missing special means and means of personal security, especially firearms; to make the fact of each unit of special means, means of personal security or missing firearm the subject of a special investigation."

71. In March 2008 the SIS Chief gave instructions to regional prosecutors to identify those who had participated in the demonstrations and mass disorder, and to investigate the heads of the regional headquarters of Levon Ter-Petrosyan's election campaign.

72. On 21 March 2008 A.H., the deputy head of the criminological research unit of the Expert Criminological Department of the Armenian police (*ՀՀ ոստիկանության փորձաքրեագիտական վարչության քրեագիտական հետազոտությունների բաժին*), to whom the forensic ballistic examination had been assigned (see paragraph 69 above), produced the results of his examination of the objects and bullets removed from the bodies of Armen Farmanyan, Tigran Khachatryan, Gor Kloyan, Hovhannes Hovhannisyan, Davit Petrosyan and Zakar Hovhannisyan (Conclusion no. 389). In addition to the findings mentioned in paragraphs 39, 43, 46, 49,

52 and 60 above, the expert concluded that the shot marks on the plastic caps of the Cheremukha-7 cartridges were not suitable for matching with a specific weapon because they did not clearly show the characteristics of the bore, while the gas grenades showed no traces of contact with the bore and were not therefore suitable for matching with the weapons that had fired them. As regards the bullets, they were suitable for comparative examination, which made it possible to determine that they had been fired from different weapons. The bullets had been compared with the bullets found at the scenes of unsolved crimes committed on the territory of Armenia and those registered in the National Bullet and Cartridge Case Inventory, but no matches had been identified.

73. On 17 April 2008 two experts of the National Bureau of Examinations and one Ministry of Defence expert examined a video-recording lasting about five minutes, concluding that the five uniformed individuals appearing on the video were firing blank cartridges from AK-74 assault rifles.

74. On 28 April 2008 a senior expert and the head of the criminological research unit of the Expert Criminological Department of the Armenian police, to whom the joint forensic ballistic and chemical examination had been assigned (see paragraph 69 *in fine* above), produced the results of their examination (Conclusion no. 385). The experts concluded, *inter alia*, that all the damage to the clothing of Gor Kloyan, Hovhannes Hovhannisyan, Davit Petrosyan and Zakar Hovhannisyan had been caused by gunshots, without any evidence of close-range discharge. It was impossible to determine the angle of the shots from the damage to the clothing. No ricochet marks were identified on the areas around the damage, but given the findings in Conclusion no. 389 regarding Davit Petrosyan about a possible ricochet (see paragraph 52 above), it could be concluded that the damage to his clothing could also have been caused by a ricochet.

75. On 23 June 2008 an expert of the National Centre of Forensic Examinations conducted a joint forensic trace evidence, ballistic and explosive technical examination of Tigran Abgaryan's military winter coat, as ordered by the SIS investigator. It concluded, *inter alia*, that the tear on the back of the collar measuring 19 x 9 mm had resulted from at least one gunshot with a bullet containing copper, which had passed from front to back and constituted an exit wound. There were no traces of gunpowder soot or half-burnt gunpowder particles around the tear in question (Conclusion no. 09330802).

76. On 13 May, 16 June, 19 June, 23 June, 24 June, 25 June and 26 June 2008 the investigator decided to recognise the applicants Vachagan Farmanyanyan, Alla Hovhannisyan, Sargis Kloyan, Lilya Minasyan, Jemma Vardumyan, Varduhi Baghdasaryan, Edik Harutyunyan, Mariam Hovhannisyan and Ruzanna Harutyunyan (see paragraph 2 above) as the victims' legal heirs for the purposes of criminal case no. 62202608.

77. In June and July 2008 the applicants were presented with the conclusions of the forensic medical examinations (see paragraph 67 above). Seven of the applicants were also presented with Conclusion no. 389 (see paragraph 72 above) and six with Conclusion no. 385 (see paragraph 74 above).

78. It appears from a conclusion by two Russian experts (see paragraph 82 below) that on 8 November 2008 another ballistic examination of the Cheremukha-7 gas grenades was conducted by the head of the criminological research unit of the Expert Criminological Department of the Armenian police (Conclusion no. 1466). The results of this examination appear to have included the following findings.

(a) As a result of the gas discharge from Cheremukha-7 type tear-gas grenade cartridges, their plastic caps had been exposed to heat, melted and were unsuitable for matching. As a result of collision or contact with an obstacle, foreign mechanical traces had been generated on them, which also made matching difficult;

(b) There were foreign traces on the plastic caps of the Cheremukha-7 tear-gas grenades submitted for examination, such as deformations, cracks and traces of rubbing and contact, caused by collision with a hard object or having passed through an obstacle;

(c) The shot marks on the plastic caps of the Cheremukha-7 tear-gas grenades submitted for examination were unsuitable for matching with a specific weapon because they did not clearly show the characteristics of the bore, while the gas grenades (metal parts) showed no traces of contact with the bore and were therefore unsuitable for matching with the weapons that had fired them.

79. On an unspecified date the SIS submitted a request to the Ministry of the Interior of the Russian Federation for a technical examination of the Cheremukha-7 gas grenades.

80. On 30 December 2008 an official of the relevant department of the Russian Ministry of the Interior conducted the technical examination, stating that, in accordance with the technical conditions adopted in 1976, the maximum shelf life of Cheremukha-7 tear-gas grenade cartridges was five years. The suitability for use of Cheremukha-7 tear-gas grenade cartridges produced in 1986 and 1989 could only be established after their testing. After the expiry of the shelf life of Cheremukha-7 tear-gas grenade cartridges, their technical characteristics might alter and their combat effectiveness might be reduced. In particular, the duration of tear-gas emission and the maximum range of the gas grenade might be reduced or the cartridge might malfunction because of capsule failure. The use of Cheremukha-7 tear-gas grenade cartridges with an expired shelf life against people would not cause harm to their life or limb. It was not prohibited to use Cheremukha-7 tear-gas grenade cartridges in open spaces, but it was prohibited to fire them directly at people. They could be fired towards terrain or objects located near offenders, taking

into account the direction of the wind to ensure that the gas fumes moved towards the offenders.

81. On 20 January 2009 the SIS asked the Russian authorities to carry out an additional forensic ballistic examination of the Cheremukha-7 gas grenades and their plastic caps removed from the bodies of Armen Farmanyanyan, Tigran Khachatryan and Gor Kloyan.

82. On 4 February 2009 two ballistic experts of the Expert Criminological Centre of the Ministry of the Interior of the Russian Federation (*Экспертно-криминалистический центр министерства внутренних дел Российской Федерации*) issued their conclusion after examining the Cheremukha-7 gas grenades and their plastic caps (Conclusion no. 913). They began by recapitulating the findings of the ballistic examination conducted on 8 November 2008 (see paragraph 78 above). The experts then concluded that there were no bore marks of the weapons from which the gas grenades had been fired on the surface of their metal casing. This was because there had been no direct contact between the surface of the casings and the bore because there were plastic caps on both sides of the casings, the purpose of which was to lead the grenade through the bore and “lock in” the gunpowder gas at the time of firing. The bore marks on the surface of the plastic caps were unsuitable for matching with the weapons from which they had been fired.

83. On 23 March 2009 amendments were made to the Criminal Code. Article 225 § 3 (see paragraph 139 below) was repealed and a new sub-paragraph 10.1 added under paragraph 2 of Article 104, which prescribed a penalty for murder committed during mass disorder by one of its participants (see paragraph 137 below).

84. It appears that on 24 March 2009 a new criminal case was instituted under Article 104 of the Criminal Code, which was joined to case no. 62202608.

85. It further appears that on 13 July 2009 another criminal case was instituted under, *inter alia*, Article 373 § 3 of the Criminal Code (see paragraph 142 below) for a violation of the rules for the use of KS-23 type special means when quelling the mass disorder and the resulting involuntary manslaughter of three people and the injury of three others. The case was joined to criminal case no. 62202608 and appears to have established that KS-23s, which were special-purpose firearms, had been used in the area of Mashtots Avenue and Grigor Lusavorich Street, Leo Street and Paronyan Street by four non-commissioned officers of the Police Troops: L.H. and A.A. of the Special Operations Detachment and M.G. and V.S. of military unit no. 1033. It was also established that out of a total of fifty-six Cheremukha-7 tear-gas cartridges fired, twenty, nineteen, eight and nine had been fired by L.H., A.A., M.G. and V.S. respectively. On unspecified dates all four officers were charged under, *inter alia*, Article 373 § 3 of the Criminal Code with the

involuntary manslaughter of Armen Farmanyan, Tigran Khachatryan and Gor Kloyan.

86. The Government alleged, and the applicants disputed, that the investigation in that case had also established that weapons of various types and calibres, including KS-23s, had been used by both the participants in the disorder and the Police Troops, and that various explosive devices, including military grenades, had been used against the police officers and the servicemen of the Police Troops. It had been further established that Cheremukha-7 type tear-gas grenades, after ricocheting off a wall or other obstacle or after passing through an obstacle, were capable of causing injuries, including fatal ones, depending on the angle of collision and the type of obstacle.

B. The complaints lodged by the applicants

87. On 3 February 2010 the applicants lodged complaints with the Prosecutor General alleging, on the basis of Article 2 of the Convention, that the SIS had failed to carry out an effective investigation into the deaths of their relatives. They argued that no criminal proceedings had been instituted in respect of the murder of their relatives, that they had been recognised as victims (see paragraph 76 above) with delays of about two to four months and that the crime scene had not been examined and photographed. They also raised arguments specific to their individual cases.

88. On 8 February 2010 the Prosecutor General dismissed all the complaints, finding that the SIS had carried out and was continuing to carry out a comprehensive and objective investigation. It appears that the Prosecutor General informed the applicants in writing of his decision, but that no copies were provided. The applicants' requests to receive such copies were rejected by the Prosecutor General on the grounds that he was not obliged to provide any.

89. On 2 April 2010 the applicants lodged complaints with the Kentron and Nork-Marash District Court of Yerevan ("the District Court") alleging that the SIS had failed to carry out an effective investigation and to show due diligence in examining the circumstances of the deaths and seeking damages in this regard. They also complained that they had had no access to the case file, which had prevented them from lodging requests and complaints and effectively defending their rights, and that the Prosecutor General had failed to adopt a decision on their complaints of 3 February 2010 (see paragraph 87 above).

90. By decisions of 24 May, 2 June, 4 June and 8 June 2010 the District Court dismissed the complaints. As regards the allegations of an ineffective investigation, it found that:

"... the Code of Criminal Procedure does not prescribe such investigative or procedural measures, while Article 290 § 1 of the Code of Criminal Procedure

provides that complaints can be lodged with a court against the unlawfulness and unfoundedness of the decisions and actions of the body of inquiry, the investigator, the prosecutor and the bodies carrying out operational and intelligence measures which are provided for by the Code of Criminal Procedure.

Accordingly, this complaint falls outside the scope of the judicial review of the investigation.”

91. As regards the alleged lack of access to the case file (see paragraph 89 above), the District Court found no violation of the applicants’ rights, since the rules of criminal procedure only allowed full access to the case file after the completion of the investigation. Lastly, the court found that there had been no inaction on the part of the Prosecutor General since he had adopted decisions on the applicants’ complaints on 8 February 2010 and they had been informed of this in writing (see paragraph 88 above).

92. On 2, 12, 14 and 18 June 2010 the applicants lodged appeals.

93. By decisions of 2, 13, 17 and 19 July 2010 the Criminal Court of Appeal dismissed the applicants’ appeals and upheld the respective decisions of the District Court.

94. The applicants lodged appeals on points of law, which were declared inadmissible by the Court of Cassation on 14 September and 22 October 2010.

95. On 28 February 2011 the applicants lodged their applications with the Court.

C. The “SIS document”

96. On 26 December 2011 the SIS published a document entitled “Communiqué on the results of the investigation conducted within the scope of the criminal case examined by the SIS into the circumstances of the mass disorder which took place in the capital on 1 and 2 March 2008” (hereinafter “the SIS document”).

97. The SIS document began by setting out the circumstances of the events which took place in Yerevan from 20 February onwards, describing how the leaders of the opposition had allegedly planned, organised and provoked the mass disorder of 1 and 2 March, including by forming groups of people ready to commit violence and distributing weapons among them, with the aim of destabilising the internal political situation in the country (see paragraphs 9, 13, 17, and 21 above). As a consequence, armed resistance and riots took place in the area of the Myasnikyan monument, as well as on Grigor Lusavorich Street, Leo Street, Paronyan Street and Mashtots Avenue, resulting in 187 injured servicemen of the Police Troops and police officers, thirty-two injured civilians, ten deaths and more than 500,000,000 Armenian drams (AMD) worth of damage to public and private property.

98. In the description of the events of 1 March 2008, it was stated that from 6 p.m. onwards the command of both the regular police forces and the

Police Troops deployed at the intersection of Mashtots Avenue and Grigor Lusavorich Street had been assigned to the Deputy Chief of Police, A.Y., and the Commander of the Police Troops, G.G. They were stationed there to prevent the crowd from advancing towards the National Assembly building and the President's residence. It was further stated that between 8 p.m. and 11 p.m. the protestors had launched regular armed attacks on the police forces. After the attempts to install barbed wire had failed and before the water cannons were put to use, in order to calm the crowd and prevent attacks, in addition to tear-gas launchers and blank cartridges, it was decided to authorise the commissioned and non-commissioned officers of the Police Troops equipped with assault rifles to open fire in the air with tracer bullets in order to exert psychological pressure. Furthermore, after the Police Troops had retreated to Leo Street, Tigran Abgaryan was shot with a rifle by a participant in the mass disorder from behind the corner of a building (see paragraphs 61-63 above). The Police Troops sniper shot him, wounding him in the leg. It was stated that the identity of that person was still being investigated.

99. For the purpose of preventing the mass disorder, the Police Troops had been equipped with the following weapons and ammunition:

(a) 16 units of AK-74 assault rifles with 1,920 units of 5.45 mm tracer bullets, of which 1,405 units were used and 515 units were returned to the arsenal;

(b) eight units of AK-74 assault rifles with 480 units 5.45 mm blank cartridges, of which 280 units were used;

(c) ten units of Kornet type guns with 130 rubber bullets, of which 62 were used;

(d) four units of KS-23 rifles intended for firing Cheremukha-7 and Siren-7 tear-gas cartridges and Volna-R rubber bullets;

(e) 89 units of Cheremukha-7 and five units of Siren-7 tear-gas cartridges and 180 units of Volna-R rubber bullets, of which 56 units of Cheremukha-7 tear-gas cartridges and 129 units of Volna-R rubber bullets were used;

(f) seven units of SPSH guns intended for firing Cheremukha-4 tear-gas cartridges;

(g) 154 units of Cheremukha-4 tear-gas cartridges, of which 79 units were used;

(h) 15 units of Cheremukha-1, 15 units of Cheremukha-5, 80 units of Siren-6 and 16 units of Dreif tear-gas grenades, of which 29 units of Siren-6 and four units of Dreif tear-gas grenades were used;

(i) seven units of Zarya and five units of Kasset stun grenades, of which four units of Zarya and five units of Kasset stun grenades were used; and

(j) one SVD type sniper rifle with 20 units of 7.62 mm bullets, of which 1 was used and 19 were returned to the arsenal.

100. The SIS document also described the investigative and other measures taken in each case to establish the circumstances of the deaths. In

this connection, it referred to the various forensic examinations conducted, including medical, ballistic and other examinations. It further stated that the investigation had established as follows:

(a) Armen Farmanyany (paragraphs 37-40 above), who had been engaged and financed by an opposition member of parliament, had recruited participants for the mass disorder. At around 2 p.m. on 1 March 2008 he had led a group of young people to the area of the Myasnikyan monument where, at around 4 p.m., he had distributed metal bars, wooden bats and Molotov cocktails among them and instructed them to be ready to attack the police officers, which had later been carried out under his leadership. At around 9 p.m., in front of School no. 24 on Paronyan Street, Armen Farmanyany had been shot and had died on the spot. His friend A.V. and a group of unidentified people had put his body on the roof of a car belonging to a nearby person, B.U., demanding that he be transported to hospital. They had driven to 7 Leo Street, where the body had been handed over to an ambulance. These circumstances had been established on the basis of interviews with about fifteen people, including A.V., B.U., the driver of the ambulance L.K., the doctor M.A., the nurse A.M., the records of photographic identification by nurse A.M. and the results of the examination of the scene where the body had been placed in the ambulance, in which L.K. had participated;

(b) Tigran Khachatryan (paragraphs 41-43 above) had gone to the area of the mass disorder with his friend, Ar.Ab. at around 7 p.m. At around 8 p.m. they had become separated because of the chaos, after which Tigran Khachatryan had gone with a group of participants in the mass disorder to the arch near the intersection of Paronyan Street and Leo Street, where he had been wounded and had died. These circumstances had been established on the basis of interviews with about twenty people, including Ar.Ab., S.K., the driver of the ambulance N.S., the doctor L.N., the nurse A.M., the records of photographic identification, the results of the examination of the scene where the body had been placed in the ambulance, in which L.N. had participated, and other material in the criminal case file;

(c) Gor Kloyan (paragraphs 44-46 above) had gone to the area of the mass disorder at around 8 p.m. At around 9.30 p.m. he had gone with a group of participants to the intersection of Mashtots Avenue and Grigor Lusavorich Street, where he had been wounded. After that he had been transported by taxi by a group of unidentified people. These circumstances had been established on the basis of interviews with about fifteen people, including V.A. and K.A., the records of photographic identification by them and other material in the criminal case file. According to operational information, Gor Kloyan had been engaged in the mass disorder by Armen Farmanyany (see this same paragraph, under letter (a));

(d) Hovhannes Hovhannisyan (paragraphs 47-49 above) had been standing at around 8 p.m. next to the Myasnikyan monument with a beer bottle in his hand. At around 9 p.m. he had gone with other participants in the

mass disorder, waving a stick in his hand, towards the intersection of Mashtots Avenue and Grigor Lusavorich Street, where he had been shot and died. A nearby person, H.H., and an unidentified woman had transported his body to Yerevan Medical Centre no. 2. These circumstances had been established on the basis of interviews with about twenty people, including H.H. and eyewitnesses G.P. and K.H., and the results of the examination of the scene;

(e) Davit Petrosyan (paragraphs 50-52 above) had gone to the area of the mass disorder, Grigor Lusavorich Street, with his brothers-in-law, V.D. and K.D., and his cousin, N.V., at around 8 p.m. At around 9 p.m. he had been taking photographs with his mobile telephone at 2 Paronyan Street and had temporarily become separated from the others. Sometime later, they had found him wounded and transported him in an unidentified car to hospital, where he had died. These circumstances had been established on the basis of interviews with about fifteen people, including his mother and the victim's legal heir, the applicant Jemma Vardumyan, Davit Petrosyan's wife, L.D., as well as V.D., K.D. and N.V., the conclusions of the computer technical examination, the results of the examination of the scene and other material in the criminal case file;

(f) Grigor Gevorgyan (paragraphs 53-54 above) had been wounded at around 9 p.m. on 1 March 2008 in front of a shoe repair shop at the intersection of Paronyan Street and Leo Street. His body had then been transported by a group of unidentified people to Zakyan Street, where it had been picked up by an ambulance and transported to the morgue. These circumstances had been established on the basis of interviews with about twenty people, including the driver of the ambulance M.M., the nurse D.Z. and Grigor Gevorgyan's acquaintance living in the same neighbourhood, R.S., the records of photographic identification and the results of the examination of the scene where the body had been placed in the ambulance. According to the statements of Grigor Gevorgyan's wife and legal heir, the applicant Varduhi Baghdasaryan and those of her brother R.B., Grigor Gevorgyan had gone to the area of the mass disorder with R.B., but they had lost each other at around 9 p.m.;

(g) Samvel Harutyunyan (paragraphs 56-57 above) had gone to the area of the mass disorder at around 6.30 p.m. with his friend, A.B., and his cousin, G.G. At around 9.30 p.m. Samvel Harutyunyan, after becoming separated from A.B. and G.G., had gone with a group of participants in the mass disorder to the intersection of Mashtots Avenue and Grigor Lusavorich Street, where he had advanced, throwing stones, and had been injured. He had then been transported by a group of unidentified people to hospital. These circumstances had been established on the basis of interviews with about twenty people, including A.B., G.G., eyewitnesses K.A. and V.A. and Samvel Harutyunyan's father and legal heir, the applicant Edik Harutyunyan, the records of photographic identification by K.A. and V.A., the results of an

investigative experiment with their participation and other material in the criminal case file;

(h) Zakar Hovhannisyan (paragraphs 58-60 above) and his friend, Ar.Av., had gone to the area of the mass disorder at around 11 p.m. on 1 March 2008. Between midnight and 1 a.m. Zakar Hovhannisyan and other participants in the mass disorder had been in the vicinity of Mashtots Avenue, where he had been shot. Ar.Av. had fled the scene, while Zakar Hovhannisyan had been transported to hospital by a group of unidentified people. Even though Ar.Av., who had avoided appearing before the investigating authority for a year and a half, had denied having been in the area of the mass disorder and having witnessed the incident, this fact had been confirmed by interviews with about fifteen people, including Zakar Hovhannisyan's brother-in-law V.S., his friends N.M. and V.Y., the latter's father A.Y., Ar.Av.'s friend G.M. and other material in the criminal case file. According to operational information, Zakar Hovhannisyan had been engaged in the mass disorder by Armen Farmanyanyan (see this same paragraph, under letter (a));

(i) Tigran Abgaryan (paragraphs 61-63 above) had been shot by one of the participants in the mass disorder at around 11 p.m. on 1 March 2008, while stationed on Leo Street. The shot had been fired from the corner of Grigor Lusavorich Street. These circumstances had been established on the basis of interviews conducted with around thirty people, including his fellow servicemen.

In conclusion, it was stated in each case that the police and the NSS had been instructed to carry out operational measures to identify witnesses to the above-mentioned incidents and identify and find those responsible.

101. The SIS document then described the criminal investigation, stating that, since criminal case no. 62202608 had also been instituted on the grounds of mass disorder involving murder (see paragraph 65 above and paragraph 139 below), the deaths had been investigated within the scope of those proceedings. Later, after amendments had been made to Articles 104 and 225 of the Criminal Code (see paragraph 83 above), a new criminal case had been instituted under Article 104 of the Criminal Code (see paragraph 84 above).

Dozens of people had been questioned, including the police officers and the servicemen of the Police Troops who had taken part in the quelling of the mass disorder. All records of the booking in and out of weapons had been seized from the relevant military units of the Police Troops, the records had been studied and all weapons removed from the arsenal had been identified. All firearms and special means assigned to the police officers and the servicemen of the Police Troops performing service in the area of the mass disorder, as well as those which had been removed from the arsenal for the purposes of internal service, had been seized and subjected to ballistic examinations.

The bullets removed from the bodies of Davit Petrosyan, Hovhannes Hovhannisyan and Zakar Hovhannisyan had been compared with the cartridge cases found at the scene of the incident, as well as with the bullets registered in the National Bullet and Cartridge Case Inventory and the bullets fired from the weapons assigned to the police officers and the servicemen of the Police Troops who had taken part in the quelling of the mass disorder. No matches had been made and the weapons from which the shots had been fired had not been identified.

Taking into account the fact that the shot marks on the particles of the Cheremukha-7 tear-gas grenades removed from the bodies of Gor Kloyan, Tigran Khachatryan and Armen Farmanyan were unsuitable for matching with a specific weapon, it had not been established from which weapon the fatal shots had been fired. The fact that a match could not be made between the Cheremukha-7 gas grenade particles removed from the bodies and the weapons from which they had been fired had also been confirmed by the relevant agencies of the Ministry of the Interior of Russia (see paragraph 82 above).

The movements of those who had fired special means, the number of shots fired by them, the locations from which those shots had been fired and the trajectories of those shots had been established (as far as possible) through interviews.

102. The SIS document also referred to the fact that a criminal case had been instituted on 13 July 2009 under Article 373 § 3 of the Criminal Code (see paragraph 85 above) and stated that the relevant investigation had identified the four officers who had fired the KS-23s. Charges had been brought against them for the involuntary manslaughter of Armen Farmanyan, Tigran Khachatryan and Gor Kloyan.

It further referred to the findings of the experts of the Russian Ministry of the Interior (see paragraphs 80 and 82 above), adding that they had also established that, after ricocheting off a wall or other obstacle or after passing through an obstacle, Cheremukha-7 type gas grenade cartridges were capable of causing injuries to people, including fatal ones, depending on the angle of collision and the type of obstacle.

Furthermore, during his visit to Yerevan from 19 to 24 November 2008 the Council of Europe Commissioner for Human Rights had recommended to the Prosecutor General an Irish expert, C.B., who had specialist knowledge of the use of special means. The expert had been invited to Yerevan to take part in the examination aimed at matching the gas grenades removed from the victims' bodies with the specific firearms from which the Cheremukha-7 special means had been fired by the police servicemen. Having received all the information and material by email, C.B. had stated that such matching was impossible.

103. The SIS document further stated that the investigation had established that, during the mass disorder and in the process of quelling it,

weapons of various types and calibres, including KS-23s, had been used by both the participants in the disorder, and the police officers and the servicemen of the Police Troops, and that various explosive devices, including military grenades, had been used against the police officers and the servicemen of the Police Troops.

104. Lastly, it was stated in the SIS document that, following instructions from the President of Armenia, fresh impetus had been given to the investigation. New experienced investigators had joined the investigative team, who had then studied the case material consisting of several hundred volumes and more than one hundred thousand pages, conclusions of hundreds of forensic examinations, dozens of hours of video footage and other evidence. More than 500 witnesses had also been questioned. Following the examination of the video and photographic material, instructions had been given to identify a number of people who might have witnessed the use of force.

D. The split of the proceedings

105. The Government stated that on 5 November 2014 the Prosecutor General had met with some of the applicants to discuss further investigative measures. According to the applicant Vachagan Farmanyanyan, he had been invited to that meeting, where he had been informed that the death cases would be separated into individual sets of proceedings without any explanation being given for that decision.

106. On 9, 10, 11 and 13 December 2014 and 29 January 2015 the SIS decided, on the instructions of the Prosecutor General, to split the proceedings concerning the deaths of the applicants' relatives from criminal case no. 62202608 into individual sets of criminal proceedings. The three cases which concerned involuntary manslaughter as a result of a violation of the rules for the use of KS-23 type special means were examined under Article 373 § 3 of the Criminal Code (see paragraph 85 above), while the remaining six cases were examined under Article 104 of the Criminal Code (see paragraph 84 above).

107. On 8 April 2015 the applicants applied to the SIS for copies of material in the criminal case file or, alternatively, information on the investigative measures taken within the scope of the investigation, in order to submit that information to the Court at the latter's request.

108. By letter of 9 April 2015 the Deputy Head of the SIS informed the applicants that the investigation was still pending and that therefore no copies of the material or information on the investigative measures taken could be provided.

III. ALLEGED FAILURE OF THE GOVERNMENT TO COOPERATE

109. On 8 September 2015 notice of the applications was given to the Government who were specifically asked to submit copies of “all the relevant documents, including the results of all the ballistic and other examinations conducted in the course of the investigation” and “all the documents prepared by the parliamentary fact-finding group” (hereinafter “the FFG”) set up to assist the parliamentary *ad hoc* committee in its investigation of the events in Yerevan (see paragraph 125 below).

110. On 12 May 2016, after the Government had submitted their observations, the applicants wrote to the Court complaining that they had been unable to have access to certain documents and that the Government had failed to provide copies of all the material requested by the Court which was necessary for an effective examination of the case. They pointed specifically to the Government’s failure to provide the results of the forensic examinations and the documents produced by the FFG, as requested by the Court. Furthermore, the Government had made numerous submissions but had failed to disclose any evidence in support of them. The applicants asked the Court to invite the Government to submit the missing documents, including all the documents which they had relied on in their observations, as well as numerous other documents which the applicants considered relevant for the case. They also insisted that the Government submit all the video footage in the criminal case file.

111. On 18 May 2016 the Court forwarded the applicants’ letter to the Government, drawing their attention to the fact that their observations had not included the documents requested in its communication letter of 8 September 2015 (see paragraph 109 above) and inviting the Government to submit those documents.

112. On 1 June 2016 the Government submitted a number of documents, including the results of the post-mortem examinations (see paragraph 67 above), ballistic examinations (see paragraph 72 above), joint ballistic and chemical examinations (see paragraph 74 above) and joint trace evidence, ballistic and explosive technical examinations (see paragraph 75 above), as well as a number of other forensic examinations conducted during the investigation. As regards the FFG’s material, the Government replied that the FFG had not produced any final reports save that concerning the police officer H.T., who had been the tenth victim of the events in question. However, that document was irrelevant for the present case since no application had been lodged by H.T.’s relatives. The Government added that if the applicants or the Court pointed to any document prepared by the FFG, it would be provided immediately if available.

113. On 9 June 2016 the Court wrote to the Government, indicating that it appeared from the material in the case file that the FFG and/or its individual

members had produced at least two documents (see paragraphs 126 and 127 below) and inviting them to submit copies of those documents.

114. On 23 June 2016 the Government replied that the FFG had not received from its individual members the two above-mentioned documents or any other document related to the issues raised in the case produced by its individual members.

115. On 7 July 2016 the applicants wrote to the Court, pointing to the fact that the Government had provided a “strange” explanation for refusing to provide the FFG’s documents. They further complained about the quality of some of the documents provided and the fact that the Government had only provided copies of the results of four ballistic examinations when they had been asked to provide all of them. According to the SIS document (paragraphs 96-104 above), more than 800 forensic examinations had been ordered and more than 5,000 witnesses had been questioned within the scope of the criminal proceedings, but the Government had provided only a handful of those documents. The applicants again requested the Court to invite the Government to provide all the material necessary for a meaningful examination of the case.

IV. FURTHER DEVELOPMENTS

116. On 3 July 2018 a new criminal case was instituted under Article 300.1 of the Criminal Code (overthrowing the constitutional order), which was joined to criminal case no. 62202608 (see paragraph 65 above). Former President Kocharyan and a number of other high-ranking military officials were arrested and charged with overthrowing the constitutional order of Armenia during the period 23 February to 3 March 2008. It was alleged that they had unlawfully involved the armed forces in political processes in breach of the constitutional requirement that the military be politically neutral. The applicants were recognised as the victims’ legal heirs for the purposes of that case.

117. On 14 February 2019 the investigation into that case was completed and the applicants’ representative was granted access to the case file.

118. On 29 April 2019 the case was sent to trial.

119. On 20 May 2019 the trial court suspended the proceedings and applied to the Constitutional Court with a request to determine the compatibility of Article 300.1 of the Criminal Code with the Constitution.

120. On 21 June 2019 the Constitutional Court admitted the application for examination.

121. On 6 July 2020 the applicants requested the Constitutional Court to involve them as a party in the proceedings, arguing that their rights were directly affected by them. It appears that this request was either dismissed or left unanswered.

122. On 26 March 2021 the Constitutional Court adopted its decision, finding Article 300.1 of the Criminal Code incompatible with the Constitution and declaring that provision invalid.

123. On 6 April 2021 the charges against Mr Kocharyan and several other high-ranking officials were dropped and the criminal case was discontinued in view of the outcome of the proceedings before the Constitutional Court (for further details regarding the criminal case against former President Kocharyan and the proceedings before the Constitutional Court, see *Advisory opinion concerning the use of the “blanket reference” or “legislation by reference” technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, §§ 16-21, 29 May 2020).

124. The Government asserted, without providing further details, that as of December 2021 there were several criminal cases pending against the former Minister of Defence and other individuals for overthrowing the constitutional order, while several high-ranking police officers and investigators were being prosecuted for falsifying documents.

V. PARLIAMENTARY INQUIRY

125. On 16 June 2008 the National Assembly set up a parliamentary *ad hoc* committee (hereinafter “the *Ad Hoc* Committee”) to investigate the events which had taken place in Yerevan on 1 and 2 March 2008 and the circumstances which had led to them. Its task was to submit a conclusion to the National Assembly on the violence which had occurred, including the lawfulness and proportionality of the police’s actions, the circumstances of the deaths and recommendations on how to prevent similar events in the future. A fact-finding group (“the FFG”, see paragraph 109 above) was established in October 2008 on the recommendation of the Council of Europe Commissioner for Human Rights to assist the *Ad Hoc* Committee in its work. It appears that the FFG was dissolved in May 2009 because of tensions between its members. The FFG and its individual members nevertheless produced several documents related to certain aspects of the death cases, which were provided to the *Ad Hoc* Committee and on which the latter relied in preparing its final conclusions.

A. Reports produced by the members of the FFG

1. Issues related to the use of Cheremukha-7 tear-gas grenades

126. One of the reports produced by the members of the FFG was entitled “Findings of the Study of Facts Related to the Use of Special Means”. It was based on interviews conducted with: (a) the four officers who had fired the Cheremukha-7 tear-gas grenades, L.H., A.A., M.G. and V.S. (see

paragraph 85 above); (b) the four senior officers who had given the orders to fire the tear-gas grenades, including the former Deputy Commander of the Police Troops, G.P., the Commander and the Deputy Commander of the Special Operations Detachment of the Police Troops, B.K. and M.D., and the Chief of Staff of military unit no. 1033, Ar.An.; and (c) the police official who had conducted the ballistic examination of 21 March 2008, A.H. (see paragraph 72 above). The members of the FFG also studied the relevant USSR legal instruments, such as Order no. 127 of 6 July 1989 establishing the procedure for the use of special means and an instruction manual, issued in 1990, on the use of Cheremukha-7 type special means, both of which were still in force in the Russian Federation. The report included the following passages:

“The [FFG] established that as a result of the use of Cheremukha-7 type special means, civilians Gor Kloyan, Armen Farmanyan and Tigran Khachatryan were killed, and [three other civilians] received bodily injuries. The [FFG] also discovered that [fifteen] military servicemen ... were placed in different hospitals in Yerevan with a diagnosis of poisoning ...

B. Training on the Use of Special Means

[B.K.] admitted that Cheremukha-7 type gas grenades are designed to be used in enclosed spaces ... Nonetheless, in order to justify the use by the Police Troops of Cheremukha-7 in an open space, [B.K.] stated that he remembered very clearly that Cheremukha-7 was also permitted to be used during mass disorder. However, he was unable to present the sources of that information to the [FFG].

[M.D.] ... [initially] stated that special means training had been organised and conducted by [B.K.] and that due to a busy schedule he had been unable to attend the relevant course. At the end [M.D.], in contradiction to his previous statement, told the [FFG] that he had participated in both training courses and used the special means in accordance with the knowledge [he had] acquired ... [M.D.] informed the [FFG] that he knew the rules for the use of special means from personal experience and not from professional literature. At the same time, he stated that he was not aware of the existence of any such literature in the unit.

[Ar.An.] ... stated that he had conducted training on the rules of use and tactical technical parameters of special means in the detachment and that all personnel had passed the required tests. When asked by the [FFG] about the difference between Cheremukha-7 and Cheremukha-4, [Ar.An.] responded that they had different shapes and different methods of use, [but] avoided responding in what circumstances each should be used, stating only that both types were tear-generating. It became known to the [FFG] that [Ar.An.] had overseen the use of special means by the officers of military unit no. 1033.

[L.H.] and [A.A.] ... confirmed that they had attended the above-mentioned training. In addition, the [FFG] was provided with documents proving that the training had taken place and that all the above-mentioned individuals had successfully passed the tests.

C. Order to Use Special Means

[G.P.] ... first stated that nobody had given an order to use KS-23 carbines to fire Cheremukha-7 special means in the direction of the crowd, killing three and injuring

three protestors. According to [G.P.], they had received an order to shoot at the car moving toward them and ... the servicemen equipped with special means had shot in the direction of the protestors on their own initiative.

In response to the [FFG]'s question as to whether the Police Troops had had the authority to shoot at the driver of the vehicle with Cheremukha-7 special means, [G.P.] answered that 'they' had had the power to shoot at the driver of the vehicle and that they were not accountable to anybody for giving such an order.

In response to the [FFG]'s question as to whether 'they' had been authorised by the law to shoot in the direction of the crowd with Cheremukha-7, [G.P.] stated that he did not want to answer that question and that their actions had been in accordance with the law.

... [G.P.] also stated that the special means they had used had been outdated and that after shooting, the smoke, instead of being exhaled, had started to spread over the area, causing the poisoning of several soldiers. He had raised the issue with the Armenian authorities, but no money had been allocated to obtain special means.

... [B.K.] ... confirmed that Cheremukha-7 tear-gas grenades were designed to be used in enclosed spaces and Cheremukha-4 in open spaces during mass disorder, and that both could not be used against groups of people. Initially, [B.K.] stated that the officers equipped with special means ... had not received any special instructions to fire Cheremukha-7. Nevertheless, after we presented him with his statement given in the preliminary investigation in which he had testified that he had given the order to fire Cheremukha-7, [B.K.] told us that he had received that order from ... [G.P.] and passed it on to the members of his team (Special Operations Detachment) [officers A.A. and L.H.], who had been armed with KS-23 carbines and Cheremukha-7 tear-gas grenades.

According to [B.K.], several people came out from the left archway next to the fish shop and started throwing stones in their direction, after which he gave the order to fire Cheremukha-7, thereby violating the requirements of Order no. 127.

In addition, [B.K.] told the [FFG] that at the intersection of Leo Street and Paronyan Street a truck had been heading in their direction, so he had ordered [A.A.] to fire Cheremukha-7 toward the windscreen of the truck, in the direction of the [passenger seat]. However, he could not give any reasonable explanation as to how it was that Tigran Khachatryan, who had been found next to a similar truck ... had died from injuries (blow to the head from behind) inflicted by the Cheremukha-7.

In that regard, the officer of the Special Operations Detachment ... [A.A.] told the [FFG] that ... he had used the special means at a distance of 30 metres from those gathered in front of the Russian embassy and fired in the direction of Leo Street. He stated that he had fired in the direction of [the] truck slowly coming towards the soldiers at a distance of 20 metres.

[Another officer of the Special Operations Detachment, L.H.,] told the [FFG] that ... they had initially fired rubber bullets at the legs of the demonstrators in order to stop them advancing. After they had failed to stop the movement, [B.K.] had given the order to fire Cheremukha-7. According to him, he had fired first across the walls and then across the kerb of the pavement near the fish shop.

In response to the [FFG]'s question as to why they had not obeyed the law and warned the people by loudspeaker that they were going to use special means against them and given them sufficient time to act appropriately, [B.K.] replied that this should have been done by the Commander of the Police Troops and that he had not

received any order to warn the demonstrators by loudspeaker of the use of special means and to give them time to disperse.

... [M.D.] who was in charge of the officers equipped with special means ... stated that Cheremukha-4 and Cheremukha-7 were designed for use during mass disorder. [M.D.] told the [FFG] that they had had Cheremukha-4 and Cheremukha-7 tear-gas grenades at their disposal and that ‘they’ had fired the Cheremukha-4 and Cheremukha-7 in the direction of the crowd, without effect.

They had fired in the direction of the archway near the fish shop with Cheremukha-4 but to no avail, [and had] therefore at the same time fired with Cheremukha-7. ... [M.D.] contradicted himself by saying that during the firing with Cheremukha-7 the people had been quite far from them, which cast doubt on the need for and objective of using Cheremukha-7 tear-gas grenades.

...

Although in his evidence to the preliminary investigation body [Ar.An.] had stated that [G.G.], the Commander of the Police Troops, had given the order to fire with Cheremukha-7, he nevertheless explained to the FFG that [G.G.] had ordered that only the vehicle be fired at ...

...

E. Study of the ballistic examinations of the gas grenades

The ballistic expert [A.H.], while testifying before the FFG with regard to the examination of the Cheremukha-7 tear-gas grenades, stated that he had used Soviet-era Order no. 127 and the internet while conducting the examination. [A.H.] told the FFG that he knew nothing about the tectonic and technical data of Cheremukha-7 because of a lack of relevant material, which made the FFG have doubts, given that Order no. 127 provides complete information on the tectonic and technical data of Cheremukha-7. In response to the FFG’s question about the cases in which Cheremukha-7 can be used, [A.H.] answered that he had no idea. In response to the next question: [why] he had mentioned in Conclusion no. 389 that Cheremukha-7 were special means designed to preserve public order, expert [A.H.] answered that he had read about it on the internet, even though Order no. 127 explicitly defines the cases in which Cheremukha-7 can be used (see Chapter A) ...”

2. The death of Tigran Abgaryan

127. Another report produced by two members of the FFG, entitled “Circumstances of the death of Tigran Abgaryan, serviceman of the 2nd battalion of unit no. 1033 of the Police Troops of Armenia”, pointed out what they believed to be a number of shortcomings in the investigation into the circumstances of his death, including in the conduct of the forensic examinations (see paragraphs 62 and 75 above). In preparing this report, the FFG members interviewed several officers of the Police Troops of various ranks. One of them, the Chief of Staff, alleged that he had witnessed one of the participants in the mass disorder shoot at Tigran Abgaryan from behind the corner of a building. He was then shot himself by a sniper, but still managed to flee.

B. Conclusion of the *Ad Hoc* Committee

128. On 17 September 2009 the *Ad Hoc* Committee issued its report (hereinafter “the Conclusion”) examining the events leading up to the clashes of 1 March 2008, the police operation at Freedom Square and the developments which followed that operation until the declaration of a state of emergency. As regards, in particular, the events which unfolded in Yerevan after the dispersal of the assembly at Freedom Square, the Conclusion contained, in so far as relevant, the following findings:

“1. Despite separate instances noted in this Report, the Committee has drawn the conclusion that the actions of the police, aimed at thwarting the ... events [that took] place in Yerevan on 1-2 March 2008 [after the police operation at Freedom Square] and later the mass disorder, were generally lawful and in line with the requirements of [domestic law].

...

3. In the opinion of the Committee, the actions carried out by the police [were] not arranged and organised sufficiently operationally, while the actions of separate police officers [were] of low professional competence; otherwise it might have been possible to reduce the occurrence of serious consequences.

4. The studies of the Committee [have] revealed that the Cheremukha-7, as a special means, was applied by the Police Troops of Armenia, particularly by the non-commissioned officers of ... unit no. 1033 and the Special Operations Detachment, who, in using the means, did not always follow the required safety rules, according to which Cheremukha-7, as a special means, is prohibited [for] use in the direction of gatherings of people; this has been affirmed by the technical expert examination conclusion of the Ministry of the Interior of Russia. (As a result, six civilians ... received bodily injuries from the cartridges of Cheremukha-7 special means, three of whom died. The instance that those tear-gas cartridges were used in breach of the required safety rules is supported by the fact that [eleven] servicemen of the Police Troops were also poisoned and received bodily injuries of varying degrees due to the gas emitted during the use of the cartridges). As a result, the use of Cheremukha-7 special means, while probably compelled by the situation, [was] nevertheless unlawful.

5. The Committee finds it necessary to note that, in terms of effectiveness, the cartridges of Cheremukha-7 special means are intended for enclosed areas. (In response to the Committee’s inquiry, the [Armenian] police have stated that the Cheremukha-7 type gas cartridges, considered [to be] special means, which were used against the participants [in] the event, were last acquired in 1990, meaning that they [were] 18 years old, whereas their shelf life is five years. It is probably because of being expired that part of those cartridges [did not maintain the intended qualities].

Conclusion no. 1466 of the forensic ballistic expert examination, carried out by the [Expert] Criminological Department of the [Armenian] police, states that the experimental shots of Cheremukha-7 cartridges provided for examination have revealed that in 40% of the fired cartridges, there [was] no discernible gas leakage from the gas grenades; meanwhile, low flying speed of gas grenades [was] also observed.)

6. The Committee concludes that in technical, organisational and moral-psychological terms the police [were] not adequately prepared to prevent the

mass disorder and similar difficult situations. Several facts attest to this, including the two futile attempts of installing the barbed wire, the ineffective use of water cannons, and in general the other actions aimed at preventing the mass disorder.

7. The Committee finds that the police [were] unprepared and [were] unable to foresee such developments of events in advance, which would have allowed them to control and manage the overall course of events, whereas they ... resisted the actions of the participants in the mass disorder with great difficulty.

8. Moreover, the Committee admits the fact that the 1 March events were unprecedented in their nature and scale; in fact, not only the police, but also our whole society were taken aback by this, and evidently the police could objectively be unprepared for such developments.

9. In this respect, the Committee considers it important that the police troop forces engaged in ensuring public order and public safety should gradually be remanned with professional staff.

10. The police officers and Police Troops servicemen engaged in ensuring public order and public safety should regularly undergo professional requalification.

...

11. The Committee states that the actions of various subdivisions of the [Armenian] police were not coordinated and organised, and certain personnel members [fell into] panic ...

12. The Committee considers as requisite the technical-material re-equipping of the police with technical and special means which will be more effective and safe when applied.

13. The Committee also considers ... important the establishment of a legal framework for carrying out actions aimed at ensuring public order and safety, particularly as to the use of physical force, special means and weapons.

14. The Committee finds that officers of all power structures engaged in ensuring public order, defending safety, and involved in states of emergency are obliged to wear appropriate uniforms with distinctive emblems; an aspect which was not adhered to in certain cases. (Video-recording no. 2 shows a young person in civilian clothing armed with a sub-machine gun in the presence of police officers. Yet it turned out that this person [was] a serviceman driver of the Ministry of Defence who reported to duty in civilian clothing due to the urgent call)."

129. The Conclusion further included a chapter dedicated to examining the circumstances of the deaths. The death cases were studied individually, with the case of Tigran Abgaryan receiving a more detailed examination. In doing so, the *Ad Hoc* Committee examined the document concerning the circumstances of Tigran Abgaryan's death prepared by the members of the FFG (see paragraph 127 above) and the comments made in reply by the SIS, reaching, in so far as relevant, the following findings:

"Since the bullet causing the gunshot wound to Tigran Abgaryan was not found, a joint forensic trace evidence, forensic ballistic and explosive technical examination of his uniform was therefore ordered. The conclusion of the examination states: 'Damage present on the military winter jacket is that of a firearm, of a bullet nature, caused by a bullet containing copper and as a result of at least one shot in the front-to-back direction. The described firearm damage to the military winter jacket is

exit damage'. According to the hypothesis of the police and [preliminary investigation body], Tigran Abgaryan died of a gunshot fired from a firearm by a participant in the mass [disorder]. However, since the preliminary investigation has not yet revealed the identity of the person whose firearm gunshot caused the death of Tigran Abgaryan, the Committee may not refute the hypothesis put forward by the police and the preliminary investigation body, or put forward another hypothesis.

...

The Committee ... states that the position of the [members of the FFG] is inconclusive ... [and that] the hypothesis put forward by [them] is inadmissible.

However, the Committee is not satisfied with the actions of the preliminary investigation body, since so far the circumstances of Tigran Abgaryan's death, and particularly the perpetrator, as well as the instrument of crime ... have not been fully established.

As regards the conclusions of the forensic medical examinations, the Committee finds that a number of conclusions provided by the Republic Scientific-Practical Centre of Forensic Medicine of the Ministry of Health of the Republic of Armenia are sometimes incomprehensible even for professionals and, of course, [have] resulted in various interpretations, assumptions and ambiguities. The same applies to forensic chemical ... ballistic ... explosive technical and other examinations."

130. The *Ad Hoc* Committee further examined the question of the need for and lawfulness of the use of special means, including the above-mentioned document prepared in this regard by the FFG (see paragraph 126 above) and the comments made in reply by the SIS, reaching, in so far as relevant, the following findings:

"Issues related to the lawfulness of [the use of] special means by the Police Troops of the Republic of Armenia and to the adherence to safety rules during their use became a subject of special examination and consideration by the Committee, taking into account in particular the fact that the use of these means led to the death of three people and bodily injuries of varying degrees to another three, as well as intoxication by tear gas which caused bodily injuries to eleven servicemen of the Police Troops.

The examination revealed:

On 1 March 2008, at about [7.30 p.m., G.G.], Commander of the Police Troops of the Republic of Armenia, together with about 800 servicemen of the Police Troops, was at the crossroads of G. Lusavorich Street and Mashtots Avenue. According to his instruction, 350 servicemen were taken to Shahumyan Square, and about 450 servicemen of the Police Troops remained in place, standing in three lines. The servicemen of the Police Troops who stood in the [first] and [second] lines carried only rubber batons and protective shields, whereas the non-commissioned officers positioned in the [third] line were also armed with special means.

According to the clarifications provided by [G.G.] during the sitting of the Committee, only the non-commissioned officers of unit no. 1033 of the Police Troops and those of the Special Operations Detachment were armed with special means. At about [7.45 p.m.], a large group of participants in the mass [disorder], coming out from behind the barricade constructed next to the Russian embassy, moved towards the intersection of G. Lusavorich Street and Mashtots Avenue. With a view to blocking their movement towards Mashtots Avenue, the troops moved forward, while the barbed wire installing vehicle tried to block G. Lusavorich Street, across the width,

with barbed wire. However, the servicemen of the Police Troops encountered active resistance from the participants in the mass [disorder], who threw stones, metal bars and bottles filled with flammable substances, that is, so-called ‘Molotov cocktails’, at them. During the clash, various servicemen of the Police Troops received bodily injuries of varying degrees and of different [kinds], while the barbed wire installing vehicle was hijacked by the participants in the mass [disorder]. In order not to increase the number of wounded among the personnel and to provide them with medical assistance, [G.G.] decided to withdraw the personnel and move them towards Leo Street and Paronyan Street, creating a turtle formation called ‘testudo’, and to apply special means, rubber and blank cartridges, with the purpose of preventing the attacks.

The second big clash among the participants in the mass [disorder] and the servicemen of the Police Troops took place in the area of Leo Street and Paronyan Street, at about [9 p.m.], where Police Troops officer [H.T.] received fragmentation injuries from the explosion of a grenade fuse, and the Police Troops were again compelled to use special means to halt the advancing of the participants in the mass [disorder] and prevent attacks on them.

During the operations, the Police Troops had the following special means: 10 units of Kornet type pistols intended for firing rubber cartridges, 4 units of KS-23 rifles intended for firing Cheremukha-7 and Siren-7 tear-gas cartridges and Volna-R type rubber cartridges, 7 units of SPSH type pistols intended for firing Cheremukha-4 type tear-gas cartridges, 15 units of Cheremukha-1, 15 units of Cheremukha-5, 80 units of Siren-6 and 16 units of Dreif type tear-gas grenades, 7 units of Zarya and 5 units of Kasset type stun grenades, 154 units of Cheremukha-4, 89 units of Cheremukha-7 and 5 units of Siren-7 tear-gas cartridges, 180 units of Volna-R type rubber cartridges and 130 rubber cartridges for Kornet pistols. Of the aforementioned means, 79 units of Cheremukha-4, 56 units of Cheremukha-7 tear-gas cartridges, 29 units of Siren-6, 4 units of Dreif tear-gas grenades, 4 units of Zarya, 2 units of Kasset stun grenades, 129 units of Volna-R rubber cartridges and 62 units of rubber cartridges for Kornet pistols were used. Of the 56 units of Cheremukha-7 tear-gas cartridges used, 39 were used by two non-commissioned officers of the special operations detachment of the Police Troops of the Republic of Armenia (20 units and 19 units), while 17 units were used by two non-commissioned officers of unit no. 1033 (8 units and 9 units).”

131. Lastly, the Conclusion contained the following general findings of the *Ad Hoc* Committee:

“Considering the fact that during the mass [disorder] in the above-mentioned locations three citizens – Armen Farmanyan, Gor Kloyan and Tigran Khachatryan – died by special means cartridges, in particular ‘Cheremukha-7’ type gas grenade cartridges, the Committee made a finding that they were probably used either in the direction of congregations of people or [that] it happened as a result of shots rebounding off concrete walls, other barricades or barriers.

During the sitting of the Committee of 30 April 2009, in response to the question of [N.Z.], a member of the Committee, on how it was possible to explain the fact that people had died as a result of the use of Cheremukha-7 special means, [H.H.], former [Chief of Police], answered that injuries [could] be caused if it [was] fired in the direction of people at close range. He continued: ‘Maybe it was not fired at the right angle; maybe there were clashes, since at that time the situation was chaotic’.

The circumstance of using those tear-gas cartridges in contravention of the prescribed safety rules is also supported by the fact that [eleven] servicemen of the

Police Troops were also poisoned and received bodily injuries of varying severity. This is also supported by [a number of expert examinations].

Page 55 of the Conclusion describes in detail that the gas grenades of 40% of the fired cartridges did not have noticeable gas leaks; low flying speed of gas grenades was recorded, the gas cartridges had been received in 1990, and their prescribed storage life is five years.

The Committee expresses its reservations with regard to the attitude of the [Armenian] police since, despite the fact that the Committee applied to the police requesting them to provide the relevant instruction on safety rules for the application and use of special means, the latter was not provided. Only in connection with the termination of the activities of the [FFG] was the instruction that the police had provided to the [FFG] transferred to us, together with the other documentation.

The Instruction on the Procedure for the Use of Special Means by the Bodies of Internal Affairs and Internal Troops was approved by Order no. 127 of the Minister of Internal Affairs of the USSR of 6 July 1989, which, however, was repealed in the Republic of Armenia in 2006, together with other legal acts. It means that up to the present moment the Police Troops of the Republic of Armenia do not have a procedure which prescribes the rules for keeping and using special means or the safety rules thereof.

Point 1.3 of the ... Instruction defines the cases for the use of special means; in particular, point 1.3.1 provides that special means shall also be used to prevent mass [disorder], as well as group violations of public order accompanied by violence. According to the 'General Directions' chapter of the Instruction, KS-23 carbines are designed for opening aimed fire with Cheremukha-7 gas grenade cartridges (page 14); however, it is prohibited to open fire in the direction of congregations of people, as well as to fire at offenders at point-blank range.

Point 2.6 of the Instruction explicitly states: 'A Cheremukha-7 type gas grenade is designed for opening aimed fire inside buildings, creating a gas cloud therein'. Although the same Instruction does not contain any direct ban on the use of Cheremukha-7 special means in open spaces, nevertheless, we think that its use was inappropriate and inexpedient, since it could not lead to desirable results.

The Committee also notes that, although the above-mentioned Instruction was repealed in 2006, the [Armenian] police have not yet adopted a new instruction replacing it.

In spite of detailed investigations carried out by the preliminary investigation body and ourselves, the Committee states that, unfortunately, it was technically impossible to identify the KS-23 carbines and, consequently, the person armed with them whose shots caused the deaths of three citizens ... For this purpose, forensic ballistic examinations were arranged both in the Republic of Armenia and the Russian Federation. In particular, the KS-23 carbines that fired Cheremukha-7 cartridges and the Cheremukha-7 cartridges removed from the bodies of the dead ... people, were sent to the Expert Criminological Department of the [Armenian] police to find out the following:

1. whether it is possible to identify Cheremukha-7 type gas grenades with the weapons which fired them;
2. whether there are traces – useful for identification – on [the] Cheremukha-7 type cartridges removed from the [bodies] of the victims.

According to Conclusion no. 1466 of the Expert Criminological Department of the [Armenian] police, the experts arrived at the following conclusions:

1. 'In [the event] of ricochet after colliding with a wall or any other obstacle, as well as after passing through any obstacle, Cheremukha-7 type gas grenades may, depending on the collision angle and characteristics of the material of the obstacle, cause bodily – including fatal – injuries to a human being'.

2. As a result of gas leaking from Cheremukha-7 type gas grenade cartridges, the plastic floating caps undergo a thermal reaction, melt and are no longer useful for identification purposes. As a result of collision or contact with an obstacle, side mechanical traces – damage, scratches – appear and these also impede identification.

3. Traces of shooting on the plastic floating caps of Cheremukha-7 type gas grenades submitted for expert examination are unsuitable for identification of a specific unit of weapon, since the specifics of the bore are not clearly marked on them and metallic corpuses of gas grenades do not bear traces of contact with the bore and are therefore unsuitable for identification of the shooting unit of the weapon.

The [SIS] also applied to the Special Equipment and Communication Research and Production Association State Institution of the Ministry of the Interior of the Russian Federation, providing [the] KS-23 carbines that fired [the] Cheremukha-7 gas grenade cartridges, as well as [the] Cheremukha-7 gas grenades removed from the [bodies] ... of the victims, and asked for answers to the following questions:

a. What is the maximum storage life of Cheremukha-7 type cartridges? Are cartridges produced in 1986 and 1989 suitable for intended use?

b. When the storage life of cartridges has expired, is their use for intended purpose possible, taking into account the risk of causing injury to people's health and life?

c. Is the use of Cheremukha-7 type gas grenade cartridges prohibited in open spaces? If not, [in what] manner [may they be used]?

d. [Has] any methodology [been] developed, and is identification of Cheremukha-7 type gas grenades with the rifles from which they were fired possible?

The following answers were received:

a. The maximum storage life of Cheremukha-7 type gas grenade cartridges is no more than five years.

b. [After the] expiry of the shelf life, the performance characteristics of Cheremukha-7 type gas grenade cartridges may undergo changes, that is, reduced combat characteristics, reduced duration of tear [gas] emission, reduced maximum [range] of the gas grenade, failure of cartridges due to malfunction of percussion caps. The use of expired Cheremukha-7 type gas grenade cartridges against people will not cause injury to their health and life.

c. The use of Cheremukha-7 type gas grenade cartridges in open spaces is not prohibited.

While using Cheremukha-7 and Cheremukha-7 M type gas grenade cartridges, firing directly at a human being is prohibited. Fire may be opened against sites or objects around the offenders; moreover, the direction of the wind that provides the spread of the fume cloud over the offenders should be taken into account.

d. Our organisation is not entitled to conduct ballistic examinations and does not have any information on the methods of identification of the given type of cartridges

and units of weapon. It is expedient to address this question to the Expert Criminological Centre of the Ministry of the Interior of the Russian Federation.

To obtain an answer to the last question, both the Committee and the [SIS] applied to the Expert Criminological Centre of the Ministry of the Interior of the Russian Federation, which provided Conclusion no. 913, stating that:

‘Traces of bore of a firing weapon on the surface of metal shells of gas grenades were not detected.

This is explained by the fact that there is no direct contact between the surface of the shell and internal surface of the bore of gas grenades, since polymeric obturators – designed for sliding the grenade through the pilot segment of the barrel of the carbine and blocking the powder gases – cover the shell from both sides.

Traces of bore on the polymeric caps are unsuitable for the purpose of identifying the unit of weapon originating those traces.’

With a request to identify Cheremukha-7 type gas grenade cartridges with the units of weapon from which they were fired, the Committee also asked the group of experts who arrived from the USA and who had investigated the events of 11 September 2001, as well as the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, to conduct a relevant examination by international experts, [but] the answer was that it [was] technically impossible. This is also supported by the answer of the Irish expert [C.B.] addressed to the [SIS], [who said] ‘I do not think it is possible to establish which particular weapon it was fired from as grenades, unlike bullets, do not have a forensic signature’.

However, the Committee gave a positive assessment [of] the efforts of the Prosecutor General’s Office of the Republic of Armenia and the [SIS] of the Republic of Armenia aimed at revealing the circumstances of the deaths of three individuals ... by Cheremukha-7 type gas grenades; specifically, a criminal case was instituted against four servicemen of the Police Troops who had applied special means during the prevention of the mass riots; they were charged with breaching the rules for handling KS-23 carbines – a special means firearm.

...

4. [At the request] of the President of the Republic of Armenia, the Prosecutor General of the Republic of Armenia transferred to the Committee all material at the disposal of the preliminary investigation body with regard to the death of ten individuals; on the basis of the examination of this material, the Committee finds that the preliminary investigation body has undertaken all possible measures [to clarify] the circumstances of the case.

Nevertheless, the Committee assigns high priority to the issue of regular provision of information to the public by the preliminary investigation body on the circumstances of the death of [the] ten individuals and, particularly, on further actions aimed at identifying and bringing the perpetrators to justice.

...

One of the most important tasks of the Committee is to clarify the circumstances of the deaths of the deceased. In this regard, one fact should be stated first: the Committee, within the scope of the powers vested in it, as well as [on the basis of] the comparison of [the] material and facts at its disposal, should and may only make findings concerning circumstances such as the type of weapon which caused the death, as well as the time, place, and conditions of death ... Meanwhile, the Committee

has not provided an answer to one of the most problematic issues, constituting a matter of public concern, that is, whose actions caused the death, since, even if the Committee so desired, it would not be able to and is not entitled to become a preliminary investigation body and exercise powers vested exclusively in the preliminary investigation body under the criminal procedure legislation.

However, the Committee is hopeful that the ongoing preliminary investigation will be able to achieve the task it was assigned. In [this] connection, it is recommended that the [SIS] undertakes all necessary measures to establish the causes of death, violence, bodily injuries and other causes.

The Committee states that the operational investigative activities have so far not been effective, particularly:

(a) ownership of the units of weapons, ammunition and other objects intended [to cause] bodily injury found on 1 March 2008 in Freedom Square and adjacent areas, and the circumstances of their presence in the area have not been fully established;

(b) all the circumstances of the deaths of the ten individuals during the mass [disorder], the perpetrators thereof and the people who caused bodily injuries to different people have not been identified;

...

(d) all the units of weapons used during the mass [disorder] and the people who used these units of weapons, except for the case of [F.G.], have not been identified;

(e) the people actively participating in the mass [disorder] and clearly pictured in the video-recordings circulated have not been found;

(f) the identity of the person who fired at Tigran Abgaryan, a serviceman of the Police Troops, and made an attempt to fire at other servicemen, has not been revealed, even though the sniper of the Police Troops noticed and neutralised him by wounding (the sniper clearly described the person concerned, the precise location of injuries received);

...

(l) all the policemen who used physical force and violence against the participants in the mass [disorder] have not been identified ...”

VI. EVIDENCE PROVIDED BY THE APPLICANTS

132. The applicants submitted several expert reports to the Court produced at the request of EHRAC (see paragraph 4 above), including a report on the medical aspects of the post-election deaths by J.C., a forensic pathologist, dated 21 September 2016 (see paragraph 133 below) and a report dated 26 September 2016 by D.D., a forensic practitioner in the field of firearms, ballistics and explosives (see paragraphs 134-136 below). Both experts were based in the UK.

A. Report on the medical aspects of the post-election deaths

133. The forensic pathologist J.C. carried out an assessment of the forensic medical and ballistic examinations conducted at domestic level. The relevant parts of his report provide as follows.

Gor Kloyan (see paragraphs 44-46 above) – the blackening of the surface of the pelvic bone and surrounding tissue, recorded by the forensic medical expert, could point to a fairly close-range shot in which soot had entered the wound. Furthermore, given Gor Kloyan's moribund state on arrival at the hospital, he had obviously lost a great deal of blood by that stage and therefore early initial resuscitation might have increased his chances of survival, particularly if he had been given fluids and blood to restore his blood volume.

Davit Petrosyan (see paragraphs 50-52 above) – with only kidney and liver damage, in theory, Davit Petrosyan's injury was a survivable gunshot wound. Therefore, had he received immediate medical aid at the scene, with fluid and blood replacement, his chances of survival would have increased and the outcome might have been different.

Grigor Gevorgyan (see paragraphs 53-54 above) – the gunshot wound to the head caused extensive destruction to the skull and brain, which was suggestive of an injury from a high-energy weapon (high-velocity rifle). With an entrance wound of 0.5 x 0.4 cm, the injury was consistent with the use of 5.45 mm ammunition, such as what had reportedly been available.

Samvel Harutyunyan (see paragraphs 56-57 above) – the shape of the wound was not described in the forensic medical examination conclusion, that is to say whether it was linear, stellate (star-shaped) or something else. Nor was the conclusion accompanied by clinical photographs. It was difficult to speculate on what object could have caused the open injury, although interestingly the provisional diagnosis on admission had been a gunshot wound. Given what was found in some of the other deceased, it could well have been the impact of a Cheremukha-7 tear-gas grenade which had no longer had the force to fully penetrate. However, it could also have been any variety of heavy non-firearm object used as a weapon.

Tigran Abgaryan (see paragraphs 61-63 above) – the entrance wound measuring 3 cm was very large in size, while the hole in the coat collar interestingly measured only 19 x 9 mm. Wounds caused by, for example, 5.45 mm or 9 mm bullets would be around 6 mm and 9 mm in diameter respectively. A shotgun fired at close range would produce a large round wound around 3 cm diameter, but there was nothing at all to suggest that Tigran Abgaryan's injury had been caused by such a weapon. A wound caused by a Cheremukha-7 tear-gas grenade would also be large, but again there was little from the description of the injury, particularly the internal findings, to suggest that a tear-gas grenade had been the cause of that injury. The forensic medical expert had not, however, made any comment on these matters.

As a general comment, J.C. noted that the general feature of the autopsy reports was that the forensic medical experts had recorded their findings but had failed to comment on what those findings might mean. For example, there was nothing about the nature of Grigor Gevorgyan's gunshot wound (potentially caused by a high-energy firearm), the possible causes of Samvel Harutyunyan's head injury (potentially a heavy weapon or impact from a tear-gas grenade) or even a simple comment on the unusual occurrence of deaths caused by tear-gas grenades generally. J.C. further noted that it had made no sense to describe the cause of death of Armen Farmanyan (see paragraphs 37-40 above) and Tigran Khachatryan (see paragraphs 41-43 above) as an "injury to the head" and to state that "no firearm injuries had been detected" because a tear-gas grenade fired into the skull from a firearm was still considered a firearm injury. As regards the ballistic properties of tear-gas grenades, namely the speed at which they leave the grenade launchers, their effective range and their power to penetrate the body, those were questions more for a firearms expert. However, it would seem unlikely that a tear-gas grenade which had struck something else first, that is to say ricocheted, would then have the power to penetrate someone's skull, unless very close by.

B. Report by the forensic practitioner in the field of firearms, ballistics and explosives

134. The forensic practitioner D.D. examined the circumstances of the deaths from a ballistics perspective. The relevant parts of his report provide as follows.

1. Deaths resulting from tear-gas grenades

135. The injuries sustained by Armen Farmanyan (see paragraphs 37-40 above), Tigran Khachatryan (see paragraphs 41-43 above) and Gor Kloyan, (see paragraphs 44-46 above) who had died after being struck by Cheremukha-7 tear-gas grenades, had been severe and the energy of the projectiles at the point of impact had been sufficient to cause them to penetrate to a significant depth, passing through bone and body tissue. Because the projectiles had retained such high energy this suggested a close range, however, it was not possible to provide the specific distance without carrying out comparative testing. It was feasible that sufficient energy could be retained to break human bones, including the skull, after a ricochet in certain circumstances, for instance if the overall range was close and if relatively little energy was absorbed by impact of the ricochet.

As regards Armen Farmanyan (see paragraphs 37-40 above), given the energy with which the projectile had struck the victim, it was quite probable that the damage to the projectile had been caused by impact with his skull. There was no evidence of a very close-range discharge, but as the projectile

had clearly retained great energy when it had struck, the range could not have been such that the initial discharge energy had been greatly depleted. As the plastic cap had been recovered from inside the skull, it seemed that the cap had become detached either as a result of the impact with the skull or due to friction caused as it had travelled into the skull.

As regards Tigran Khachatryan (see paragraphs 41-43 above), some form of impact had probably caused the separation of the plastic caps from the body of the projectile and it could be that it had resulted from the victim being struck. However, the possibility that the caps had detached prior to this could not be completely excluded. The catastrophic damage to the victim's skull indicated that the projectile had retained a great degree of energy, so if it had struck any object prior to contact with the victim, it had not been sufficient to deplete its energy significantly. There was nothing to refute the proposition that the damage had been caused by the victim's skull being struck and that there had been no prior impact or ricochet.

As regards Gor Kloyan (see paragraphs 44-46 above), the projectile recovered from his body did not appear to be significantly disrupted and, given that it had caused a fracture to the upper part of the left pubic bone, the impact to the bone must have been significant. Consequently, it seemed quite possible that the tear in the grenade cap could have been caused by the bone being struck. The somewhat dismissive view in the ballistic report failed to offer any possibilities as to the nature of the six tiny particles removed from the victim's body. It seemed that the particles had either resulted from the discharge of the weapon itself or had been carried into the wound cavity by the projectile. It could not be ruled out that the particles had been ejecta which, if correct, indicated very close-range discharge. The reference in the forensic medical conclusion to the "slightly blackened surface" of the pubic bone might be thought to be another close-range effect. However, it would be expected that any such effect would appear on clothing and skin and that the intervening tissue would prevent the bone being affected. Consequently, the cause of the blackening was not apparent. It would have therefore been prudent to allow experts specialising in examining clothing – because they applied microscopic and chemical analysis – to examine the six particles in question in order to determine whether they were gunshot particles.

D.D. further noted that, if only one fatality had been caused by the impact of a Cheremukha-7 projectile, the possibility that there had been no intention to strike the victim might be considered. However, it would seem unlikely that three individuals had been struck by gas canisters travelling with such high velocity as to cause fatal injury, unless they had been targeted. While it was not possible to assess the range, the fact that the projectiles had retained a very high kinetic energy suggested a relatively close range, although comparative testing could assist in this regard. Such testing could have been carried out by those investigating the deaths.

2. *Deaths resulting from live ammunition*

136. D.D. then turned to the cases involving death by firearms, noting that no analysis appeared to have been carried out to identify the particular weapons used to discharge the fatal 5.45 mm and 9 mm bullets. If test-fired bullets from the weapons deployed had been compared to the bullets recovered, it would have been possible that the specific weapon used to discharge the bullets could have been identified by microscopic comparison. In the absence of short-range effects, such as scorching, stellate tearing of the skin and tattooing, there was nothing to indicate contact or a very close-range discharge in respect of the injuries caused by the 5.45 mm and 9 mm bullets. The shots therefore could have been fired from any distance greater than around 1 metre. It was not known how many weapons had been deployed or discharged during the repression of the protest, but in principle it might well have been possible to link the 5.45 mm and 9 mm bullets with individual weapons by comparing the bullets to test bullets fired from the weapons potentially used. As regards the bullet recovered from Davit Petrosyan's body specifically (see paragraph 52 above), D.D. noted that the relevant photograph showed some marks. The nature of the damage indicated a glancing blow with a solid surface, although the precise nature of the item struck by the bullet before hitting the victim could not be assessed.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND OTHER MATERIAL

A. Criminal Code (2003-2022, as in force at the material time)

137. Article 104 § 1 of the Criminal Code defined murder as the unlawful and premeditated killing of another person. Article 104 § 2 (10.1), which was added on 23 March 2009 (see paragraph 83 above), prescribed a penalty for murder committed during mass disorder by one of its participants.

138. Article 225.1 §§ 1 and 2 prescribed a penalty for organising and holding a public event in violation of the procedure prescribed by law and for inciting disobedience to an order to terminate a public event held in violation of the procedure prescribed by law.

139. Article 225 § 3 prescribed a penalty for organising mass disorder accompanied, *inter alia*, by murder. This provision was repealed on 23 March 2009 (see paragraph 83 above).

140. Article 235 §§ 1 and 2 prescribed a penalty for the illegal acquisition, sale, possession, trafficking or carrying of arms and ammunition by a group of people acting in collusion.

141. Article 316 § 2 prescribed a penalty for assault endangering the life or health of a public official or his or her next of kin in the exercise of his or her official duties.

142. Article 373 § 3 prescribed a penalty for violation of the rules governing the use of arms, ammunition, radioactive material, or explosive or other particularly dangerous devices, objects or material, resulting in manslaughter.

B. Code of Criminal Procedure (1999-2022, as in force at the material time)

1. The victim and the victim's legal heir

143. Article 58 § 2 of the Code of Criminal Procedure provided that the decision to recognise a person who had suffered non-pecuniary, physical or pecuniary damage as a result of a criminal offence as the victim was taken by the body of inquiry, the investigator, the prosecutor or the court.

144. Article 59 § 1 (9) provided that, after the completion of the investigation, the victim was entitled to familiarise him or herself with all the material in the case file, make photocopies of any such material and copy any amount of information contained in the case file.

145. Article 80 provided that one of the victim's next of kin who had expressed the desire to implement the rights and obligations of a deceased or incapacitated victim in the criminal proceedings was recognised as the victim's legal heir. The decision to recognise the next of kin as the victim's legal heir was taken by the body of inquiry, the investigator, the prosecutor or the judge, at his or her request. If several next of kin applied with such a request, the choice of the victim's legal heir was made by the prosecutor or the judge. The victim's legal heir participated in the proceedings instead of the victim and enjoyed the latter's rights.

2. Complaints against decisions and actions of the investigating authorities

146. Article 103 § 1 provided that a complaint could be brought by participants in the criminal proceedings against the actions and decisions of the authority conducting them, in accordance with the procedure prescribed by the Code. A complaint against the actions and decisions of an investigator or an officer of a body of inquiry could be brought before the relevant prosecutor, a complaint against the actions and decisions of a prosecutor could be brought before a higher prosecutor, and a complaint against the actions and decisions of a court could be lodged with a higher court. In the cases specified by the Code, a complaint against the actions and decisions of the prosecuting authority could be lodged with a court.

147. Article 278 § 2, entitled "Scope of judicial control", provided that a court, in the cases and in accordance with the procedure prescribed by the Code, examined complaints concerning the lawfulness of decisions and

actions of the body of inquiry, the investigator, the prosecutor and the bodies carrying out operational and intelligence measures.

148. Article 290 §§ 1 and 5, entitled “Contesting before a court unlawful and unfounded decisions and actions of a body of inquiry, an investigator, a prosecutor or bodies carrying out operational and intelligence measures”, provided that such decisions and actions could be contested before a court by the suspect, the accused, the defence lawyer, the victim, participants in the criminal proceedings and other people whose rights and lawful interests had been violated by those decisions and actions, if their complaints had not been satisfied by a prosecutor. If the complaint was found to be substantiated, the court adopted a decision obliging the body conducting the criminal proceedings to put an end to the violation of the person’s rights and freedoms.

C. Police Act (2001, as in force at the material time)

149. Section 29 of the Police Act, entitled “Grounds, conditions and limits of the use of physical force, special means and firearms”, provides that a police officer may use physical force, special means and firearms in the cases and in accordance with the procedure prescribed by the Act. Police officers are obliged to undergo special training and regular tests to determine their ability to act in situations requiring the use of physical force, special means and firearms. After undergoing the relevant training, a police officer is entitled to keep and carry firearms and special means. When deciding whether to use physical force, special means or firearms a police officer must be guided by the situation, the nature of the offence and the character of the offender. Prior to the use of physical force, special means or firearms a police officer must give a warning about their use, providing the offender with sufficient time to comply with the lawful orders and discontinue the offence, except in cases where the delay in their use may pose an immediate threat to the life and limb of citizens or police officers, or may lead to other severe consequences, or where such a warning is impossible in the circumstances. A police officer must also: (i) try to minimise the harm caused to the offender, taking into consideration the nature of the offence, the degree of danger posed by the act or the offender to the public and the extent of resistance and disobedience shown; (ii) ensure that first aid be provided to persons who have sustained bodily injuries; and (iii) immediately report all cases of injury or death caused by the use of physical force, special means or firearms to a higher police authority. The police authority must inform promptly the victim’s next of kin and the prosecutor of the incident. The use of physical force, special means or firearms by a police officer in the cases not provided for by law or exceeding the limits of their use entails liability in accordance with the law.

150. Section 31, entitled “Use of special means”, defines special means as technical means (devices, equipment, objects or material) or police dogs

included in the police's armament, the main purpose of which is to have a direct physical or psychological impact on people or physical impact on objects. It lists the types of special means that may be used by police officers, which include, *inter alia*, batons, rubber bullets, handcuffs, stun grenades, water cannons, electroshock devices, police dogs and tear gas. It further lists the situations in which the special means may be used. As regards tear gas, it may be used: (a) where it is necessary (i) to disrupt an attack on citizens and a police officer; (ii) to overcome disobedience or disrupt resistance shown to a police officer or other law enforcement officers; (iii) to liberate people who have been kidnapped, unlawfully deprived of their liberty or held against their will, or housing, buildings, territories and means of transportation which have been seized; or (iv) to disrupt mass disorder and other group activities impeding the functioning of public transport, communications and other institutions; or (b) where there are sufficient grounds to believe that a person or a group of people intend to show armed resistance. All types of special means may also be used in the cases provided for in section 32(1) of the Act (see paragraph 151 below). It is prohibited to use special means against women with noticeable signs of pregnancy, obviously disabled people and minors (except in cases where they are engaging in armed attacks, armed resistance or group attacks endangering people's life and limb), as well as when disrupting peaceful and unarmed unauthorised gatherings if they do not violate the functioning of public transport, communications and institutions.

151. Section 32(1), entitled "Application and use of firearms" lists the situations in which firearms may be used by police officers, including where it is necessary to (i) protect citizens from attacks posing a threat to their life or limb; (ii) repel an attack on a police officer posing a threat to his or her life or limb and prevent an attempt to seize his or her weapon; (iii) liberate hostages; (iv) arrest people caught committing serious or particularly serious offences against life, limb or property and attempting to flee, as well as those showing armed resistance; (v) repel group or armed attacks on citizens' flats or territories occupied by public authorities or institutions, as well as the accompanying police force; (vi) catch people who have fled from police custody, detention or a prison facility or prevent them from fleeing, as well as repel attempts to forcibly liberate them; or (vii) prevent a person wanted for a serious or particularly serious offence from fleeing.

D. Police Troops Act (1998)

152. Section 1 of the Police Troops Act provides that the Police Troops of Armenia are part of the police system of Armenia and are called upon to protect human rights and freedoms from unlawful encroachments and to ensure the safety of society and security of the State.

153. Section 2 provides that the tasks of the Police Troops include, *inter alia*, maintaining public order and ensuring public safety.

154. Section 9 provides that the Police Troops are composed of military conscripts and civilian personnel.

155. Section 10 provides that conscription into the Police Troops is carried out in accordance with the procedure prescribed by the Military Service Act.

156. Section 14 provides that the duties of military units of the Police Troops, when upholding public order and ensuring public safety, include, *inter alia*, involvement in the prevention and disruption of mass disorder. It is prohibited to engage the Police Troops in the prevention of peaceful and unarmed assemblies, rallies, marches and demonstrations.

E. *Ad Hoc* Public Report of Armenia’s Human Rights Defender (Ombudsman): On the 2008 February 19 Presidential Election and the Post-Electoral Developments

157. The Armenian Ombudsman carried out a comprehensive and in-depth analysis of the post-election events in Armenia, some relevant parts of which were cited in the case of *Mushegh Saghatelyan v. Armenia* (no. 23086/08, § 124, 20 September 2018). The relevant parts not cited in that judgment provide as follows:

“3.2.2. The French Embassy (starting from 11.30 a.m. on 1 March)

At around 11 a.m. on 1 March, people started gathering on the square adjacent to the French embassy. People had gathered to express their protest and indignation about the events that had taken place earlier that morning.

There is a clear correlation between the events of the morning of 1 March and what happened during the second half of the day. The events that took place during the second half of 1 March cannot be investigated without a focus on their causal link with the violence done to the demonstration participants earlier in the morning; hence, these two events should be investigated in a common framework.

At 11.15 a.m. on 1 March, the police and the Police Troops detachments that were near the Opera started moving towards the French embassy. Servicemen of the Police Troops and other special detachments were standing in several directions and lines. The faces of some ‘police officers’ were covered with masks. Employees of [the Main Department for the Fight against Organised Crime of the Armenian police] were taking part in the attempt to disperse the demonstrators.

Numerous provocateurs, planted among the demonstrators, were doing their best to incite clashes with the police. All of these allegations, including eyewitness accounts, must be thoroughly investigated.

Unlike the Freedom Square operation earlier that morning, which was subject to the criminal procedure legislation (given the ‘build-up of arms’ hypothesis), the use of force near the French embassy is subject exclusively to the [Assemblies, Rallies, Marches and Demonstrations Act], especially its provisions regarding the termination of demonstrations and the use of special means. The police have the right to compulsorily terminate a gathering, if the gathering poses a real threat to the lives of people, health, State and public security, the public order, or may inflict considerable property damage on the State, the community, or on natural and legal persons.

Therefore, the physical force applied by the police at around [12] noon on 1 March should be considered unlawful, because there was no official presentation and explanation that the gathering of citizens in the vicinity of the French embassy posed a real threat to any of the aforementioned. Moreover, up to 2 p.m. the demonstration was peaceful ...

The engagement of the Police Troops of the Republic of Armenia in the attempt to disperse the citizens in the vicinity of the French embassy at [12] noon on 1 March should be considered unlawful as well because section 20 [(sic) (see paragraph 156 above)] of the Police Troops Act directly provides that ‘it shall be prohibited to engage the Police Troops in the prevention of peaceful and unarmed assemblies, rallies, marches and demonstrations’ ... It needs to be determined who issued the unlawful order to engage the Police Troops, and whether an internal investigation was instigated.

The situation was different in the second half of the day, when the demonstrators became, in a sense, uncontrollable, which was accompanied with disorder. The events near the French embassy in the second half of 1 March took place in two places: (i) in the vicinity of the Myasnikyan [monument], where demonstrators had assembled and were waiting for their leader, and (ii) in the area between Mashtots Avenue and Paronyan Street and Leo Street, where discrete clashes took place between police officers and groups of people. Moreover, during the night of 1 March, the looting of shops on Mashtots Avenue and the burning of vehicles took place under questionable and controversial circumstances. It is worth noting that the participants in the demonstration in the vicinity of the French embassy did not attack any of the nearby shops ... The investigation needs to reveal whether the peaceful demonstrators gathered in the vicinity of the French embassy are actually linked to those perpetrating disorder in the nearby streets. This question is of particular legal importance from the standpoint of charging the *de facto* leaders of the demonstration with organising disorder in the nearby streets.

The investigation should also address the infliction of firearm wounds upon the police officers, given the fact that the police have still not published any evidence of the demonstrators firing in the direction of the police officers.

During the clashes in the area between Mashtots Avenue and Paronyan Street and Leo Street, eight people died, according to official information, of which seven were civilians. Four of the civilians died of firearm wounds, while the other three died because of special means (tear gas).

To determine whether firearm use in the demonstrations was legitimate, the following tests should be applied:

- Firearm use is lawful in any of the situations specified in [section 32 of the Police Act], including, in particular, ‘while repelling an attack made upon a police officer when his or her life or health are endangered, as well as while preventing an attempt to seize his or her weapon’. It remains to be determined whether each case of firearm use was preceded by a demonstrator’s attack on the police officers, which posed a real threat to the police officers’ life or health, or whether the police officers were the first to attack and to use firearms.
- If it turns out that the police could realistically achieve their objective by using special means, but instead, preferred to use firearms, then the principle of proportionality has been breached. It is worth noting that, as a result of using special means, three civilians died. In this regard, the

President [of Armenia] Robert Kocharyan declared: ‘The events illustrated that what we have is rather outdated and not always safe. Had the special means truly been safer, three of the seven civilian lives could have been spared’. Here, a question arises: how did it happen that hazardous special means were used, causing three additional deaths, especially if we consider, as the President said, that *we inherited those means from the Soviet period*[?] The authorities responsible for the investigation should ask the following question: who ordered [the] use [of] those special means? Moreover, [section 29 of the Police Act] provides: ‘Police employees shall undergo special training and regular tests to determine their ability to act in situations requiring the use physical force, special means and firearms’. Which official is responsible for administering those tests? When were they last administered?

- ... [W]hen assessing [the proportionality of the use of force], it must be taken into account that the brains of the dead demonstrators were smashed. Reportedly, the police officers were shooting in the direction of the demonstrators for over an hour. Finally, there is video footage in Armenia, which shows masked individuals firing at people. The [Prosecutor General] has expressed readiness to engage UN experts in verifying the authenticity of those videos.
- It must be determined, in the event of using firearms when there is a considerable accumulation of people, whether it has the potential of inflicting damage upon other individuals. [Section 32 of the Police Act] explicitly prohibits firearm use when there is a considerable accumulation of people if such use has the potential of inflicting damage upon others. It should be noted that, in the provision that prohibits firearm use, the legislature has used the term ‘considerable accumulation of people’, which includes all forms of assembly. If it turns out that, in the instant case, firearms were used in a situation in which there was a real threat of inflicting damage upon other individuals, then such interference will be considered unlawful.”

II. RELEVANT INTERNATIONAL MATERIAL

158. For the relevant Council of Europe and other international material concerning the presidential election of 19 February 2008 and the events of 1 March 2008, see *Mushegh Saghatelyan* (cited above, §§ 125-33) and *Myasnik Malkhasyan v. Armenia* (no. 49020/08, §§ 50-56, 15 October 2020). Extracts of that material not quoted in those judgments are provided below.

A. Council of Europe bodies

1. *Parliamentary Assembly of the Council of Europe (PACE)*

- (a) **Information Note on the Conclusion of the *Ad Hoc* Committee of the National Assembly of Armenia on the events of 1 and 2 March 2008 and “the reasons thereof” (AS/Mon(2009)38 rev2, 6 January 2010)**

159. On 6 January 2010 the PACE Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe

(Monitoring Committee) produced the Information Note on the Conclusion of the *Ad Hoc* Committee (see paragraphs 128-131 above). The relevant parts provide as follows:

“1. ...the National Assembly of Armenia set up a parliamentary [*Ad Hoc*] Committee to conduct an inquiry into these events and ‘the reasons thereof’. However, as a result of its composition – which was dominated by representatives of the ruling coalition – and the fact that it was boycotted by the forces supporting Mr Levon Ter-Petrosyan, it was concluded that this committee would not have the required credibility in the eyes of the Armenian public.

2. Therefore, on recommendation of the Commissioner for Human Rights of the Council of Europe, an independent expert group was established by Presidential decree, which was tasked with establishing the facts with regard to the events of 1 and 2 March, as well as the circumstances that lead [*sic*] to them, on which basis the parliamentary [*Ad Hoc*] Committee could base its conclusions and recommendations.

3. Regrettably, as a result of the insurmountable tensions between the members of this fact-finding group, as well as of the continuous attempts by all sides to politicise its work, the group broke down and was disbanded by the authorities in May 2009.

...

8. When the rapporteurs of the Assembly met with the Chairman of the [*Ad Hoc*] Committee, the latter mentioned the difficulties the [*Ad Hoc*] Committee had encountered in getting materials from the authorities, especially the law enforcement and secret services. However, the report makes no mention of this.

...

10. While agreeing with the Human Rights Defender on [the underlying factors for the events of 1 and 2 March 2008], and also highlighting the effects of a lack of pluralism in the media, the [*Ad Hoc*] Committee, however, concludes that it is the cynical exploitation of these factors by the forces supporting Levon Ter-Petrosyan as ‘propaganda against the authorities’ that created an atmosphere of intolerance and public discontent which, in turn, was manipulated by the opposition to instigate mass disorder.

11. This rather one-sided view of the underlying causes for the political crisis, the surprising lack of criticism of the authorities and placing the blame for the polarised political climate solely on the opposition forces, especially on those supporting Mr Levon Ter-Petrosyan, is regrettable as it undermines the credibility of the report by the Committee. That said, from the recommendations contained in the report (see below) it is clear that, in reality, the Committee made a far more comprehensive, and arguably more balanced, analysis of the factors that caused the crisis, than it was willing to publicise in its report.

...

17. Based on news and witness accounts, the Committee paints a picture of the protests emerging in central Yerevan, following the police actions on Freedom Square, which, fuelled by rumours that the police killed innocent protesters, quickly degenerated into practically uncontrollable riots. While the report clearly notes that opposition leaders were calling upon people to go to the area near the French Embassy, it also recognises that the overall nature of these protests was spontaneous and not premeditated. In that respect, the report confirms the position of the

rapporteurs of the Assembly that the events on 1 March 2008 did not constitute a premeditated attempt at a *coup d'état*.

18. The Committee notes that police snipers were used (despite initial claims of the authorities to the contrary) and that the police decided to have police officers, 'armed with [AK-47] sub-machine guns' fire tracer bullets in the air to exert psychological pressure on the protestors.

19. On the basis of their analysis of the quickly deteriorating situation, the Committee concluded that the police in general had acted lawfully, but raised serious questions with regard to the use of 'special means' by the police. In addition, the Committee condemned the instances of police brutality that it recognised took place in the afternoon of 1 March 2008.

20. In general, the Committee considered that the police had been inadequately prepared – in technical, organisational and 'moral-psychological' terms – to prevent and resolve civil disorder of the scale that took place in the afternoon of 1 March 2008.

...

27. In two of the five deaths from bullet wounds, the bullet could not be recovered, which makes it impossible to establish the type of weapon from which they were fired. Of the other three deaths as a result of bullet injuries, two were the result of a bullet fired by Makarov PM pistol, and one from a bullet fired by a Kalashnikov 47 sub-machine gun. Given the fact that the police was firing tracer bullets with Kalashnikov sub-machine guns over the heads of the protestors (and what goes up has to come down!), as well as the fact that the Makarov PM is the standard issue sidearm of the Armenian police, it could be expected that there would be a very high statistical chance of tracing some of these bullets to the weapons that fired them. However, surprisingly, the Committee reports that the investigation services were unable to trace any of the bullets. The fact that this conclusion is not questioned by the Committee is regrettable, as the claim that the bullets cannot be traced raises a number of serious questions and could easily be construed as a possible cover-up by the police.

28. One person died as the result of a violent impact of a blunt object on the head, which fractured the skull and penetrated the brain. The report does not elaborate further on the nature of the blunt object or the circumstances of the death of this person nor reaches any conclusions in this respect.

29. The death of three persons by tear-gas grenades that were fired by the police has been a matter of great controversy. The Committee established that these tear-gas grenades were acquired still in the time of the Soviet Union and had long since expired. However, on the basis of expert testimony, the Committee concluded this fact had not contributed to their fatal use. Instead, it concluded that the fatalities were the result of grenades being fired directly at, or in the close vicinity of, the protestors at point blank range, which is expressly forbidden in the regulations governing their use. Regrettably, international experts from Russia, the USA and Ireland confirmed to the Committee that it is impossible to match the grenade to the weapon that fired them due to the fact that the bore does not leave a suitable ballistic signature on the plastic casing of the grenade. It is, therefore, doubtful that the policemen that fired these fatal grenades will ever be found.

30. In its investigations, the Committee established that there are currently no valid legal regulations covering the use of 'special means' by law enforcement forces.

...

41. The comprehensive set of recommendations indicate that the Committee has made a far more in-depth analysis of the events of 1 and 2 March 2008 than is reflected in the rest of the report. This contradiction, as well as the manner in which certain issues are either stressed or avoided, give the impression that the Committee wanted, at all costs, to avoid too overtly discrediting the official version of the events or too harshly criticising the authorities on their handling of them. This ‘self-censorship’ is regrettable as it undermines the overall credibility of the inquiry.

...

43. The two most obvious weaknesses of the report are its rather one-sided, bordering on biased description of the events leading up to crisis of 1 and 2 March 2008 and the practically total lack of discussion and analysis of developments that followed the events of 1 and 2 March 2008, such as the arrest and prosecution of a large number of opposition supporters.

...

46. The lack of any concrete results from the inquiry into the 10 fatalities that occurred during the events of 1 and 2 March 2008 is unsatisfactory. There should be further efforts to trace any of the bullets that killed five of the 10 persons as a result of the events of 1 and 2 March 2008, to find the weapons that fired them, especially as there are indications that at least three of these bullets could have been fired by weapons that were used by the police during the events. Failure to properly answer these concerns could easily lead to allegations of foul play or cover up by the police.”

(b) Resolution 1837 (2011): The functioning of democratic institutions in Armenia

160. The relevant parts of Resolution 1837, adopted by PACE on 5 October 2011, provide as follows:

“3. The Assembly reiterates its concern about the lack of results of the inquiry into the 10 deaths that occurred during the March 2008 events. It therefore welcomes the renewed impetus given by the President of Armenia in recent months. In relation to this inquiry, the Assembly considers that:

3.1. it should also focus on the issue of responsibility in the chain of command and the context in which the 10 deaths occurred, in order to avoid similar situations from recurring in the future;

3.2. in the event that individual responsibility for the 10 deaths cannot be established, the reasons for this should be fully explained in the report of the investigation.”

161. The relevant parts of the Explanatory Memorandum to this Resolution, produced by the co-rapporteurs of the Monitoring Committee, provide as follows:

“5. On 20 April 2011, President Sargsyan ordered the law enforcement agencies to give a renewed impetus to the stalled investigations into the March 2008 events and especially into the responsibility for the ten casualties. ...

...

20. The report of the [*Ad Hoc*] Committee paints a picture of the actual events on 1 March as a badly planned and mismanaged police operation – ostensibly to act upon

reports that protestors were amassing arms on [Freedom] Square – that degenerated into practically uncontrollable riots. In this respect, the report [recognises] that the overall nature of these protests was spontaneous and not premeditated. This conclusion confirms the position of the Assembly, expressed in all its resolutions on the matter, that the March 2008 events cannot be considered as a premeditated attempt at a *coup d'état*.

21. In its report, while considering the police action on the morning of 1 March 2008 ‘on the whole lawful and appropriate’, the [*Ad Hoc*] Committee strongly criticised the manner in which the police handled the situation during those events and, particularly, for not implementing measures to establish a dialogue with the protestors or deploying other non-violent mechanisms of crowd control. In addition, it considered that a significant number of individual police actions, including the confiscation and subsequent destruction of video materials of journalists and instances of police brutality, violated legal procedures and were overall unacceptable.

...

31. Until now, the Office of the Prosecutor General and the [SIS] have not been able to identify any person or persons responsible for the ten casualties. The authorities therefore concluded that the opening of an inquiry was not possible as long as clear evidence that would identify the individuals directly responsible for the ten casualties was missing.

32. In our view, this was a restricted view of what such an inquiry should entail. We [emphasised] to the authorities that the aim of the inquiry called for by the Assembly was not only to identify, if possible, the individuals responsible for the ten casualties but also to establish how these casualties could occur during a public demonstration, to investigate possible command responsibility and to recommend that measures be taken to avoid a similar situation during future demonstrations. Furthermore, in the event that no individual responsibility can be established, such an inquiry should explain why this is the case ...

...

35. During our visit in July 2011, we met the Head of the [SIS], which has been tasked by the President of Armenia with re-evaluating all evidence and findings in the investigation into the ten deaths. While he was hopeful and confident that the investigation would lead to results, he confided that, until now, no new evidence has been unearthed that could help identify the persons responsible. In his view, the politicisation of the whole affair was influencing witness statements and their willingness to testify. We stressed the need to investigate command responsibility fully and to provide absolute transparency with regard to the progress, or lack thereof, of the investigation ...

...

37. The fact that, in the end, the police are responsible for investigating their own decisions and actions with regard to the ten deaths is a weak point in the investigation and leads to questions about their impartiality and credibility in the eyes of the Armenian public.”

2. *Council of Europe Commissioner for Human Rights*

(a) Report by the Commissioner on his Special Mission to Armenia on 12-15 March 2008, CommDH(2008)11REV, 20 March 2008

162. The relevant extracts of the report provide as follows:

“... The Prosecutor General stated that the ammunitions had penetrated the bodies, which appears to indicate that they must have been fired at a very close range ...

A review seems necessary of the current riot control measures used by the police as serious mistakes were made ...

The Prosecutor General mentioned specifically the need for international forensic expertise to determine the cause of death of the eight persons. Furthermore, the authorities have requested technical assistance to analyse existing video footages of the events to determine whether they have been manipulated ...”

(b) Report by the Commissioner following his visit to Armenia from 18 to 21 January 2011, CommDH(2011)12, 9 May 2011

163. The relevant extracts of the report provide as follows:

“38. The Commissioner devoted particular attention to the issue of the ten deaths that occurred during the March 2008 events. The lack of results of the investigation into these cases has been a source of grave concern. None of the perpetrators have been identified to date. Furthermore, it appears that command responsibility of senior officials within the police and the security services, who were in charge at the time of the events, was not seriously considered.

...

40. It should be noted that during the March 2008 events, the police was firing tracer bullets with Kalashnikov sub-machine guns over the heads of [protestors]. Taken together with the fact that the Makarov PM is the standard issue sidearm of the Armenian police, it would seem that there is a high likelihood that some of the bullets found in the bodies of the victims can be traced to the weapons that fired them. Nevertheless, the investigation services have indicated that they were unable to trace any of the bullets, despite performing checks with all available weapons used by the police. It has also been impossible to match the tear-gas grenades that killed three persons to the weapon that fired them due to the fact that the bore does not leave a suitable ballistic signature on the plastic casing of the grenade (a fact which had also been confirmed by a foreign expert).

41. During his meeting with the Commissioner, the Prosecutor General of Armenia [A.H.] acknowledged that it has been impossible to resolve the death cases thus far.

42. Out of the four policemen who had been identified as using ‘Cheremukha-7’ gas grenades during the March 2008 clashes, the investigation could not establish who fired the deadly shots which claimed the lives of three persons. Furthermore, the investigation could not identify witnesses present on the scene who could have helped in clarifying this question. The prosecutorial authorities have maintained that the ‘Cheremukha-7’ gas grenades were used lawfully. In contrast, the report [from] the [Ad Hoc Committee] concluded that the tear-gas grenades were used in contravention of safety rules considering the injuries that the police servicemen themselves sustained.

43. The Prosecutor General informed the Commissioner that the investigation for intentional murder would continue. He was of the opinion that the use of force by law enforcement officials and security forces during the March 2008 events has been lawful and necessary to prevent further casualties and attack of State institutions. At the same time, he indicated the willingness of his Office to consider new expertise, facts and elements for this investigation.

44. Several of the Commissioner's interlocutors expressed the view that the investigation has not been conducted professionally. Moreover, as noted in the report by the parliamentary [*Ad Hoc* Committee] ... important video footage materials from journalists and citizens had been erased by the police.

...

48. The question of police violence and abuse has been a recurrent issue in Armenia. The ten deaths which occurred during the March 2008 events, some of which most probably resulted from excessive use of force by a public authority, have turned a stark spotlight on underlying problems.

...

50. The Commissioner finds that the use of force on 1-2 March 2008 was excessive and that it resulted in serious human rights violations.

...

57. In June 2008 the National Assembly established an ad hoc parliamentary committee to conduct an inquiry into the events of 1 March 2008 and 'the reasons thereof'. The [*Ad Hoc* Committee's] composition was dominated by representatives of the ruling coalition, as the opposition did not respond to the committee's invitation to participate. The non-participation of opposition representatives was seen by many as affecting the impartiality and credibility of the [*Ad Hoc* Committee].

58. During his July 2008 visit, the Commissioner proposed the creation of a separate, smaller group of independent experts who would be tasked [with] establishing a factual account of the events of 1 and 2 March 2008, on the basis of which the inquiry committee could base its conclusions and recommendations. The fact-finding group was established by Presidential decree on 23 October 2008 after agreement of all parties and on the basis of parity between nominees proposed by the governing coalition and the opposition. However, political and internal tensions developed between members of the fact-finding group, eventually preventing the achievement of its intended objectives. Although the group was disbanded by the authorities in May 2009, it nevertheless managed to submit some materials and reports for the use of the parliamentary [*Ad Hoc* Committee].

59. On 16 and 17 September 2009 [S.N.], Chair of the parliamentary [*Ad Hoc* Committee], presented the committee's final report. While acknowledging the authorities' responsibility in some of the aspects of the 'root causes' of the March 2008 events, the report expressed the position that the exploitation by the opposition – in particular the forces supporting Levon Ter-Petrosyan – of these factors and of the resulting public discontent, directly instigated the mass disorder. The impression conveyed by the report of the inquiry committee is that the opposition and the demonstrators bear the bulk of the responsibility for the tragic succession of events. This rather categorical denouncement of the opposition's role and the relative absence of criticism of the authorities were seen by many as affecting the credibility of the report.

60. The report further concluded that police actions on 1 and 2 March 2008 were on the whole lawful and proportionate, albeit acknowledging that the police was ill-prepared and that there were instances of misconduct, disproportionate use of force and violence by the police, which should be duly investigated. More generally, in the [*Ad Hoc* Committee's] report examination of police actions, the emphasis was placed on a lack of professionalism rather than on a thorough review of concrete allegations of ill-treatment and other human rights violations.

61. The circumstances of the ten deaths were extensively discussed in the report, including on the basis of the questions raised by members of the fact-finding group. However, the [*Ad Hoc* Committee] was not able to bring new elements that would clarify the circumstances of the deaths and help in identifying those responsible. The report expressed hope that the on-going investigation would contribute to resolving these cases. It criticised the police for mistakes during the investigation process and when using special means, while making a generally positive assessment of the action of the Prosecutor General's Office.

...

66. The Commissioner met with [S.N.], who reflected on his experience as [*Ad Hoc* Committee] chair and upon the lessons learned from the exercise. [S.N.] indicated that the two most significant setbacks in the work of the inquiry committee were the inability to bring the opposition in and the unresolved question of the ten deaths.

67. [S.N.] also expressed dissatisfaction about the uncooperative attitude of the police towards the inquiries made by the committee, which had not been reflected fully in the [*Ad Hoc* Committee's] written report. He recalled that the police had confiscated and erased several video materials from journalists and citizens, which could have been crucial in clarifying the circumstances of the events."

B. United Nations

164. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("UN Force and Firearms Principles") were adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

Principle 2 states that governments and law enforcement agencies should undertake to develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the use of means capable of causing death or injury. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defence equipment such as shields, helmets, bulletproof vests and bulletproof means of transport, in order to decrease the need to use weapons of any kind.

Principle 9 provides that "law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury ... and only when less extreme means are insufficient to achieve these objectives. In any event, intentional

lethal use of firearms may only be made when strictly unavoidable in order to protect life”.

Principle 14 provides that “[i]n the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9”.

C. Human Rights Watch

165. Human Rights Watch published a report entitled “Democracy on Rocky Ground, Armenia’s Disputed 2008 Presidential Election, Post-Election Violence, and the One-Sided Pursuit of Accountability, February 2009”. For a description of the police operation at Freedom Square in the early morning of 1 March 2008, see *Mushegh Saghatelyan* (cited above, § 134). For a description of the events that took place later that day near the Myasnikyan monument and the French embassy, see *Myasnik Malkhasyan* (cited above, § 57). The relevant extracts from the Human Rights Watch Report, describing the events of the evening of 1 March 2008, provide as follows:

“Police build-up, evening of [1 March]

Towards the end of the day journalists and demonstrators saw police and other security personnel regrouping in parts of the city cent[re] close to where the demonstrators were gathered, notably in the vicinity of Republic Square and Mashtots Avenue, and on Leo [Street] and Paronyan [Street] ...

Violent clashes and police use of force

At the Myasnikyan monument, a rally continued until around 3 a.m. on [2 March]. An aggressive police action to disperse the crowd began at around 9.30 p.m. on [1 March], and was met with stone throwing and even petrol bombs from the side of the demonstrators. After that, the police retreated and left the large crowd alone. A smaller group of demonstrators, however, engaged in a violent confrontation with police and security forces. It was in this context that most of the fatalities occurred.

Tracer bullets and police attack

Multiple witnesses told Human Rights Watch that shortly after 9 p.m., without prior warning, police started shooting tracer bullets in the air, apparently intending to intimidate the demonstrators and make them disperse. A first episode of tracer fire lasted about 10-15 minutes. Half an hour later, police in riot gear began approaching from the direction of Leo [Street] and Paronyan [Street]. Organised in four to five rows, they advanced toward the demonstrators, accompanied by the second episode of tracer fire.

One witness who was on Shahumyan Square, just behind the Myasnikyan monument, told Human Rights Watch, ‘I could see the sky full of tracer bullets, shining in red lights. The intense fire lasted at least 10 minutes and I saw the police advancing in several lines, beating truncheons on the shields and making loud noises.’

...

According to [witness G.G.], when the police fired tear gas ‘that’s when we started to fight back. We hid behind cars and buses and threw stones in return. Some also threw Molotov cocktails made of petrol.’

Another protestor who was in a part of the crowd standing near the Russian embassy told Human Rights Watch:

‘Internal troops came and without any warning attacked the demonstrators. I stood in the middle of the protestors. ... When the police were approaching, demonstrators first retreated toward the trolley buses which were used to barricade off the main demonstration site. But then we realised that we could not retreat any further as behind stood our mothers, sisters and brothers ... I did not see who threw the first stone, but stones were thrown from both sides. We collected stones from the sidewalks, broke them into pieces and used them to throw at police.’

A journalist observing the events described to Human Rights Watch what she saw:

‘I had a feeling that [the security forces] were going to kill us all. I was terrified and ran back through Proshyan Street. People were throwing stones and Molotov cocktails. They intended to slow down the approaching police.’

Although Human Rights Watch was not able to determine under what exact circumstances the first casualties took place, the resistance from demonstrators intensified when at least one of the protestors was shot. ...

...

[G.G.] described to Human Rights Watch how a group of 10-15 young men took the fight to the police, chanting ‘Struggle, struggle, struggle to the end!’

Faced with this level of resistance, police retreated, but a small part of the crowd – one witness said around 100 people – pursued them, continuing to attack them. According to [G.G.], police attempted to block the street with razor wire, ‘but [the barrier] did not prevent the people. It was simply pushed aside.’ A lorry carrying razor wire was set on fire. [Another witness, also G.G.,] described to Human Rights Watch seeing five police vehicles burning and a civilian car turned upside down as a result of the first clashes.

...

Clash between police and demonstrators near Kentron police station

Police regrouped north of the demonstration site at the junction of [Paronyan Street and Leo Street], several met[res] away from an arch that leads to the Kentron (central district) police station. According to [witness S.S.], high-ranking police (as evident from their uniforms and epaulettes) were at the arch from the time of the police advance on the crowd, which suggests that operations were being directed, or at least officially observed, from there.

...

About 15 to 20 met[res] away from the police line stood several dozen mostly young demonstrators, chanting ‘Levon, Levon!’ and throwing stones at police. The protestors were not armed, but collected stones from the sidewalks and broke them into pieces. Some also had iron and wooden sticks. Both witnesses described to Human Rights Watch that without any advance warning, police used tear gas against the protestors ... [and] that tracer bullets were shot by military standing behind the three to four rows of riot police.

Some protestors attempted to ram an unmanned car into the police line. [S.S.] told Human Rights Watch:

‘I saw [a] Ural type car driving towards the police line, but there was no driver inside. The car stopped in the middle. Security forces immediately opened intense fire from sub-machine guns at the car. I saw a young man was trying to get into the car, but then police used tear gas and I had to run inside the yard to get fresh air. ... When I came back the shooting was over and I saw a dead body next to the car. Another young man, apparently his friend, was crying for help.’

[S.S.] ran to help. The man on the ground was about 40, slightly bald, and wearing a black coat; his head and neck were covered in blood. [S.S.] helped to carry the body to the sidewalk, where somebody checked for a pulse and said the man was already dead.

[A.A.] saw a minivan with about 15 young protestors drive toward the police lines. Police opened fire on it, bringing it to a stop, and those inside the minivan fled (the witness did not report seeing whether any of them had been injured).

[S.S.] also described to Human Rights Watch how, around 10 p.m., a police officer stepped from beneath the arch, pointed his Makarov pistol in the direction of protestors a few met[res] away who were throwing stones, and fired six shots, apparently randomly. [S.S.] did not see whether anyone was hit.

[A.A.] saw one man shot dead, and another shot in the leg, as they walked toward police lines:

‘I saw two young men together coming from Mashtots Avenue and when they approached the crossroads, I heard a shot and one of them fell on the ground. The other of the two started crying that he was killed. Then a policeman who stood under the arch came and kicked the body, but he was told by others not to do that as he was already dead. Four-five minutes later the other guy was shot in the leg as well and he fell down. He was picked up by others and put into a [car] and taken away.’

[S.S.] described to Human Rights Watch how four policemen dragged a wounded protestor into the arch and beat him with truncheons until he was unconscious. [A.A.] also saw how about six officers attacked three young men who approached the lines from the direction of the main demonstration:

‘Policemen hit one boy with truncheons on his legs. He buckled over with pain and then police made him lie down on the ground and started kicking him and beating him with truncheons. He was then picked up and put into a police car and taken away.’

The clashes were over by midnight. As one witness told Human Rights Watch, ‘The crossroad and nearby streets resembled a battlefield. On the other hand, the main demonstration in front of the Myasnikyan monument with about four or five thousand protestors continued and stayed peaceful. It appears that the majority had no idea about the series of clashes that had taken place a block north at the crossroads. When a witness of the events went to the leaders asking if they knew what was happening ... on the other side of the barricades, the opposition leaders told her that police was shooting, but just to scare them. The protestors at the main demonstration dispersed around 2-3 a.m. after [Levon Ter-Petrosyan] addressed them by phone, asking them to do so in order to avert greater casualties.

...

Shop looting and other criminal damage

Some demonstrators broke into shops on Mashtots Avenue and looted them. Most protestors to whom Human Rights Watch spoke alleged that those shops were broken into by so-called provocateurs intending to smear the peaceful demonstrators. However, at least two witnesses who had been participants in the demonstrations told Human Rights Watch that three shops belonging to prominent supporters of then President-elect Sargsyan were broken into, and thus tried to justify the crowd's [behaviour] as targeting certain oligarchs only. ...

The Office of the Public Prosecutor reported that altogether seven shops were looted and 63 vehicles were set on fire.

...

Investigation of Excessive Use of Force

...

Regarding the many episodes of apparent excessive force, the fact that violence against demonstrators was widespread and the methods used strongly suggest that the force was condoned or at least tolerated by senior officers responsible for commanding the operations. These individuals, in addition to individual officers engaged in assault and other crimes, should be investigated and held accountable. ...

The official investigation into the [1 March] events has so far failed to identify the people responsible for the 10 deaths, and whether any of the deaths were caused by excessive use of force. Even with regards to the three deaths caused by direct impact of tear-gas canisters, weapons only used by the police, the investigation has failed to establish the exact circumstances in which these deaths occurred even though only four police officers were in possession of tear-gas launchers.”

THE LAW

I. JOINDER OF THE APPLICATIONS

166. Having regard to the common factual and legal background of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Courts).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

167. The applicants complained under Article 2 of the Convention that their relatives had been killed as a result of use of force which had not been “absolutely necessary”. They further complained under Articles 2 and 13 of the Convention that the authorities had failed to carry out an effective investigation into the circumstances of their relatives’ deaths. The Court reiterates that, being the master of the characterisation to be given in law to the facts of a case, it is not bound by the characterisation given by the parties (see, among other authorities, *Minasyan and Others v. Armenia*, no. 59180/15, § 35, 7 January 2025). In the present case, having regard to the particular circumstances of this case and the approach taken by the Court in

similar cases (see, *mutatis mutandis*, *Shumkova v. Russia*, no. 9296/06, § 123, 14 February 2012), it considers that the applicants' complaint concerning the procedural aspect of Article 2 also absorbs the complaint under Article 13. The applicants' complaints will therefore be examined solely under 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 save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

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

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

A. Admissibility

1. The parties' submissions

(a) The Government

168. The Government submitted that the applicants had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention. Referring to Articles 103, 278 and 290 of the Code of Criminal Procedure (see paragraphs 146, 147 and 148 above), they argued that the applicants had had the right to lodge complaints with a court against particular decisions or actions of the investigating authority, but that they had instead lodged complaints on 3 February 2010 with the Prosecutor General, asserting in a vague and abstract manner that the ongoing investigation had been ineffective and unlawful (see paragraph 87 above). Such complaints, however, fell outside the scope of judicial control over the investigation since domestic law did not provide that the overall lawfulness of a criminal investigation could be assessed by the courts. Furthermore, having been familiarised with the results of a number of forensic examinations, the applicants had not expressed any objections or lodged any requests for additional examinations or investigative measures. Lodging such requests would have resulted in certain actions or possible inaction by the investigator, which the applicants could have then contested before the courts under Article 290 of the Code of Criminal Procedure. Referring to the case of *Sahakyan and Mkrtchyan v. Armenia* ((dec.), nos. 57687/09, 63452/09 and 63455/09, § 92, 1 October 2013), the Government argued that that specific provision had been recognised by the Court as constituting an effective remedy.

169. The Government further submitted that the applicants had also failed to comply with the six-month rule under Article 35 § 1 of the Convention. In particular, they had lodged their applications with the Court while the

investigation had still been pending and no final decision had yet been adopted. The applicants had been wrong in claiming that the Court of Cassation's decision of 14 September 2010 (see paragraph 94 above) was the "final decision" within the meaning of Article 35 § 1 of the Convention and their applications were therefore premature. Referring to the cases of *Emin and Others v. Cyprus* ((dec.), no. 59623/08, § 36, 3 April 2012) and *Harrison and Others v. the United Kingdom* ((dec.), 44301/13, 25 March 2014), the Government argued that at the time the applications had been lodged, namely on 28 February 2011, the applicants could not be regarded as no longer having any realistic hope of a positive outcome to the investigation or of any effective domestic remedies being available to them. There had been a number of investigative measures taken in the course of the investigation, including after their applications had been lodged. Moreover, in 2014, three years after the applications had been lodged, the applicants had met with the Prosecutor General to discuss further investigative measures (see paragraph 105 above). Later, a new course had been given to the proceedings and the applicants' cases had been split into separate individual criminal cases in order to ensure efficiency in the investigation (see paragraph 106 above). That could be considered a new factor that had revived the authorities' positive obligation to carry out an adequate investigation. It followed that since the ongoing investigation could not be considered a "continuing situation", the applications had been lodged prematurely.

(b) The applicants

170. The applicants submitted that they had exhausted all the available and effective domestic remedies. In particular, they had lodged complaints first with the Prosecutor General and then with the courts under Articles 103, 278 and 290 of the Code of Criminal Procedure, with the final decision being taken by the Court of Cassation on 14 September 2010 (see paragraphs 87-94 above). Those complaints had been lodged specifically against the inaction, actions and decisions of the investigating authority and had not been dismissed by the domestic courts on the grounds of their vagueness, as the Government claimed, but for lack of jurisdiction of the courts to examine them. The refusal to examine their complaint showed that they had had no effective remedies against the ineffectiveness of the investigation, and the Government accepted this by acknowledging that domestic law did not provide that the overall effectiveness of the investigation could be assessed by the domestic courts (see paragraph 168 above). Furthermore, the Government's reference to the case of *Sahakyan and Mkrtchyan* was irrelevant because the applicants in that case had never applied to the courts. As regards the Government's argument that they had failed to lodge any specific requests with the investigating authority, the applicants had been unable to lodge any meaningful requests because they had been denied access

to the case file throughout the entire investigation and had consequently lacked basic information regarding its progress.

171. As regards the Government's objection regarding their alleged failure to comply with the six-month rule (see paragraph 169 above), the applicants referred to the case of *Türkoğlu v. Turkey* (no. 34506/97, 17 March 2005), in which the Court had decided that the application was admissible under Article 2 of the Convention even though the investigation had not yet been completed. The applicants submitted that they had lost all realistic hope of an effective investigation and had had no further remedies to exhaust after they had complained at all three levels of jurisdiction, with the Court of Cassation's decision of 14 September 2010 being the final decision (see paragraph 94 above). The Government's reference to the case of *Emin and Others* was irrelevant because, unlike in that case, the investigation into their relatives' deaths had been a sham, had lacked good faith and had produced no tangible results after almost nine years. Nor could the decision to split their criminal cases be regarded as similar to the new evidence that had come into light and revived the investigation in the *Harrison and Others* case. Moreover, the positive obligation to carry out an effective investigation had persisted throughout the entire investigation and could not be revived by such a procedural decision, so the Government's submissions in that regard were contradictory. Lastly, the applicants submitted that, in any event, they had complied with the six-month rule because the violation of their rights had been a continuing situation and, even if it had not been, they had lodged their applications within six months of the date on which copies of the final decision of 14 September 2010 had been received.

2. The Court's assessment

172. The general principles as regards the issue of the exhaustion of domestic remedies can be found in *Vučković and Others v. Serbia* (preliminary objection) ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-145, 27 November 2023). The Court reiterates, in particular, that the rule referred to in Article 35 § 1 of the Convention obliges those seeking to bring a case against the State before an international judicial body to use first the remedies provided by the national legal system, thus dispensing States from answering before an international body for their acts before they have had an opportunity to put matters rights through their own legal systems. In order to comply with the rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see, among other authorities, *Vučković*, cited above, §§ 70 and 71).

173. In the present case, the Government argued that the applicants had not exhausted domestic remedies as they had failed to lodge requests challenging specific decisions and actions of the investigating authority and

pursued instead an erroneous remedy by complaining to the courts in a vague manner about the overall ineffectiveness of the investigation. Furthermore, they had failed to object to the results of certain investigative measures or request that additional investigative measures be taken (see paragraph 168 above).

174. Having regard to the Government's arguments, the Court wishes first of all to draw a distinction between the present case and the case of *Sahakyan and Mkrtchyan* referred to by them. In that case, the issues raised were under Article 3 of the Convention and the applicants failed to contest the prosecutor's dismissal of their allegations of ill-treatment before the courts. Indeed, as noted by the Court, a decision rejecting the institution of criminal proceedings can be contested before the courts under the Armenian legal system (see *Sahakyan and Mkrtchyan*, cited above, §§ 92, and *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, § 228, 17 March 2016). However, no such decision – or any similar decision refusing or terminating prosecution – was ever taken in the present case or, if one was taken, it was never notified to the applicants. It is also clear from the Government's submissions that, while arguing that the applicants had not exhausted domestic remedies, they at the same time admitted that they had had no right under domestic law to complain to the courts about the overall ineffectiveness of the investigation (see paragraph 168 above). Indeed, it is apparent from the domestic decisions that the applicants' complaint lodged with the courts alleging that the investigating authority had failed to conduct an effective investigation (see paragraph 89 above) was not subject to judicial examination (see paragraph 90 above). It therefore appears that the applicants did not have any effective remedies to exhaust in respect of the alleged inaction of the investigating authority and its alleged failure to conduct certain investigative measures diligently and others at all, as well as its failure to adopt certain decisions. While arguing that the applicants had had the right under domestic law to contest specific decisions or actions of the investigating authority and that their complaint to the courts should have focused on those aspects, the Government failed to specify which particular decisions or actions of the investigating authority could but had not been contested by the applicants before the courts, their submissions in that regard being rather abstract. As regards the Government's argument that the applicants should have objected to the results of various investigative measures or requested that further measures be carried out, the Court notes once again that this argument lacks precision. In any event, it stresses that the obligation to initiate and carry out an effective investigation under Article 2 of the Convention lies with the authorities, who must act of their own motion once the matter has come to their attention. They cannot leave it to the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures, including by requesting particular lines of inquiry or investigative measures (see *Nachova and Others*

v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005-VII, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 165, ECHR 2011). In sum, there are no grounds to allow the Government's non-exhaustion claim.

175. The Court further notes that the Government's objection regarding the alleged failure by the applicants to comply with the six-month rule (see paragraph 169 above) is in essence based on the argument that the applications were lodged too early in the investigation and were therefore premature. The Court considers that this issue is closely linked to the substance of the applicants' complaint concerning the alleged lack of an effective investigation and must therefore be joined to the merits.

176. The Court notes that this 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. Substantive aspect of Article 2 of the Convention

(a) The parties' submissions

(i) The applicants

177. The applicants submitted that their relatives had died as a result of use of force which had not been "absolutely necessary". They argued at the outset that all the deaths in the present case were attributable to the State. Only the police forces had been equipped with firearms and other weapons, including AK-74 assault rifles, Makarov pistols and KS-23 tear-gas grenade launchers, so only they could have been responsible for the deaths of their relatives. No protestor had ever been suspected of or charged with carrying or using firearms or other weapons. The Government's allegation that the protestors at Freedom Square had been in possession of firearms lacked credibility and was based on evidence obtained in questionable circumstances. They had failed to provide any evidence that firearms had been used by the protestors during any part of the protests of 1 March, and that Tigran Abgaryan (see paragraphs 61-63 above) had been killed by a bullet fired by a participant in the alleged mass riot. As regards Samvel Harutyunyan (see paragraphs 56-57 above), who had died from impact by an unknown object, his injuries could also have been inflicted by the police forces, taking into account the indiscriminate and disproportionate use of force by them. Moreover, according to one of the experts hired by the applicants, Samvel Harutyunyan's injury had been most likely caused by the same type of tear-gas grenade as in the case of the other victims in the present case (see paragraph 133 above).

178. The applicants pointed to a number of failures in the planning and control of the police operation, criticising the Government's failure to provide

any documents relating to it, including those concerning its planning and preparation, which would have allowed a full and effective assessment to be made.

179. Firstly, they emphasised the significance of the police's actions in the early morning of 1 March 2008 at Freedom Square for the assessment of the events that had taken place later that day. The nature and apparent intention of this initial police intervention had served to escalate rather than diffuse any potential conflict. The applicants alleged that the police had surrounded the square before dawn and, without any warning or indication of the reason for their presence, had started violently assaulting the protestors. No evidence had been provided and no submission made by the Government as to any security plan put in place in order to disperse the assembly safely and peacefully. No announcement had been made of an impending termination of the assembly, providing people with time to disperse voluntarily, and no identified evacuation routes had been planned. On the contrary, it appeared that the element of surprise had been deliberately planned, with the operation beginning at 6 a.m. when the protestors had still been asleep. The violent dispersal of the peaceful demonstration at Freedom Square had resulted in gradually increasing resistance to the police forces throughout the day, which, combined with a poorly planned and controlled operation, had led to increasing violence against the protestors in the streets, including the massive and indiscriminate use of firearms by the police forces, resulting in the tragic events which had taken place that evening. This unrestrained and dangerous use of ammunition indiscriminately endangering the lives of protestors was another example of failure in the planning and control of the police operation, which had resembled more a military operation rather than a policing operation aimed at dispersing the demonstration and arresting the alleged perpetrators for public disturbance. The authorities had thus failed in their planning and control of the police operation with respect to the use of live bullets and similar military combat high-energy weapons.

180. Secondly, the authorities had failed to properly plan and control the police operation with respect to providing full protective clothing to the servicemen of the Police Troops, which had contributed to the death of Tigran Abgaryan, who, being a young military conscript without any training or policing experience, should not even have been involved in such a tense law enforcement operation, during which the police had fired large quantities of live ammunition.

181. Thirdly, the authorities had failed to secure access routes and evacuation passages for the emergency medical services during the police operation, which had contributed to the deaths of Gor Kloyan and Davit Petrosyan (the applicants refer, in this respect, to the assessment made by the forensic pathologist J.S., summarised in paragraph 133 above).

182. The applicants further referred to the specific instances of the use of force.

183. As regards the deaths of Armen Farmanyanyan (see paragraphs 37-40 above), Tigran Khachatryan (see paragraphs 41-43 above), Gor Kloyan (see paragraphs 44-46 above) and, possibly, Samvel Harutyunyan (see paragraphs 56-57 above; see, also, the assessment by J.S., summarised in paragraph 133 above), caused by Cheremukha-7 tear-gas grenades, the applicants alleged that the victims had been deliberately targeted under orders to “shoot to kill”. The number of people dead and injured, the nature of the injuries caused by the Cheremukha-7 tear-gas grenades during the events of 1 March 2008 and all the other evidence in the case suggested that the victims had been directly targeted and that the tear-gas grenades – whether deliberately or recklessly – had been used as firearms as opposed to crowd-control weapons, with direct and possibly even close-range shots. In this connection, the applicants referred, *inter alia*, to the submissions made by the officers who had fired the tear-gas grenades and their commanders before the FFG (see paragraph 126 above), the submissions made by the former Chief of Police before the *Ad Hoc* Committee (see paragraph 131 above) and the findings reached by the forensic pathologist and forensic practitioner, J.C. and D.D. (see paragraphs 133 and 134-135 above). It followed from the same evidence that the officers had been fully aware of the potentially devastating effects of those weapons and the fatal consequences of their misuse. Given the catastrophic nature of the fatal injuries and the high velocity needed to achieve this, the Government’s allegation of ricochet was unconvincing. Moreover, no evidence had been provided as to the possible surface from which the grenades had allegedly ricocheted, or as to the angle of the alleged ricochet.

184. Furthermore, the legislative framework in place in Armenia at the material time had been inadequate because it lacked any regulations or guidance defining or restricting the use of Cheremukha-7 tear-gas grenades fired from KS-23 carbines. The Police Act (see paragraphs 149-151 above) included no specific provisions or guidance on the appropriate circumstances and limitations of the use of tear gas, the precautions to be taken when using it or on its provision, storage and expiry. In fact, the Cheremukha-7 tear-gas grenades used during the events of 1 March 2008 had expired in 1995, while the government order governing the use of special means had been repealed in 2006. Therefore, the lack of an adequate legislative framework had contributed to the inappropriate firing of the Cheremukha-7 tear-gas grenades directly into the crowds of protestors. It was notable that, in addition to the three deaths caused by the Cheremukha-7 tear-gas grenades, three other individuals had been confirmed to have been injured by the same type of grenades (see paragraphs 85, 126, 128 and 130 above).

185. As regards the deaths caused by live ammunition, namely those of Hovhannes Hovhannisyan (see paragraphs 47-49 above), Davit Petrosyan

(see paragraphs 50-52 above), Grigor Gevorgyan (see paragraphs 53-55 above), Zakar Hovhannisyan (see paragraphs 58-60 above) and Tigran Abgaryan (see paragraphs 61-63 above), it was not disputed that the police forces had widely used firearms during the police operation, including such combat firearms such as AK-74 assault rifles and a SVD sniper rifle. The Government had also acknowledged that of the 1,920 units of 5.45 mm cartridges, the Police Troops had fired 1,405 units, without any indication of how they had been used or in what circumstances. Moreover, this number was not exhaustive because it did not include the bullets fired by the regular police officers who had also participated in the operation of 1 March 2008. The material in the case file was limited to the firearms and special means in the possession of and used by the Police Troops, but lacked any information regarding the firearms in the possession of and used by the regular police officers, despite there being evidence of the use of Makarov pistols, which was the usual sidearm of the Armenian police. This meant that the number of bullets fired must have been even higher and that the amount of ammunition had been equal to that carried by every soldier going into combat duty on the front line. All this had happened during a police operation in which – according to the police and the Government – they had been confronted by up to fifteen to twenty-five “aggressive” protestors at any one time, armed with stones, sticks and Molotov cocktails. It had been reckless to use so much live ammunition and endanger the lives of around 4,000 peaceful protestors gathered at the Myasnikyan monument in order to push back an aggressive group of thirty protestors.

186. Another problem was the indiscriminate manner in which those firearms had been used, namely by firing live tracer bullets over the heads of large crowds of protestors in order to frighten them. Such random and chaotic use of highly lethal firearms with live combat bullets, without any prior warning, had created a very high statistical chance of causing death or injury. At least one person had been confirmed to have been killed by the 5.45 mm tracer fire, but four others had been confirmed to have been injured and another had been suspected to have been killed by the same type of bullets. This had been an escalatory measure which had made some of the more determined protestors entrench themselves even further. Furthermore, the use of ammunition had not been in line with the good practices for policing mass events or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see paragraph 164 above) requiring a differentiated use of lethal and non-lethal force where appropriate. If the intention had been to frighten the protestors, the police forces could have used blank cartridges. However, only 280 blank cartridges had been fired, compared to at least 1,405 live bullets. This had been an irresponsible decision stemming from a military combat mentality and resulting in fatally erroneous decisions both on the ground and by those in command. Moreover, while the Government submitted that 1,405 tracer bullets had been used, they had failed to provide

any description of the circumstances in which they had been used, including when, by whom and on whose orders. There was therefore no evidence that all those bullets had been used to fire into the air. The applicants asked the Court to change its case-law regarding the use of live bullets under Article 2 § 2 (c) of the Convention and to impose a positive obligation on the State to replace lethal weapons with non-lethal options, taking into account that modern technology provided effective non-lethal means of quelling riots. The applicants contested the Government's allegations that their relatives had participated in the mass disorder and that some of them had even recruited other protestors ready to commit violence (see paragraph 189 below). However, even assuming that the victims had been among those likely to show resistance to the police, that had not justified the use of lethal force against the protestors in general and the victims in particular.

(ii) The Government

187. The Government submitted at the outset that the events of 1 and 2 March 2008 had to be assessed in the light of the atmosphere of intolerance and polarisation evident before and after the elections and the subsequent escalation. Nevertheless, given that at the time the Government submitted their observations in March 2016 the investigation had still been pending, it was objectively complicated to clearly establish the circumstances of the deaths of the applicants' relatives.

188. Firstly, the Government commented on the planning and control of the operation. They explained the reasons for the police operation at Freedom Square, denying that its purpose had been to disperse the assembly, and described the manner in which it had been planned and executed, including the developments that had followed up to the declaration of a state of emergency (see paragraphs 9, 13, 17, and 21-29 above). The Government stated that, by describing the chronology and the development of the events, their intention was to shed light on the essence of the escalation of the situation and the intolerance and aggressive behaviour of the protestors. They argued that the events had developed and escalated unexpectedly and in a chaotic manner, and that as the police had been responsible for stabilising the situation and the overall safety of civilians, they had been obliged to respond to the developments in the heat of the moment. Furthermore, it was important to take into account that the events had been unfolding in the very centre of Yerevan and that things had been turning chaotic minute by minute. Under such circumstances, the State had not only had a negative obligation not to use force but also a positive obligation to protect the safety of the civilian population. In short, the operation had been duly planned and controlled but had turned into an unpredictable and chaotic mass event owing to the unacceptable behaviour of the armed and dangerous crowd.

189. The Government described separately the circumstances of each death as presented in the SIS document (see paragraphs 96-104 above),

including the assertions that Armen Farmanyany had been one of the organisers of the mass disorder and had participated in it with Gor Kloyan and Zakar Hovhannisyan, whom he had recruited (see paragraph 100 above). The Government then argued that it had not been established that those deaths had resulted from the use of direct force by the police forces. In particular, even though three of the deaths had been caused by Cheremukha-7 tear-gas grenades, it had been established in two of those cases that the grenades had most likely struck a hard object or passed through an obstacle before striking the victims (see sub-paragraph (b) in paragraph 78 above). It had also been established that after ricocheting off a wall or other object, or after passing through an obstacle, Cheremukha-7 type tear-gas grenades might cause injuries, including fatal ones, depending on the angle of collision and the type of obstacle (see paragraph 131 above). It was therefore possible to assume that the demonstrators had not been directly shot at. Similarly, in one of the deaths caused by Makarov pistols, namely that of Zakar Hovhannisyan (see paragraphs 58-60 above), there had been a deformation and scratches on the bullet removed from his body, which again had happened due to impact with a hard object. The Government disagreed with expert D.D.'s position that the tear-gas victims had been targeted (see paragraph 135 above) and asked the Court to disregard it. They referred, in particular, to D.D.'s statement about the absence of any evidence regarding the angle of the ricochet, arguing that an assessment of the angle would have only been possible if the bodies had been examined at the crime scene and immediately after the deaths. The investigating body had been deprived of this opportunity given that the bodies had been moved and transferred to hospital.

190. The Government also disputed the fact that Hovhannes Hovhannisyan, Samvel Harutyunyan and Tigran Abgaryan had died as a result of the use of force by the police forces. In the case of Hovhannes Hovhannisyan (see paragraphs 47-49 above), who had been killed by a bullet fired from an AK-74 assault rifle, they argued that the bullet in question had not been fired by the police forces because it had been compared with bullets registered in the National Bullet and Cartridge Case Inventory but no matches had been identified. Samvel Harutyunyan (see paragraphs 56-57 above) had died from an open, blunt and penetrating injury to the skull which had been caused by a blunt object and, since many of the protestors had been in possession of various dangerous objects, his death might have been caused by such an object. As regards Tigran Abgaryan (see paragraphs 61-63 above), who had been killed by an unidentified bullet, given the fact that he had been a military conscript, it could be presumed that his death had been caused by the illegal actions of one of the protestors.

191. To demonstrate the scale of the violence with which the police forces had been faced, the Government submitted that thirty-four police employees and twenty-two civilians had been injured during the clashes at Freedom Square and that the list of weapons found there had included, *inter alia*,

pistols, machine guns, ammunition, Molotov cocktails and other dangerous objects. During the mass disorder in the area of the Myasnikyan monument and nearby streets, eight civilians, one serviceman of the Police Troops and one police officer had died, while thirty-five civilians and 186 police officers and servicemen of the Police Troops had received injuries. Ninety-two vehicles had been damaged, including public, private and police vehicles, and twelve commercial premises had been looted. The total damage suffered by the City of Yerevan, as well as by other public and private entities and individuals, had exceeded AMD 400,000,000. An inspection of the area near the Myasnikyan monument and nearby central streets had uncovered around 1,600 bullet casings and more than fifty cartridges of various calibres, more than 1,000 metal bars and wooden sticks, sixty-one Molotov cocktails and two 20-litre containers filled with a flammable substance. Accordingly, the police operation and the use of force in the present case had been proportionate and “absolutely necessary”.

192. Lastly, the Government contested the applicants’ allegation that Armenian law did not contain any specific provisions or guidance on the appropriate circumstances and limitations on the use of tear-gas grenades or other special means (see paragraph 184 above), pointing to sections 29 and 31 of the Police Act (see paragraphs 149 and 150 above).

(b) The Court’s assessment

(i) General principles

193. The Court reiterates that Article 2 ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 174, ECHR 2011 (extracts)).

194. The exceptions delineated in paragraph 2 indicate that Article 2 extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than “absolutely necessary” for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see *McCann and Others*, § 148, and *Giuliani and Gaggio*, § 175, both cited above). The use of the term “absolutely necessary” indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the

force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2 (see *McCann and Others*, § 149, and *Giuliani and Gaggio*, § 176, both cited above).

195. Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The primary duty on the State to secure the right to life entails, in particular, putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards (see *Makaratzis v. Greece* [GC], no. 50385/99, § 57, ECHR 2004-XI, and *Giuliani and Gaggio*, cited above, §§ 208-09).

196. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, § 58, and *Giuliani and Gaggio*, §§ 209 and 249, both cited above). Accordingly, and in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the policing operation resulting in the death of one or more individuals in order to assess whether, in the particular circumstances of the case, the authorities took appropriate care to ensure that any risk to life was minimised and were not negligent in their choice of action (see *McCann and Others*, §§ 194 and 201, and *Giuliani and Gaggio*, §§ 176 and 249, both cited above).

197. In the latter connection, police officers should not be left in a vacuum when performing their duties: a legal and administrative framework should define the limited circumstances in which law enforcement officials may use force and firearms, in the light of the international standards which have been developed in this regard (see *Makaratzis*, § 59, and *Giuliani and Gaggio*, § 249, both cited above). In particular, law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Nachova and Others*, § 97, and *Giuliani and Gaggio*, § 250, both cited above).

198. Lastly, it should not be overlooked that the deaths in the present case occurred in the course of a mass demonstration. While it is the duty of Contracting States to take reasonable and appropriate measures with regard

to lawful demonstrations to ensure their peaceful conduct and the safety of all citizens, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used. In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved. However, it is important that preventive security measures such as, for example, the presence of first-aid services at the site of demonstrations, be taken in order to guarantee the smooth conduct of any event, meeting or other gathering, be it political, cultural or of another nature. Moreover, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance. On the other hand, interferences with the right guaranteed by that provision are in principle justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others where demonstrators engage in acts of violence (see *Giuliani and Gaggio*, cited above, § 251, with further references).

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

- (α) Whether the deaths of Hovhannes Hovhannisyan, Samvel Harutyunyan and Tigran Abgaryan can be attributable to the State

199. The Court observes at the outset that it is undisputed that the deaths of Armen Farmanyan (see paragraphs 37-40 above), Tigran Khachatryan (see paragraphs 41-43 above), Gor Kloyan (see paragraphs 44-46 above), Davit Petrosyan (see paragraphs 50-52 above), Grigor Gevorgyan (see paragraphs 53-55 above) and Zakar Hovhannisyan (see paragraphs 58-60 above) were attributable to the State. On the other hand, the parties disagreed as to whether the deaths of Hovhannes Hovhannisyan (see paragraphs 47-49 above), Samvel Harutyunyan (see paragraphs 56-57 above) and Tigran Abgaryan (see paragraphs 61-63 above) had occurred as a result of the use of force by the police forces (see the applicants' arguments summarised in paragraphs 183 and 185 above and the Government's position set out in paragraph 190 above).

200. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When, as in the instant case, the respondent Government have exclusive access to information able to corroborate or refute the applicants' allegations, any lack of co-operation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations (see *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005-VIII; *Imakayeva v. Russia*, no. 7615/02, § 111, ECHR 2006-XIII (extracts)); and *Georgia v. Russia (I)* [GC], no. 13255/07, § 104, ECHR 2014 (extracts)).

201. A number of principles have been developed in the Court's case-law for situations where it is faced with a task of establishing facts on which the parties disagree. Therefore, in assessing the factual evidence, the Court has adopted 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. In this context, the conduct of the parties when evidence is being obtained may also be taken into account. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Giuliani and Gaggio*, cited above, § 181, with further references).

202. 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 *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 274, ECHR 2007-II, and *Giuliani and Gaggio*, cited above, § 180). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place (see *Ramsahai and Others*, cited above, § 274). Where possible, the Court prefers to rely on the findings of competent domestic authorities, including parliamentary bodies like the one which intervened in the present case, without completely renouncing its supervising power, on the understanding that it may entertain a fresh assessment of the evidence (see *Kavaklıoğlu and Others v. Turkey*, no. 15397/02, § 176, 6 October 2015). 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 *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 238, ECHR 2011 (extracts); *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 586, 13 April 2017; and *Lapshin v. Azerbaijan*, no. 13527/18, § 95, 20 May 2021).

203. In the present case, the Court notes that it is faced with a shortage of facts surrounding the deaths, including the three deaths in question, which is further compounded by the fact that there was no judicial determination of the facts at domestic level (contrast *Makaratzis*, cited above, § 47). Nevertheless, while the material in its possession does not allow it to draw a complete picture of the circumstances in which those three deaths occurred, the Court is not convinced by the Government's argument (see paragraph 190 above) that the bullet which killed Hovhannes Hovhannisyan had not been fired by the police forces because it did not match with any of the bullets

registered in the National Bullet and Cartridge Case Inventory. It refers, in particular, to its findings below questioning the proper conduct of this alleged investigative measure (see paragraph 260 below) and considers such flaws in the investigation to be a more plausible explanation for the failure to trace the bullet. Nor does the fact that Tigran Abgaryan was a military conscript in itself suggest that he could only have been killed by a bullet fired by one of the protestors, as it may as well have been a stray bullet or the result of a ricochet. The Court observes in this latter connection that, as is apparent from some of the material in the case file, a version of events was put forward by the investigating authority, according to which Tigran Abgaryan had been shot by a participant in the mass disorder who then managed to flee, even though he himself was shot by a sniper (see paragraphs 98, 127 and 131 above). However, there is no evidence in the case file in support of this version of events, which moreover appears to have been based exclusively on the statements provided by members of the police forces who were involved in the events and could not be considered impartial witnesses.

204. The Court further points to the applicants' allegation that Hovhannes Hovhannisyan and Tigran Abgaryan could not have been killed by any of the protestors because only the police forces were equipped with firearms and live ammunition (see paragraph 177 above), which the Government disputed, alleging that some of the protestors had also been in possession of such lethal weapons (see paragraphs 86 and 190 above). The Government, however, failed to submit any convincing evidence in support of their allegation (see, *mutatis mutandis*, *Güleç v. Turkey*, 27 July 1998, § 72, *Reports of Judgments and Decisions* 1998-IV). The Court notes that their allegation is based primarily on the official narrative that the post-election rallies and the events of 1 March 2008 were part of a pre-planned attempt at a *coup d'état* organised and provoked by the leaders of the opposition, which allegedly involved a planned distribution of weapons among the protestors camped at Freedom Square in order to instigate armed riots (see paragraph 9 above). The Government further referred to the fact that numerous weapons had been discovered at Freedom Square after the dispersal of the assembly (see paragraph 13 *in fine* above), as well as to the SIS document, according to which the investigation had revealed that protestors had also used various firearms during the clashes with the police (see paragraph 103 above). The applicants contested these allegations (see paragraphs 14 and 177 above).

205. The Court observes that these issues have already been addressed in a number of cases against Armenia which similarly concerned the post-election rallies at Freedom Square and the events of 1 March 2008. The Court held that the rallies at Freedom Square had been peaceful, without any evidence of incitement to violence or acts of violence, until the early morning police operation of 1 March 2008 (see *Mushegh Saghatelyan v. Armenia*, no. 23086/08, §§ 230-33 and 246, 20 September 2018, and *Myasnik Malkhasyan v. Armenia*, no. 49020/08, § 72, 15 October 2020). It

found that there was no convincing evidence to suggest that there had been a build-up of arms at Freedom Square for the purpose of instigating riots and rejected the Government's allegations that the police had been deployed at Freedom Square in order to carry out a search for weapons and that armed demonstrators had been the first to attack the police. It also found that the main if not only purpose of the police operation in the early morning of 1 March 2008 had been the dispersal of the assembly at Freedom Square and that any clashes that had happened there had most likely been the consequence of the measures taken by the police to end it, including the alleged use of excessive force, as opposed to being premeditated acts by the protestors (see *Mushegh Saghatelyan*, cited above, §§ 230, 232, 245 and 247, and *Myasnik Malkhasyan*, cited above, § 80). The Court further pointed to the absence of any evidence linking the weapons allegedly found at Freedom Square, including pistols, grenades and "hedgehog-like" sharp objects, to any of the demonstrators, finding it surprising that no firearms, explosives or bladed weapons had been used by the demonstrators during the police operation at Freedom Square given the allegation that they had been armed with such weapons with the intention of starting an armed riot (see *Mushegh Saghatelyan*, cited above, § 230).

206. The Court further held that the gathering of people in the area of the Myasnikyan monument later that day had been spontaneous and unorganised developments, while the earlier dispersal of demonstrators from Freedom Square, including its heavy-handed nature, as well as a number of other similar or uncontrollable events which had happened later that day, might have played a role in the eventual escalation of violence, as opposed to it being a case of planned and organised disorder or an attempted coup (see *Myasnik Malkhasyan*, cited above, § 80, and *Dareskizb Ltd v. Armenia*, no. 61737/08, § 61, 21 September 2021). In the latter case, the Court held that there was no evidence in support of the Government's allegation that the protestors who had committed violence in that area had been armed with anything other than improvised objects as opposed to firearms or any evidence to suggest that any of the deaths had occurred as a result of deliberate or even unintentional actions on the part of the protestors (*ibid.*).

207. The Court also refers to a number of independent reports concerning the events in question, including by the Armenian Ombudsman and Human Rights Watch, which were based on information collected on the ground and were cited in the above-mentioned judgments, none of which suggested that any of the protestors had been armed with firearms (see paragraphs 157 and 165 above).

208. The Court notes that the Government failed to produce any evidence in the present case to cast doubt on the above-mentioned reports or the findings reached in the cases cited above. The allegations made in the material in the criminal case file investigated by the SIS regarding the possession and use of firearms by the protestors were not supported by any evidence and

appear to have been uncorroborated statements. Therefore, while it is undisputed that some of the protestors committed acts of violence, all the material in the Court's possession suggests that they were armed with makeshift or improvised weapons such as metal bars, wooden bats, Molotov cocktails, stones and similar objects, as opposed to firearms. On the other hand, it is undisputed that the police forces were equipped with firearms, which, moreover, were put to use on a large scale, including AK-74 assault rifles firing 5.45 mm bullets, which is the type of bullet that killed Hovhannes Hovhannisyan (see paragraph 49 above). While the bullet that killed Tigran Abgaryan was never found and its type and calibre were never identified (see paragraph 63 above), in view of all the above elements, the Court has sufficient grounds for holding beyond reasonable doubt that both victims were killed by bullets fired by the police forces.

209. The situation is somewhat different, however, as regards Samvel Harutyunyan, who died after being struck by an unidentified object (see paragraph 57 above). The Court notes that, while there is some evidence suggesting that this may have been a Cheremukha-7 tear-gas grenade, the report by the forensic pathologist J.C., submitted by the applicants, did not reach any conclusive findings in that regard and did not rule out that it could have been any heavy non-firearm object (see paragraph 133 above). It follows from the material in the case file that in total six individuals were struck by Cheremukha-7 tear-gas grenades during the quelling of the protests, three of them fatally (see paragraphs 126 and 128 above), which the Court considers to be a strong indication that the same may have happened to Samvel Harutyunyan, especially since he died at around the same time as – and in the same area where – the three other tear-gas grenade related deaths occurred (see paragraph 56 above and paragraphs 215-216 below). This information alone, however, is insufficient for it to conclude that Samvel Harutyunyan was also killed by a Cheremukha-7 tear-gas grenade. Moreover, it cannot ignore the fact that, as discussed in greater detail below, acts of violence were also committed by the protestors, including throwing stones and Molotov cocktails, and it cannot be ruled out that Samvel Harutyunyan's death was an accident resulting from such acts of violence. It is not clear whether sufficient steps were taken by the authorities to identify the object which had killed Samvel Harutyunyan, including the question of whether it could have been a firearm or other lethal or non-lethal weapon, but this issue falls to be addressed under the procedural aspect of Article 2. As far as the substantive aspect of that provision is concerned, the Court is unable to establish that Samvel Harutyunyan was killed as a result of the use of force attributable to the State.

210. Accordingly, no violation of the substantive aspect of Article 2 of the Convention can be found in respect of his death. Consequently, the Court's analysis under the substantive aspect of that provision will henceforth

be limited to the remaining eight victims, to whom the Court will continue to refer to as “the applicants’ relatives” for the sake of convenience.

- (β) Whether the killings of the applicants’ relatives breached the substantive requirements of Article 2

211. The Court observes at the outset that all the deaths in the present case occurred in the context of the rallies that rocked Armenia after the presidential election of 19 February 2008 and, more specifically, of the protests that took place on 1 March 2008, which the Government described as “mass disorder” and which involved violent clashes between a section of the protestors and the police. The fact that some of the protests on that day turned violent is undisputed between the parties. Indeed, it is clear from all the evidence before the Court that some protestors were not peaceful and engaged in acts of violence, throwing stones, Molotov cocktails and other objects at the police and causing serious damage to public and private property. It appears though that only small groups of protestors engaged in such acts, after they had left the main crowd of several thousand people gathered at the Myasnikyan monument – which appears to have remained mostly peaceful throughout that period – and moved in the direction of a number of adjacent streets (see *Dareskizb Ltd.*, cited above, § 46 *in fine* and § 61). It further appears that the number of protestors who engaged in violent confrontations with the police forces varied between several dozen and about one hundred (see the Human Rights Watch Report, cited in paragraph 165 above), while the area where the main clashes occurred stretched over the two intersections linking Mashtots Avenue and Grigor Lusavorich Street, Paronyan Street and Leo Street, situated at a distance of about 400 to 600 metres from the main rally at the Myasnikyan monument and about 250 metres from each other. While the Court does not have sufficient material before it demonstrating that the applicants’ relatives themselves engaged in any acts of violence and the Government’s assertions in that regard (see paragraph 189 above) are speculative and not supported by any convincing evidence (see, *mutatis mutandis*, *Evrin Öktem v. Turkey*, no. 9207/03, § 48, 4 November 2008), it is undisputed that all of the applicants’ relatives were present and were fatally injured in that area. The Court also accepts that different considerations may apply under the substantive limb of Article 2 as regards the deaths of the protesters, who were the targets of the use of force, and Tigran Abgaryan who was a serviceman of the Police Troops. However, in view of its findings below regarding the specific failures of the police operation and the indiscriminate use of firearms (see paragraphs 212-214 and 228-230 below), the Court does not consider it necessary to differentiate between those two situations in the particular circumstances of the case.

212. Turning to the planning and control of the police operation, the Court notes at the outset that the Government failed to submit any documents relating to the planning of the operation and provided mostly general

information, which limits the Court's ability to make a thorough assessment of how the operation was planned and executed (see, *mutatis mutandis*, *Isayeva v. Russia*, no. 57950/00, § 182, 24 February 2005). It is evident, however, that only the morning police intervention at Freedom Square was a pre-planned operation, while the use of force which led to the deaths of the applicants' relatives occurred later that day in the course of spontaneously unfolding events. However, it cannot be said that the police forces that applied lethal force in the present case were called upon to respond to unexpected circumstances in the heat of the moment, since the entire deterioration of the public-order situation in Yerevan can be said to have been largely the result of the police operation conducted earlier that day at Freedom Square. The Court has previously held that, in circumstances where the need to resort to potentially lethal force occurs as a consequence of a series of decisions and measures taken by a police officer, those decisions will engage the State's responsibility to the same extent as the planning and control of police operations (see *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, § 57, 13 October 2015). In the present case, the Court has already found that, prior to the violent clashes which took place in Yerevan on 1 March 2008, the demonstrations that erupted after the presidential election of 19 February 2008 had been conducted peacefully for ten days, without any violent incidents or calls for violence. It was only on 1 March 2008 that the authorities decided to intervene and put an end to them and to do so under somewhat dubious circumstances, apparently without any warning to disperse and with unjustified and excessive use of force (see *Ter-Petrosyan v. Armenia*, no. 36469/08, § 64, 25 April 2019). Not only was this police intervention found by the Court to have been in breach Article 11 rights of the participants and organisers of those demonstrations (see *Mushegh Saghatelyan*, § 255, and *Ter-Petrosyan*, § 65, both cited above), but it was clearly also an escalatory measure. While in no way condoning any of the violence committed by the protestors later that day, the Court nevertheless considers that – taking into account the mass nature of the demonstrations, the importance they represented to large segments of Armenian society (see, in particular, *Mushegh Saghatelyan*, cited above, § 246, where the Court held that Freedom Square had become a platform for expression on a public matter of major political importance directly related to the functioning of a democracy and of serious concern to large segments of Armenian society) and the manner in which they were terminated – a major deterioration of the public-order situation could have been expected. Admittedly, it is unrealistic to expect the authorities to foresee and be prepared for every possible eventuality given the unpredictability of such mass public events. However, it does not appear in this case that there was any contingency plan in place for such an eventuality, other than having several hundred police officers and members of the Police Troops as backup (see paragraph 9 *in fine* above).

213. The Court has little specific information regarding the police actions that followed the early morning police operation at Freedom Square, including the decisions taken and instructions given in response to the spontaneously unfolding situation in Yerevan with the aim of restoring public order. It notes, however, that the actions of the police were found to be inadequate by the parliamentary *Ad Hoc* Committee, set up for the specific purpose of examining the tragic events of 1 and 2 March 2008 (see paragraph 125 above). The *Ad Hoc* Committee held, *inter alia*, that in technical, organisational and “moral-psychological” terms the police had not been adequately prepared and their actions had not been operationally arranged and organised, pointing to a number of specific failures (see paragraph 128 above). The Court has no reason to disagree with the assessment of the *Ad Hoc* Committee. Indeed, it does not appear that there was any coherent strategy implemented in response to the disorder, including effective supervision and centralised command, or that the authorities were prepared in terms of adequacy of resources. It is notable that the Police Troops of Armenia, who were involved in this process alongside regular police forces (see paragraphs 9, 22 and 25-28 above), were not staffed with professional police officers but military conscripts (see paragraph 154 above). While, in theory, one of the tasks of the Police Troops was the “disruption of mass disorder” (see paragraph 156 above), it is not clear whether these mostly young recruits had the necessary training and experience to participate in the oversight of such large-scale demonstrations, which, moreover, turned violent, including, as will be discussed in greater detail below, the necessary knowledge of how to handle some potentially lethal equipment. Furthermore, it does not appear that these troops were adequately and properly equipped. In particular, the number of crowd-control measures and other non-lethal weapons assigned to them was significantly lower than the amount of live ammunition (see paragraph 99 above), while some of the crowd-control measures provided, such as the Soviet-made tear-gas grenades called Cheremukha-7, were outdated, malfunctioning and not even intended to be used in open spaces (see paragraphs 80 and 131 above). It is evident that this lack of preparation and the inadequacy of the overall police response resulted in them having to resort to increasingly lethal weapons.

214. In light of the above, the Court concludes that the operation in question was not planned and conducted in such a way as to minimise to the greatest extent possible the risk to life.

215. As regards the specific instances of the use of force and the resulting deaths, it appears from a number of reports (see, in particular, the Conclusion of the *Ad Hoc* Committee and the Human Rights Watch Report, cited in paragraphs 130 and 165 above) that one of the most intense and violent confrontations between groups of protestors and the police forces – described by Human Rights Watch as “an aggressive police action to disperse the crowd” – started at around 9 to 9.30 p.m. on 1 March 2008 in the area

mentioned in paragraph 211 above, during which both lethal and non-lethal weapons were put to use by the police forces with the intention of breaking up the riots. It was in this context that six of the eight deaths attributable to the State occurred (see paragraphs 37, 41, 44, 47, 50 and 53 above), with the remaining two occurring in the same area but at later hours (see paragraphs 58 and 61 above). The Court reiterates that the use of force may be justified under Article 2 § 2 (c) of the Convention in cases where the action is taken for the purpose of quelling a riot or insurrection, but it goes without saying that a balance must be struck between the aim pursued and the means employed to achieve it (see *Güleç*, cited above, § 71, and *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 108, 26 July 2005). It remains to be determined whether such a balance was struck in the present case.

– *The deaths of Armen Farmanyan, Tigran Khachatryan and Gor Kloyan*

216. The Court observes that, while each of the applicants' relatives died in different circumstances, there are certain common elements that allow the Court to examine them jointly. Three of the eight victims, namely Armen Farmanyan, Tigran Khachatryan and Gor Kloyan, died as a result of being struck by the above-mentioned Cheremukha-7 tear-gas grenades (see paragraphs 39, 43 and 46 above). The applicants alleged that the three deceased had been deliberately targeted and fired at under orders to shoot to kill (see paragraph 183 above). The Government did not dispute that the Cheremukha-7 tear-gas grenades that killed the three victims had been fired by the servicemen of the Police Troops, but contested the applicants' allegation of deliberate killings and in turn argued that the tear-gas grenades had not been fired directly at the protestors, but that they must have been hit as a result of the grenades ricocheting off a surface (see paragraph 189 above). In this connection, they referred to the deformations on the plastic caps of the relevant tear-gas grenades (see paragraph 78 above).

217. The Court does not doubt that the Cheremukha-7 tear-gas grenades that killed Armen Farmanyan, Tigran Khachatryan and Gor Kloyan had been fired by the servicemen of the Police Troops, especially taking into account the fact that only they were equipped with KS-23 carbines which fired those grenades. Nor does it question the necessity of using tear gas in the situation at hand as the protests taking place in the area in question were clearly not peaceful (see, *mutatis mutandis*, *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, § 41, 16 July 2013).

218. The Court is mindful, however, that where tear gas is applied by firing a grenade by means of a launcher, this generates the risk of causing serious injury or death, if the grenade launcher is used improperly. Consequently, given the dangerous nature of such equipment, its case-law on the use of potentially lethal force is applicable in such cases, which means that police operations – including the launching of tear-gas grenades – should not only be authorised but should also be sufficiently delimited by domestic

law, under a system of adequate and effective safeguards against arbitrary action, abuse of force and avoidable accidents (*ibid.*, §§ 42-43). The Court has already found a violation of the Convention, albeit of Article 3, in cases where the use of tear-gas grenades during demonstrations resulting in injury was not sufficiently regulated (see *Abdullah Yaşa and Others*, cited above, § 49, and *İzci v. Turkey*, no. 42606/05, §§ 64-66, 23 July 2013). In the latter case, the Court noted, under Article 46 of the Convention, that the use of tear gas had to be subject to a clear set of rules, and that a system had to be in place that guaranteed the adequate training of law enforcement personnel and control and supervision of that personnel during demonstrations, as well as an effective *ex post facto* review of the necessity, proportionality and reasonableness of any use of force, especially against people who did not put up violent resistance (*ibid.*, § 99).

219. In the present case, the sheer number of people struck by tear-gas grenades during the quelling of the 1 March 2008 protests, namely six in total, three of whom – the subject of the present case – were fatally injured (see paragraph 128 above), suggests that those were not isolated incidents but a consequence of a more systemic problem. The applicants alleged that the victims had been deliberately targeted by the officers who had fired the tear-gas grenades as they had received orders to shoot to kill (see paragraphs 183 and 216 above). While this possibility cannot be completely ruled out, solid evidence would be required for the Court to come to such a conclusion. However, there is no such evidence in the case file. At the same time, the Court can think of several other causes for this tragic outcome not involving an intention to kill or injure on the part of the law enforcement officers firing those grenades. However, it does not consider this issue to be decisive since, as already indicated in paragraph 194 above, Article 2 is not concerned only with the intentional taking of life and issues may arise under that provision even if the killings were not intentional.

220. In this connection, the Court observes, firstly, that at the material time, Armenian law lacked any specific provisions on the use of special means, including Cheremukha-7 tear-gas grenades, and laid down no instructions for their use. The only legal act that contained such instructions dated – like the grenades themselves – back to the Soviet times and was repealed in Armenia in 2006, without however being replaced with a new set of instructions (see paragraph 131 above). The Government referred to sections 29 and 31 of the Police Act as the provisions regulating the use of tear gas (see paragraphs 149, 150 and 192 above). However, that Act merely listed in general terms the situations in which tear gas could be used by the police, but contained no detailed and specific instructions for its use, including any safety rules. Therefore, it is not clear whether the servicemen of the Police Troops who fired the Cheremukha-7 tear-gas grenades had any safety rules to adhere to. In addition, it has not been shown to the satisfaction of the Court that they were trained on the proper and safe use of tear-gas

grenades. In fact, the Government failed to provide any information or evidence regarding the training, if any, received by the four servicemen of the Police Troops who had fired the Cheremukha-7 tear-gas grenades. Furthermore, some material in the case file, in particular the interviews conducted by the FFG with those servicemen and others who had trained and supervised them, gives the impression that they might not all have had the necessary knowledge and competence to do so (see paragraph 126 above).

221. The fact that the lack of safety instructions contributed to the improper use of the tear-gas launchers was also confirmed by the parliamentary inquiry (see paragraphs 128, 130 and 131 above). In doing so, the *Ad Hoc* Committee also pointed to the fact that – in addition to the six cases of death and injury among the protestors – about a dozen servicemen had been intoxicated by the Cheremukha-7 tear gas. The Court has no reason to doubt the findings of the *Ad Hoc* Committee. Indeed, given the number and nature of the injuries inflicted by the tear-gas launchers – crowd-control weapons clearly not meant to cause injuries, especially fatal ones – it may be deduced that the police officers were able to act very independently and take ill-considered initiatives, which would probably not have been the case if they had been given appropriate training and instructions (see, *mutatis mutandis*, *Abdullah Yaşa and Others*, cited above, § 49).

222. The Court further cannot ignore the fact that all six instances of tear-gas related deaths and injuries were solely caused by Cheremukha-7 type tear-gas grenades, even though those were not the only type of tear-gas grenades used during the quelling of the protests (see paragraph 99 above). It is notable in this connection that, as already mentioned in paragraph 213 above, the storage life of the Cheremukha-7 tear-gas grenades used had long expired. This caused many of them to malfunction, including with reduced gas leakage and flying speed (see paragraphs 80 and 131 above). While, according to the experts, expired tear-gas grenades did not as such pose a risk to human life (see paragraph 80 above), in the Court's opinion, the fact that the grenades did not function as they should have could have contributed to their improper use and increased the likelihood of injury. Moreover, as already mentioned in paragraph 213 above, Cheremukha-7 type tear-gas grenades were not intended for use in open spaces, but rather for use in enclosed spaces. Therefore, while there was apparently no general prohibition on the use of the Cheremukha-7 tear-gas grenades in open spaces, it was prohibited to fire them in the direction of gatherings of people (see the Conclusion of the *Ad Hoc* Committee, quoted in paragraph 128 above). The Court has previously had occasion to observe that firing a tear-gas grenade along a direct, flat trajectory by means of a launcher cannot be regarded as an appropriate police action as it could potentially cause serious, or indeed fatal injuries, whereas a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of

an impact (see *Abdullah Yaşa*, cited above, § 48, and *Ataykaya v. Turkey*, no. 50275/08, § 56, 22 July 2014).

223. The Government argued that the tear-gas grenades had not been shot in the direction of the protestors and that they had been struck as a result of ricochet shots (see paragraphs 189 and 216 above). However, their assertions are not supported by sufficient evidence and do not appear to be convincing. It is notable that the initial ballistic examination of the tear-gas grenades conducted in March 2008 did not reveal any deformations or other traces on the plastic caps (see paragraph 72 above). It was only during an additional ballistic examination, which was apparently conducted in November 2008, that such traces were noted and were considered to have been caused by collision with a hard object or having passed through an obstacle (see, in particular, references to Conclusion no. 1466 in paragraphs 78, 82 and 128 above). It was also stated that Cheremukha-7 type tear-gas grenades were capable of causing fatal injuries even after bouncing off or passing through an obstacle (see, in particular, the reference to Conclusion no. 1466 in paragraph 131 above).

224. The Court notes that, while relying on the results of that ballistic examination in support of their allegations of ricochet, the Government failed to submit any documents relating to that examination, including the decision ordering it and the conclusion reached by the experts. In any event, it appears from the documents available to the Court that the findings reached by the experts who conducted that examination lacked detail or any in-depth analysis of the issue. Apart from the general statement regarding the potential of Cheremukha-7 tear-gas grenades to cause fatal injuries after ricocheting (see, in particular, the reference to Conclusion no. 1466 in paragraph 131 above), there was no meaningful assessment of the likelihood of a ricochet in this particular case taking into account the nature of the specific injuries suffered, including their severity, location and collision angle. The expert findings in all three cases involved stereotypical language limited to one phrase, namely that the deformations had been caused by “collision with a hard object or having passed through an obstacle”. Such related issues as the likely trajectory and distance of the shots fired also appear to have remained unaddressed by the ballistic examinations. Nor was there any analysis of the possible surface from which the grenades had allegedly ricocheted or of the angle of the alleged ricochet (see paragraph 78 above).

225. At the same time, there is sufficient evidence in the case file casting doubt on the ricochet hypothesis, including evidence suggesting that at least one of the three shots might have been fired at close range and other evidence not ruling out the possibility that the traces on the plastic caps had been caused by collision with the victims’ bodies and not necessarily other surfaces (see the evidence submitted by the applicants in paragraphs 133 and 134-135 and the submissions made by the former Chief of Police H.H. before the *Ad Hoc* Committee, cited in paragraph 131 above). In view of the

Government's failure to produce any convincing evidence or arguments in support of their allegations of ricochet, the Court believes that, as alleged by the applicants, the severity of the inflicted injuries and their location, two of which were at human head height and one at human waist height, suggest that – in all likelihood – they were direct, flat-trajectory shots fired from shoulder- or waist-mounted tear-gas launchers, which clearly did not amount to their proper use (see, *mutatis mutandis*, *Abdullah Yaşa and Others*, § 48, and *Ataykaya*, § 56, both cited above). It appears that a similar finding was reached by the *Ad Hoc* Committee, which concluded that safety rules had not always been followed when firing the tear-gas grenades, including the prohibition on firing them in the direction of gatherings of people (see paragraph 128 above).

226. In view of the above, the Court concludes that the lack of a clear, detailed and binding set of instructions on the use of tear-gas grenades, the lack of appropriate training and supervision and the above-mentioned issues related to the condition and deployment of the tear-gas grenades themselves contributed significantly to the improper use of those crowd-control weapons in breach of safety rules, which resulted in the unnecessary deaths of Armen Farmanyan, Tigran Khachatryan and Gor Kloyan.

– *The deaths of Hovhannes Hovhannisyan, Davit Petrosyan, Grigor Gevorgyan, Zakar Hovhannisyan and Tigran Abgaryan*

227. The Court will now turn to the deaths of the remaining five victims, namely Hovhannes Hovhannisyan, Davit Petrosyan, Grigor Gevorgyan, Zakar Hovhannisyan and Tigran Abgaryan, all of whom were killed by live bullets (see paragraphs 49, 52, 54, 60 and 61 above). It notes that it has already addressed the question as to whether the deaths of Hovhannes Hovhannisyan and Tigran Abgaryan were attributable to the State (see paragraph 208 above). As regards the three other victims, the Government did not dispute that they had died as a result of the use of force by the police forces. The Court observes that one of the victims, Grigor Gevorgyan, was killed by an unidentified bullet (see paragraph 55 above), while Davit Petrosyan and Zakar Hovhannisyan were shot with Makarov pistols (see paragraphs 52 and 60 above). Having regard to all the material before it, the Court has no reason to doubt that all three were shot by the police forces. Firstly, it refers in this connection to its finding above that only the police forces – and not the demonstrators – were in possession of firearms and live ammunition (see paragraph 208 above). Secondly, while the bullet that killed Grigor Gevorgyan was never found, his gunshot wound, as noted by a forensic practitioner, was consistent with the type of weapon and bullet calibre used by the servicemen of the Police Troops in quelling the protests, namely AK-74 assault rifles firing 5.45 mm bullets (see also forensic pathologist J.C.'s report in paragraph 133 above). Thirdly, as regards the wounds inflicted by the Makarov pistols, the Court notes that there is no

information in the case file regarding the use of those weapons during the quelling of the protests as the investigation conducted into the use of firearms appears to have been limited mostly to the weapons used by the Police Troops, despite the fact that other police units were also involved in the events. At the same time, it follows from the material in the case file and was not disputed by the Government that the Makarov pistol was the usual sidearm of the Armenian police (see paragraphs 159 and 163 above). Therefore, given that both Davit Petrosyan and Zakar Hovhannisyan were killed by shots fired from Makarov pistols (see paragraphs 52 and 60 above), the only plausible explanation is that they were both shot by police officers carrying such weapons. In view of all the above factors, the Court considers it established beyond reasonable doubt that all five deaths caused by firearms can be attributable to the State.

228. The Court notes that three of the victims, namely Hovhannes Hovhannisyan, Grigor Gevorgyan and Davit Petrosyan, died when, as already mentioned above, the police forces launched their forceful attempt to end the riots around 9 to 9.30 p.m. (see paragraph 215 above). As regards the first two victims, it is undisputed that the Police Troops equipped with AK-74 assault rifles started firing 5.45 mm tracer bullets over the heads of the protestors, two of which killed Hovhannes Hovhannisyan and Grigor Gevorgyan. It follows from a number of documents in the case file that the purpose of the tracer fire was to scare and disperse the protestors (see paragraphs 98, 159 and 165 above). The Government also admitted (see paragraph 28 above) that its purpose had been to exert psychological pressure on the protestors (contrast *Giuliani and Gaggio*, cited above, § 216, where force was used during a demonstration to prevent an imminent threat of death or serious injury stemming from a sudden and violent attack). All in all 1,405 units of 5.45 mm tracer bullets were fired during the quelling of the protests. The Court does not consider such indiscriminate and random use of highly lethal firearms, which created a very high statistical chance of causing death or serious injury, to be acceptable. Nor was it in conformity with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see paragraph 164 above). Furthermore, the number of tracer bullet rounds fired, 1,405 units, appears grossly disproportionate especially when compared to the amount of non-lethal weapons used for the same purpose, namely 280 blank cartridges and 191 rubber bullets (see paragraph 99 above). It is therefore doubtful that all the possibilities of dispersing the riots with the use of non-lethal weapons had been fully explored and exhausted by then. Moreover, the use of tracer bullets came prior to any attempts to disperse the crowd with the use of a water cannon. It is notable in this connection that, while this sequence of events is not obvious from the Government's version of events, it follows from their submissions that the water cannon was put to use only at around 10 p.m. (see paragraph 28 above), while, as already noted above and as it follows from some of the material and uncontested

submissions in the case, the firing of tracer bullets had started prior to that, namely around 9-9.30 p.m. (see paragraphs 33, 98, 130 and 165 above). This is also confirmed by the fact that both Hovhannes Hovhannisyan and Grigor Gevorgyan had been shot with 5.45 mm tracer bullets around that time (see paragraphs 47, 53 and 133 above). Preference was therefore clearly given to the use of powerful, potentially lethal weapons, which should have been a measure of last resort. The Court reiterates in this connection that the principle of “absolute necessity” for the purposes of the Convention requires that, where different means are available to achieve the same aim, the means which entail the least danger to the lives of others must be chosen (see *Giuliani and Gaggio*, cited above, § 214).

229. The Court further notes, as regards the third victim of the above-mentioned police attack, Davit Petrosyan, that he was not killed by the tracer fire but by a bullet fired from a Makarov pistol of the type carried by regular police officers (see paragraph 52 above). As already stated in paragraph 227 above, little is known about the use of those weapons during the clashes. However, it is undisputed that regular police officers were also present in that area and were involved in the quelling of the riots alongside the Police Troops (see paragraphs 13, 17, 19, 22 and 98 above). Given the indiscriminate use of force displayed by the latter at that stage of the day-long confrontation between the police forces and the protestors, it is safe to assume that the other police units involved deployed the same tactics and that Davit Petrosyan’s death must have been the consequence of the same indiscriminate methods. It is notable that the bullet removed from his body had deformations characteristic of a ricochet shot (see paragraphs 52 and 136 above), which suggests that Davit Petrosyan may not have been the intended target of the shot fired and only reinforces the Court’s finding that his death resulted from indiscriminate use of force.

230. Lastly, as regards the deaths of Zakar Hovhannisyan and Tigran Abgaryan, the Court notes that they both were shot in the same area, albeit at later hours, at around 1.30 a.m. and 11 p.m. respectively (see paragraphs 58 and 61 above). The former was a civilian shot with a 9 mm bullet fired from a Makarov pistol (see paragraph 60 above), while the latter was a serviceman of the Police Troops shot with an unidentified bullet (see paragraph 63 above). The Court has little information as to how the events unfolded following the police attack which started around 9 to 9.30 p.m. However, it is evident that the clashes were still ongoing at the time Tigran Abgaryan was shot at around 11 p.m., and there are no reasons to believe that the police forces had stopped using lethal weapons by then. Therefore, in the light of its findings in paragraphs 203-208 above, the Court considers that the only plausible explanation for Tigran Abgaryan’s death was a ricochet shot or a stray bullet, which in all likelihood resulted from the indiscriminate use of lethal force displayed by the police forces during the clashes.

231. The situation is somewhat different in the case of Zakar Hovhannisyan. It appears from some of the material in the case file that the clashes may have been over by midnight (see paragraph 165 above), that is before he was shot at around 1.30 a.m., although according to the Government the looting of nearby shops may have continued until later (see paragraph 29 above). The Court therefore finds it difficult to establish the context in which lethal force was used against Zakar Hovhannisyan, including the reasons for the use of force and the specific circumstances. While it cannot be ruled out that sporadic clashes continued during the time when he was killed, the Court does not have sufficient elements to conclude that the killing of Zakar Hovhannisyan breached the substantive requirements of Article 2.

232. The foregoing considerations are sufficient to enable the Court to conclude that the lethal force used against the applicants' relatives, with the exception of Zakar Hovhannisyan, was not "absolutely necessary" and their deaths resulted from a badly planned and executed operation involving the improper use of crowd-control weapons and the indiscriminate and disproportionate use of lethal force.

233. Accordingly, there has been a violation of the substantive limb of Article 2 of the Convention with respect to the applicants' relatives, with the exception of Zakar Hovhannisyan.

234. As regards the death of Zakar Hovhannisyan, the Court does not have sufficient evidence allowing it to find that there has been a violation of Article 2 in its substantive limb in his case.

2. Procedural aspect of Article 2 of the Convention

(a) The parties' submissions

(i) The applicants

235. The applicants submitted that the authorities had failed to conduct an effective investigation into the deaths of their relatives.

236. They alleged, firstly, that the investigation had not been independent, raising several arguments in that regard.

To begin with, the investigation had lacked practical independence, taking into account the political considerations behind the government's brutal crackdown of 1 March 2008. The post-election protests had been suppressed under the direct instructions of the outgoing President of Armenia, Robert Kocharyan, and the President-elect, Serzh Sargsyan, and the use of live ammunition and Cheremukha-7 tear-gas grenades had to have been authorised at the highest level, bearing in mind that President Kocharyan had been the Commander-in-Chief of the armed forces, including the Police Troops. However, the entire machinery of Armenia's investigative system had been composed and established at the almost unlimited discretion of President Kocharyan, who had also had the authority to dismiss, promote and

appoint those directly involved in the police operation and the subsequent investigation. As a result, the head of the SIS, having been appointed by President Kocharyan and being his ardent supporter, had led the investigation according to the political needs of the country's leadership. Instead of conducting an effective investigation into the circumstances of the deaths, the investigating authorities and the courts had been predominantly preoccupied with prosecutions and trials of members of the political opposition. The decision launching the investigation had from the very beginning been based on the assumption that the deaths had been caused by the actions of the opposition and the protestors. This presumption had continued throughout all the trials of those who had been charged within the scope of the criminal proceedings, while the Prosecutor General and other high-ranking public officials had frequently made statements regarding the guilt of the opposition and the innocence of the law enforcement officers. As examples of a lack of independence, the applicants also relied on the statements made by the Prosecutor General from the very beginning of the investigation (see paragraph 68 above) and the instructions given by the SIS to regional prosecutors to investigate members of the opposition (see paragraph 71 above). The applicants alleged that all the law enforcement bodies, including those investigating, had been heavily involved in the confrontation with the political opposition and had been given a *carte blanche* to blame the opposition and its supporters for everything that had happened. The aim of the investigation had therefore not been to identify and punish those responsible for the use of force, but to prove the guilt of the political opposition for the mass disorder, including the deaths. The investigation had been neither independent nor impartial, and its intentions had also been questioned by both the COE Commissioner (see paragraph 163 above) and the PACE (see paragraphs 159-161 above).

The independence of the investigation had been further compromised by the heavy police involvement. The majority of the investigators in the investigative team formed at the SIS had been from the Armenian police and the NSS. The bulk of the investigative and operational intelligence measures had been conducted and most of the evidence similarly gathered by officials and officers of the Armenian police and the NSS directly or indirectly connected with the police operation of 1 March 2008, which had considerably compromised the reliability of the evidence in question. This included, among other things, all the ballistic examinations and a number of other examinations, the searches conducted at Freedom Square, the inspections and video-recordings conducted at the scenes of the evening's events, and the identification of witnesses and verification of the completeness of the special means and firearms. All these measures had been carried out under the direct or indirect supervision of the same high-ranking officials who had been directly involved in the planning, conduct and control of the police operation of 1 March 2008. No police contingent could have been independent, given

that the police themselves had been directly involved in the events of 1 March 2008.

237. Secondly, the investigation had not been conducted promptly and with reasonable expedition. It had not officially started until March 2009 or later and had still been underway at the time the parties had replied to each other's observations in 2016. No perpetrators had been brought to justice, while the information had been classified and there had been no possibility of accessing it. There had been no public scrutiny over the investigation and its results had been unknown. The applicants' effective participation in the investigation had also been severely curtailed throughout. In particular, they had continuously been denied access to the information and documents in the case file relating to the circumstances of the deaths. Furthermore, the authorities had failed to inform them of their procedural rights or of any progress in the investigation and the criminal proceedings, including the outcome of the criminal case against the four officers who had been charged with misusing special means (see paragraph 85 above). They had only been recognised as the victims' legal heirs with delays of three to four months (see paragraph 76 above). This meant that during that period they had been excluded from effectively taking part in the investigation and availing themselves of their rights. This delay had not been their fault but had been due to the fact that their deceased relatives had only been recognised as victims with delays of three to four months and only then had they been allowed by law to request to be recognised as the victims' legal heirs. The applicants added, however, that even though they had been recognised as the victims' legal heirs within the scope of the criminal case against the leaders of the opposition, they did not feel that those charged had been responsible for the deaths of their relatives.

238. The applicants further criticised a number of other aspects of the investigation. Relying on the evidence produced by experts J.C. and D.D. (see paragraphs 133 and 134-136 above), they pointed to numerous flaws in the conduct of various forensic examinations, including the post-mortem and ballistic examinations. They further complained that none of the bullets recovered had been traced to the firearms that had fired them, alleging a cover-up by the police. No investigation had been conducted into the use of firearms, namely Makarov pistols, by the regular police officers who, it was undisputed, had also participated in the police operation and the quelling of the protests. The Government had not submitted any evidence that all the law enforcement officers who had participated in the operation had been identified. Nor was there any evidence of any examination of logbooks of the booking in and out of firearms, of searches for bullets or of comparative testing of the bullets recovered. While alleging that all the law enforcement officers who had participated in the operation had been interviewed by the investigating authority, the Government failed to submit copies of a single interview. Numerous other documents had not been submitted either,

including copies of all the ballistic examinations, the records of the National Bullet and Cartridge Case Inventory, the questions put to the Irish expert C.B. (see paragraph 102 above) and his replies, and the material related to the criminal case against the four officers who had fired the tear-gas grenades. Nor had any video footage been provided, despite numerous references to such material and irrefutable evidence of the existence of hundreds of hours of video footage. The applicants also complained that the chain of command had not been investigated in any way. Several of them further complained that their interviews had been conducted in the absence of a lawyer.

239. The applicants also likened the inability to trace the Cheremukha-7 tear-gas grenades to the use of balaclavas during special operations (they quote, in this respect, *Ataykaya*, cited above, § 52), in the sense that both had the direct consequence of giving perpetrators immunity from prosecution because it was impossible to identify them. The known untraceable nature of those grenades had contributed to the reckless or deliberately lethal manner in which they had been used. Only four officers had been authorised to use this type of special means and yet it had been impossible to identify which of them had fired the fatal shots.

240. Lastly, the applicants submitted that all their complaints against the ineffectiveness of the investigation had been futile and had remained unexamined by the domestic courts because of a lack of jurisdiction.

241. On 29 September 2021, after the parties replied to each other's observations, the applicants raised new complaints under Article 2 concerning the proceedings before the Constitutional Court (see paragraphs 119-122 above), arguing that its decision had gone against the State's obligation to conduct an effective investigation and complaining that they had not been involved as a party in those proceedings even though their rights had been directly affected.

(ii) The Government

242. The Government contested the applicants' allegations, arguing that the authorities had conducted an effective investigation.

243. Firstly, the investigation had been independent since there had been no hierarchical or institutional connection between the people who might have been held to account and the officials who had carried out the investigation. The applicants' allegations were hypothetical and based mainly on their assumptions rather than on any factual grounds. The law establishing the SIS as a new investigative body had been signed by the President of Armenia on 30 November 2007 and it was illogical to assume that he could have predicted the post-election developments and the tragic events of 1 March 2008. The fact that high-ranking law enforcement officials were appointed by the President of Armenia did not mean that they lacked independence. The applicants' allegations that the investigation had been politicised by the authorities were themselves political in nature and lacked

any substantive proof. The Government argued that the investigation into the case had been conducted by the SIS and the police and that the NSS had never been involved or authorised to carry out the investigation. They also raised the question of who should have carried out the investigation if, as alleged by the applicants, all the law enforcement bodies had been involved in a political confrontation with the opposition. As regards the statements made by the Prosecutor General at his press conference on 4 March 2008 (see paragraph 68 above), those statements had been made at a time when the investigation had only just begun and he could not have made any other statements in view of the principle of the presumption of innocence. As to the instructions given by the head of the SIS to regional prosecutors (see paragraph 71 above), the inquiries that they had been asked to conduct had been relevant and necessary taking into account that they had been made within the scope of criminal case no. 62202508 instituted against the leaders of the opposition for organising mass disorder and inflicting violence on public officials (see paragraph 64 above). That inquiry had not related to the circumstances of the deaths.

244. Secondly, the investigation had been adequate and prompt. In that connection, the Government referred to the fact that criminal proceedings had been instituted on 1 and 2 March 2008 and a number of forensic examinations had been conducted within the scope of those proceedings, including medical, ballistic, chemical and trace evidence examinations. On 7 March 2008 the Prosecutor General had given specific instructions to the senior investigator at the SIS dealing with the investigation (see paragraph 70 above). The Government further relied on the SIS document, arguing that a number of vital investigative measures had been conducted, including interviews with all the police officers and the servicemen of the Police Troops who had taken part in the quelling of the riots, as well as with at least 175 other witnesses (see paragraphs 100 and 101 above). Furthermore, a criminal case had been instituted on 13 July 2009 under Article 373 § 3 of the Criminal Code for a violation of the rules for the use of KS-23 type special means when quelling the mass riots and the resulting involuntary manslaughter of three people. Four officers who had fired the Cheremukha-7 tear-gas grenades had been identified and charged (see paragraph 85 above). However, it had been impossible to trace the tear-gas grenades to the weapons that had fired them, which had also been confirmed by international experts. The Government also submitted that the investigation in that case had established that weapons of various types and calibres, as well as KS-23 type special means, had been used by both the police forces and the participants in the riots, and that various explosive devices, including military grenades, had been used against the police officers and the servicemen of the Police Troops. As a subsequent development, the criminal cases concerning the deaths had been split into separate proceedings in December 2014 and January 2015, on the instructions of the Prosecutor General. Moreover, in addition to the investigation

conducted by the SIS, the National Assembly had also carried out its own inquiry.

245. Thirdly, the authorities had ensured the applicants' effective involvement in the investigation. They had been recognised as the legal heirs of the victims and had signed the relevant documents certifying that they had been informed of their rights. The reason why this had been done with a delay of several months was because the applicants themselves had filed the relevant requests, as required by Article 80 of the Code of Criminal Procedure (see paragraph 145 above), with delays. Thereafter, the applicants had been familiarised with the results of the forensic medical examinations. Furthermore, the applicants had been familiarised with the results of the ballistic examination and the joint ballistic and chemical examination, namely Conclusion no. 389 and Conclusion no. 385 respectively (see paragraphs 72, 74 and 77 above). As regards the applicants' complaint of not having access to the case file, under Article 59 of the Code of Criminal Procedure (see paragraph 144 above), the victim enjoyed the right to familiarise himself or herself with all the material in the criminal case file only after the completion of the investigation. The denial to the applicants of access to the case file had therefore been in line with domestic law. The investigation into the case was still pending and access to all the material would be provided to the applicants after its completion. In any event, copies of many forensic examination conclusions had been provided to the applicants during the investigation.

246. As regards the applicants' complaints raised on 29 September 2021 (see paragraph 241 above), the Government submitted that the proceedings before the Constitutional Court had been limited to determining the constitutionality of a criminal provision. The Constitutional Court did not examine cases on their merits. Therefore, the applicants had had no right under domestic law to be involved as third parties in those proceedings as their rights had not been affected.

247. Lastly, the Government asked the Court to take into account the fact that on 4 June 2019 a law on assistance to those who had suffered during the events of 1 and 2 March 2008 had entered into force and that the legal heirs of the deceased, the applicants in this case, had each been awarded compensation in the amount of AMD 300,000.

(b) The Court's assessment

(i) General principles

248. The Court reiterates that 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 their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alia*, agents of the State

(see *McCann and Others*, cited above, § 161; *Giuliani and Gaggio*, cited above, § 298; and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 230, 30 March 2016).

249. In order to be “effective” as this expression is to be understood in the context of Article 2 of the Convention, an investigation into a death that engages the responsibility of the Contracting Party under that Article must firstly be adequate (see *Armani Da Silva*, cited above, § 233). This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Giuliani and Gaggio*, § 301, and *Armani Da Silva*, § 233, both cited above, with further references).

250. In particular, the investigation’s conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation’s ability to establish the circumstances of the case and the identity of those responsible. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation’s effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Giuliani and Gaggio*, § 302, and *Armani Da Silva*, § 234, both cited above).

251. Furthermore, for an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence. What is at stake here is nothing less than public confidence in the State’s monopoly on the use of force (see *Giuliani and Gaggio*, § 300, and *Armani Da Silva*, § 232, both cited above).

252. In addition, 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 (see *Giuliani and Gaggio*, § 303, and *Armani Da Silva*, § 235, both cited above). However, disclosure or publication of police reports and investigative material may involve sensitive issues with possible prejudicial effects to private individuals or other

investigations and, therefore, cannot be regarded as an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may therefore be provided for in other stages of the procedure (see *Giuliani and Gaggio*, cited above, § 304).

253. A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Giuliani and Gaggio*, § 305, and *Armani Da Silva*, § 237, both cited above).

(ii) *Application of the above principles to the present case*

254. The Court observes that the applicants at the outset contested the independence and impartiality of the investigation conducted by the authorities. They alleged, firstly, that the investigation had not been practically independent because the entire investigative machinery, including the SIS, which had been tasked with the investigation, had been biased in favour of the ruling party and against the opposition (see paragraph 236 above). The Court considers that the applicants' allegations are not without merit and points to the following.

255. It notes that the only criminal proceedings instituted in the immediate aftermath of the events in question were those against the leaders and supporters of the political opposition, who were accused under, *inter alia*, Article 225 § 3 of the Criminal Code of organising mass disorder accompanied by murder (see paragraphs 64 and 65 above). Therefore, from the very outset the leaders of the opposition were presented as being indirectly responsible for the deaths during the 1 March 2008 protests. Consequently the investigation into the deaths was conducted within the scope of that inquiry (see, *mutatis mutandis*, *Mushegh Saghatelyan*, cited above, § 153), until those cases were split into separate proceedings almost seven years later (see paragraph 106 above). No proceedings – at least initially – were instituted to investigate any unlawful and/or disproportionate use of force by the police forces, including by any individual police officers, and as early as on 4 March 2008 the Prosecutor General declared that the actions of the law enforcement bodies during the quelling of the riots had been proportionate (see paragraph 68 above). The main purpose of all the investigative measures conducted in the course of that investigation, including those relevant for establishing the circumstances of the deaths, was to collect evidence in support of the charges against the leaders and supporters of the opposition. In the Court's opinion, not only did the investigation into the deaths conducted on such a hastily accepted premise fail to properly address questions of possible individual responsibility of any of the police officers or servicemen

of the Police Troops for the deaths in question, but it also gave the impression of being politically biased. It is unsurprising that many of the charges brought in the context of those proceedings were suspected by PACE of being “artificial and politically motivated”, while the prosecutions were described as a “*de facto* crackdown on the opposition” (see *Mushegh Saghatelyan*, cited above, §§ 125 and 127, as well as the doubts expressed by the Council of Europe Commissioner for Human Rights in his report cited in paragraph 130 of the same judgment). Whether or not the lack of independence of the investigating authorities was to blame for the way in which the proceedings were conducted, it is clear that such an investigation into the circumstances of the deaths cannot be considered to have been objective, thorough and impartial.

256. The applicants complained that the independence of the investigation had been further compromised by the involvement of numerous police and NSS officers. They alleged that the investigative team had included many police and NSS investigators, while a number of crucial forensic examinations and other investigative measures had been conducted by the police (see paragraph 236 above). The Court notes that the material available to it does not allow it to make an assessment of the composition of the investigative team. On the other hand, the applicants were correct in claiming that a number of vital forensic examinations, notably the two ballistic examinations (see paragraphs 72 and 78 above) and the joint ballistic and chemical examination (see paragraph 74 above), had been conducted by police officials acting as experts in the fields concerned. No evidence was provided to the Court to demonstrate that those police officers had had any connection with the police officers or the servicemen of the Police Troops who had participated in the police operation in question. However, the Court notes that the police operation was planned and overseen by several high-ranking police officials, including the Deputy Chief of Police and the Commander of the Police Troops, and that it involved the participation of police officers from various police units and servicemen of the Police Troops numbering in the hundreds or even thousands, many of whom could be potentially implicated in the failures of the police operation and the resulting deaths (see paragraphs 9, 13, 22, 28 and 98 above). Even assuming that there was no direct connection between the police officers who conducted the forensic examinations and those whose actions could have become the focus of the investigation, the Court finds it hard to believe that the police officials responsible for carrying out the examinations could act fully independently and impartially in an investigation involving so many police colleagues. This is even more so where it involved some very high-ranking police officials and the risk of prosecution for serious offences in a high-stakes case affecting a large chunk of Armenia’s police forces, which could arguably cast a shadow over the reputation of the police as an institution. It therefore shares the applicants’ concerns about the independence of those police experts and

accepts that the credibility and thoroughness of the findings produced by them are open to doubt. In this regard, the Court is mindful of its findings in paragraphs 223 and 224 above concerning the shortcomings in the ballistic examinations.

257. Turning to the specific measures taken during the investigation, the Court notes that, despite the instructions of the Prosecutor General issued on 7 March 2008 (see paragraph 70 above), very little was done in terms of identifying those responsible for the deaths and the circumstances in which those deaths had occurred. Even the few investigative measures taken, such as the autopsies and ballistic examinations, in addition to the shortcomings already mentioned above, did not lead to any meaningful assessment or follow up. The Court points, in particular, to the following.

258. As regards specifically the three deaths caused by the impact of Cheremukha-7 tear-gas grenades, there were only four officers of the Police Troops who had been equipped with such crowd-control weapons and clearly their identities must have been known to the authorities. However, it took the authorities more than one year and four months to identify those officers and bring a criminal case against them (see paragraph 85 above), a delay which may well have resulted in a loss of evidence. The Government failed to submit any documents whatsoever relating to that criminal case. It appears, however, that not only was it launched with such a significant delay, but it was also fundamentally inadequate. There is nothing to suggest that the officers in question were ever interviewed by the investigating authority or, if they were, that those interviews were conducted thoroughly and properly. Nor does it appear that the authorities tried to secure any other evidence, including the identification and questioning of any witnesses. While there is no explicit information before the Court as to what eventually happened to the charges against those officers, it appears from other material in the case file that they were not pursued as it was impossible to identify the officer or officers who had, in fact, fired the fatal shots because the tear-gas grenades could not be traced (see paragraphs 78 and 82 above). The applicants likened the inability to trace tear-gas grenades to the use of balaclavas during special operations, arguing that both had the direct consequence of giving immunity from prosecution to those responsible for committing acts incompatible with the Convention, including its Articles 2 and 3 (see paragraph 239 above); in this respect they quoted the case of *Ataykaya* (cited above, §§ 50-54). The Court, however, does not believe that the two situations are comparable. It notes that the tear-gas grenades were non-lethal crowd-control weapons which were not supposed to cause physical injury or be used as a firearm in the first place. The main issue does not therefore lie in the fact that the tear-gas grenades were untraceable, but in the fact that they had not been properly used (see paragraphs 220-226 above), causing physical injury and death as a result. Furthermore, in the unfortunate event of this happening, it is incumbent on the authorities to take prompt and adequate measures capable

of establishing the circumstances of the incidents and leading to the identification of those responsible, especially in view of the inability to trace such weapons, which the authorities clearly failed to do in the present case.

259. Turning to the deaths caused by live ammunition, the Court notes that there was very little or no inquiry conducted into the use of firearms during the quelling of the protests. It appears from the entirety of the material before the Court that the police forces primarily used two types of firearms to fire live bullets, namely AK-74 assault rifles firing 5.45 mm bullets and Makarov pistols firing 9 mm bullets. While the investigation revealed the number of AK-74 assault rifles used and 5.45 mm bullets fired during the operation by the servicemen of the Police Troops (see paragraph 99 above), no such inquiry was carried out into the use of Makarov pistols and 9 mm bullets fired by the regular police forces. The case file therefore contains no information whatsoever on the use of such weapons.

260. In any event, it does not appear that any serious attempts were made to identify and question the servicemen of the Police Troops and the police officers who had carried and fired both types of weapons. Nor does it appear that any proper steps were taken to trace the bullets removed from the bodies of Hovhannes Hovhannisyan, Davit Petrosyan and Zakar Hovhannisyan (see paragraphs 49, 52 and 60 above) to the weapons that had fired them. While the conclusion of the first forensic ballistic examination stated that the bullets in question had been compared with those registered in the National Bullet and Cartridge Case Inventory but that no matches had been identified (see paragraph 72 above), no further details were provided of this investigative measure allegedly taken. Nor did the Government submit any information or documents regarding the alleged matching of bullets. The Court, however, has already expressed doubts about the independence of the ballistic examination in question, including the thoroughness and credibility of its findings (see paragraph 256 above). The lack of any detail or specific records of the alleged matching performed prompts the Court to further doubt the seriousness and adequacy of that measure. Furthermore, it appears that no test-firing of the weapons used during the police operation, which could have potentially allowed the identification of the weapons from which the lethal shots had been fired, had been performed either (see paragraph 136 above).

261. As regards the deaths where the bullets were never recovered or where the object causing the death remained unknown, namely those of Grigor Gevorgyan, Samvel Harutyunyan and Tigran Abgaryan, it is not clear what measures were taken to establish the circumstances of their deaths and identify those responsible apart from the post-mortem examinations (see paragraphs 54, 57 and 62 above) and a joint trace evidence, ballistic and explosive technical examination in the case of Tigran Abgaryan (see paragraphs 75 above). The Court considers it important to stress that while the Government referred to hundreds of interviews conducted during the investigation (see paragraph 244 above), they failed to submit a copy of a

single interview, including of any interview related to these and the other cases. It is therefore unclear if any efforts were made to identify and question witnesses, as well as the members of the police forces who had participated in the quelling of the protests. The same applies to the records of examination of the scenes, none of which were submitted to the Court. Furthermore, while it appears from the material in the case file, including the Prosecutor General's statement of 4 March 2008 (see paragraph 68 above), that numerous video-recordings totalling allegedly dozens of hours (see paragraph 104 above) and photographs of the events were available to the investigating authorities (see also references to video material in the Armenian Ombudsman's report and the Council of Europe Commissioner's report, cited in paragraphs 157 and 162 above), there is little information in the case file regarding such material and any assessment made of it (see paragraph 73 above). It further appears that some "crucial" recordings, which had been seized from journalists and other civilians, were erased by the police (see paragraphs 161 and 163 *in fine* above). As a result, evidence which may have potentially contained information of value and relevance to the death cases was deliberately or negligently destroyed by the police, which is certainly a matter of grave concern and a major shortcoming in the investigation.

262. Lastly, the Court notes that the investigation into the firearm deaths subsequently continued, apparently under Article 104 of the Criminal Code (see paragraph 84 above). However, not only was that criminal case instituted with a delay of more than one year, it was also of a questionable nature. While the Court has almost no information or documents about that criminal case, it nevertheless appears from the SIS document that it was instituted only after the amendment in March 2009 of Article 104 of the Criminal Code, which prescribed the penalty for murder (see paragraphs 83 and 137 above). However, the amendment in question introduced a penalty for murder committed by a participant in mass disorder and not by a member of the security forces. It is therefore unclear how any police officer could have been held accountable under that provision, if necessary.

263. The applicants further alleged a lack of public scrutiny and effective participation in the investigation. The Court notes that the applicants were recognised as the victims' legal heirs with delays of at least two to almost four months (see paragraph 76 above). While the Government argued – with reference to Article 80 of the Code of Criminal Procedure (see paragraph 145 above) – that it was the applicants' own fault because they had failed to file requests to be recognised as the victims' legal heirs earlier (see paragraph 245 above), it appears from the applicants' submissions, which the Government did not dispute, that they had been prevented from doing so because of the delay in recognising their deceased relatives as victims (see paragraph 237 above). It therefore appears that there was no justification for the applicants' belated involvement in the investigation and that they were thereby denied

the possibility of effectively intervening in the course of the investigative steps taken before their recognition as the victims' legal heirs (see, *mutatis mutandis*, *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 132, 17 December 2009). Furthermore, even after the applicants were recognised as the victims' legal heirs (see paragraph 76 above), this did not lead to their meaningful participation in the investigation. While it is true that most of the applicants were provided with the results of some of the forensic examinations conducted during the initial months of the investigation (see paragraph 77 above), it does not appear that they were provided with any further information on its progress, including the two criminal cases instituted under Articles 104 and Article 373 § 3 of the Criminal Code (see paragraphs 84 and 85 above). Therefore, for the next two and half years, before lodging their applications with the Court (see paragraph 95 above), the applicants appear to have remained completely unaware of any developments in the case. Accordingly, the investigation did not ensure sufficient public accountability to provide a sufficient element of public scrutiny of the investigation and its results, nor did it safeguard the interests of the next of kin.

264. Lastly, the Court notes that no investigation was conducted into the possible responsibility of the chain of command, including the senior officers who had the task of training and supervising the officers who had used force, as well as those higher up who had planned and commanded the police operation. In this latter regard, the Court observes that after a substantial delay of roughly ten years a new criminal case appears to have been instituted and charges brought against a number of former high-ranking officials, including President Kocharyan (see paragraph 116 above). The outcome of those proceedings, however, is unknown, while the charges against the former President were apparently dropped in April 2021 after the ruling of the Constitutional Court (see paragraph 123 above). It appears also that the investigation was still pending in December 2021 (see paragraph 124 above), that is more than thirteen years after the events, without having produced any results.

265. The foregoing is sufficient for the Court to conclude that the authorities have failed to conduct an effective investigation into the circumstances of the deaths of the applicants' relatives. It does not consider it necessary to address the other shortcomings in the investigation alleged by the applicants (see, *mutatis mutandis*, *Alikaj and Others v. Italy*, no. 47357/08, § 100, 29 March 2011).

266. Having reached this conclusion, the Court considers it necessary to address the Government's preliminary objections regarding the applicants' failure to comply with the six-month rule and the alleged prematurity of the applications (see paragraph 169 above).

267. The Court refers to its principles under Article 35 § 1 of the Convention concerning the six-month rule, including its application in cases

raising issues regarding the effectiveness of an investigation into death or ill-treatment (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, §§ 156-58, ECHR 2009, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 258-69, ECHR 2014 (extracts)). The Court points, in particular, to the obligation of due diligence incumbent on applicants which requires them to lodge their applications promptly as soon as they become or should have become aware that the investigation is not effective (*ibid.*, § 264). The issue of identifying the exact point in time that this stage occurs necessarily depends on the circumstances of the case and it is difficult to determine it with precision (*ibid.*, § 266).

268. In the present case, the Court refers to its findings above regarding the failure of the authorities to carry out an effective investigation (see paragraphs 254-265 above). As noted above, little or no investigation was conducted into the circumstances of the deaths, while the applicants were effectively excluded from the domestic procedures and kept almost entirely in the dark about any developments. The Court therefore does not find it unreasonable that they lost faith in the investigation about three years after the events in question and, having unsuccessfully attempted to raise that issue before the domestic authorities (see paragraphs 89-94 above), applied to the Court. The Government failed to specify what investigative measures had been taken after the applications were lodged. As regards the decision to separate the death cases from criminal case no. 62202608 (see paragraph 106 above), referred to by the Government as a new element reviving the investigation (see paragraph 169 *in fine* above), this was nothing more than a simple procedural decision and cannot be regarded as a circumstance having any bearing on the calculation of the six-month period. The Court therefore rejects the Government's preliminary objections concerning the applicants' alleged failure to comply with the six-month rule and the alleged prematurity of the applications.

269. Accordingly, there has been a violation of the procedural limb of Article 2.

270. Having reached this conclusion, the Court does not consider it necessary to address also the complaints raised by the applicants under Article 2 in their additional submissions of 29 September 2021 (see paragraph 241 above).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

271. In their additional submissions of 29 September 2021 (see paragraph 241 above), the applicants also raised a complaint under Article 3 of the Convention, alleging that the decision to drop the charges against the former President of Armenia (see paragraph 123 above) had caused them anguish and suffering.

272. Having regard to all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the applications must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. OBSERVANCE OF ARTICLE 38 OF THE CONVENTION

273. Lastly, the applicants complained that the Government had failed to comply with their obligations under Article 38 of the Convention, which provides as follows:

“The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.”

274. The applicants argued that the Government had failed to disclose material and information relevant for the determination of the case and elucidating the circumstances in which their relatives had died. They specifically referred to the Government’s alleged failure to provide all the material requested by the Court and to disclose the numerous pieces of material of the criminal case on which they had relied in their observations. In this latter regard, the applicants provided a list of specific evidence which they insisted the Government disclose.

275. The Government did not comment on the applicants’ allegations.

276. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications. This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a government’s part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant’s allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 202, ECHR 2013, with further references).

277. The obligation to furnish the evidence requested by the Court is binding on the respondent Government from the moment such a request has been formulated, whether it be on initial notification of an application to the Government or at a subsequent stage in the proceedings. It is a fundamental requirement that the requested material be submitted in its entirety, if the Court has so directed, and that any missing elements be properly accounted

for (*ibid.*, § 203). In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Maslova and Nalbandov v. Russia*, no. 839/02, § 128, 24 January 2008). Therefore, where an application contains a complaint that there has not been an effective investigation, as in the instant case, it is incumbent on the respondent State to furnish all documentation pertaining to it (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

278. The Court notes at the outset that the applicants' complaint under Article 38 concerns the alleged failure of the Government to provide not only the documents specifically requested by the Court but also those requested by the applicants' lawyers. The Court considers that, while it would certainly have been desirable for the Government to provide as much relevant material as possible, thereby assisting the Court in conducting a full and thorough examination of the case, they cannot be held to be in breach of Article 38 of the Convention simply because they failed to substantiate all their submissions with relevant evidence or to comply with the applicants' demands for disclosure of specific material (compare *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 225, 26 May 2020).

279. As regards the Government's alleged failure to provide the material requested by the Court, the Court notes that the Government were specifically asked at the time of giving notice of the applications to submit copies of "all the relevant documents, including the results of all the ballistic and other examinations conducted in the course of the investigation" and "all the documents prepared by the parliamentary [FFG]" (see paragraph 109 above). None of the requested results or FFG documents were provided with the Government's observations. In fact, the only documents attached to their observations were the decisions recognising the relevant applicants as the victims' legal heirs (see paragraph 76 above) and the records of presenting the conclusions of certain forensic examinations to the applicants (see paragraph 77 above), which could be hardly considered as "all the relevant documents". The Court repeated its request on 18 May 2016 (see paragraph 111 above), in reply to which the Government submitted a number of conclusions of forensic examinations (see paragraph 112 above). In total, twenty-four documents were provided, including the nine forensic medical examinations which had already been submitted by the applicants (see paragraph 67 above). The remaining documents included Conclusions nos. 385, 389 and 09330802 (see paragraphs 74, 72 and 75 above), the two examinations conducted in the Russian Federation (see paragraphs 80 and 82 above) and eleven other forensic examinations of no obvious direct evidential value for the death cases. No copy was submitted of Conclusion no. 1466

produced as a result of the second ballistic examination of the Cheremukha-7 tear-gas grenades (see paragraph 78 above). Some other material directly relevant and highly important for the death cases was similarly not submitted, such as material related to the criminal proceedings instituted on the basis of Articles 104 and 373 § 3 of the Criminal Code (see paragraphs 84 and 85 above) or witness interviews and examinations of the crime scenes mentioned in the SIS document (see paragraph 100 above).

280. The Court admits that the above-mentioned documents were not specifically mentioned in its requests. However, it is clearly unable to provide a detailed list of all the specific documents to be submitted by the respondent Government, especially in cases like the present one, where it is faced with a shortage of factual information, including about any steps taken in the course of the investigation. At the same time, in this particular case the Court was prevented from requesting the entire investigation case file, as it often does in this type of cases (see, for example, *Maslova and Nalbandov*, cited above, § 129; *Bekirski v. Bulgaria*, no. 71420/01, § 115, 2 September 2010; and *Tigran Ayrapetyan v. Russia*, no. 75472/01, § 63, 16 September 2010), due to the fact that the investigation into the deaths constituted only a small part of the investigation file given that the deaths were investigated within the scope of a much broader criminal case consisting of a massive amount of material (see paragraph 104 above), much of which was not directly relevant for the present case. Therefore, in this particular situation the effective examination of the applications greatly depended on the Government's goodwill in providing all the investigation material relevant for the death cases. It appears, however, that the Government provided the bare minimum. While it may be argued that this was a simple omission as opposed to unwillingness or refusal to cooperate, the Court finds it hard to believe that material as important and directly relevant as forensic ballistic examination no. 1466 or the proceedings brought under 373 § 3 of the Criminal Code against the officers who had fired the Cheremukha-7 tear-gas grenades could simply have been overlooked by the Government.

281. Furthermore, as regards the documents prepared by the FFG, the Government did not submit any documents, stating that the FFG had not drawn up a final report. They further stated that if a document prepared by that group were to be indicated to them, they would submit it immediately (see paragraph 112 above). In reply, the Court referred to the two documents referred to in the present judgment (see paragraphs 126 and 127 above), inviting the Government to submit those documents (see paragraph 113 above). In reply, the Government stated that the FFG had not received from its individual members the documents referred to by the Court or any other documents related to the issues raised in the present case produced by its individual members (see paragraph 114 above). The Court, however, finds it difficult to understand the Government's explanation. In fact, both documents were referred to extensively in the *Ad Hoc* Committee's Conclusion (see

paragraphs 128-131 above) and the Government could not have been unaware of their existence or the fact that they had been presented to the *Ad Hoc* Committee. The Court notes that they were eventually provided to the Court by the applicants, who were later able to obtain them. This, in the Court's opinion, does not however absolve the Government of their obligations under Article 38 of the Convention.

282. In the light of the above, having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with establishing the facts in cases such as the present one, the Court finds that the Armenian Government fell short of their obligations under Article 38 of the Convention on account of their failure to submit copies of the documents requested in respect of the events of 1 March 2008.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

283. 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

284. The applicants' families each claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

285. The applicant Jemma Vardumyan, the mother of Davit Petrosyan (application no. 16030/11), and the applicants Sargis Kloyan, Azatuhi Manukyan and Ruzanna Hunanyan, the father, mother and wife of Gor Kloyan (application no. 16060/11), also submitted a claim in respect of pecuniary damage for Davit Petrosyan's and Gor Kloyan's lost earnings, in the amount of 25,960,000 Armenian drams and 45,787.50 United States dollars respectively.

286. The Government submitted that the amount claimed in respect of non-pecuniary damage was excessive, while the claim in respect of pecuniary damage was not supported by any evidence.

287. The Court notes that the applicants claiming compensation in respect of pecuniary damage failed to substantiate their claims with any evidence, including any proof of the lost earnings claimed; it therefore rejects them. However, it awards the relatives of each deceased EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

288. The applicants also jointly claimed a total of 46,195.33 pounds sterling (GBP) for the costs and expenses incurred before the Court. In support of their claim, they submitted contracts signed with EHRAC (see paragraph 4 above) showing that they were under an obligation to pay legal fees, as well as time sheets showing the outstanding fees of the three EHRAC lawyers, Mr V. Grigoryan, Ms J. Gavron and Ms J. Sawyer, amounting to GBP 29,865. They also submitted ten invoices relating to translations issued to EHRAC and amounting to a total of GBP 5,545.21. The remaining costs included experts' fees (GBP 9,527.92), travel expenses (GBP 966.78) and administrative costs (GBP 290.42). The applicants requested that the payment of costs and expenses be made in pounds sterling into their representatives' bank account in the United Kingdom.

289. The Government submitted that the applicants had failed to submit any contracts with their lawyers or invoices showing that the amounts had actually been paid to them. As regards the translation costs, this claim was not duly substantiated because the invoices submitted did not detail the work done, including by indicating the specific documents translated. Furthermore, not all the translation work could be said to have been necessary. Similarly, the fees for the two expert opinions referred to and the lawyers' travel expenses had not been necessarily incurred. The Government asked the Court to reject all the claims except those for administrative costs.

290. 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 have been actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Khojoyan and Vardazaryan v. Azerbaijan*, no. 62161/14, § 93, 4 November 2021). In the present case, contrary to the Government's submission, contracts were submitted showing that the relatives of eight out of nine deceased were under an obligation to pay legal fees to EHRAC. Therefore, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the total sum of EUR 35,000 for the proceedings before the Court, to be converted into pounds sterling and to be paid directly into the applicants' representatives' bank account in the United Kingdom (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the preliminary objections concerning the applicants' alleged failure to comply with the six-month rule and the alleged prematurity of the applications and *dismisses* them;
3. *Declares* the complaints concerning the deaths of the applicants' relatives and the failure of the authorities to conduct an effective investigation admissible under Article 2 of the Convention and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 2 of the Convention in its substantive limb in respect of all of the applicants' relatives except Samvel Harutyunyan (application no. 16055/11) and Zakar Hovhannisyan (application no. 16015/11);
5. *Holds* that there has been no violation of Article 2 of the Convention in its substantive limb in respect of Samvel Harutyunyan (application no. 16055/11) and Zakar Hovhannisyan (application no. 16015/11);
6. *Holds* that there has been a violation of Article 2 of the Convention in its procedural limb on account of the authorities' failure to carry out an effective investigation into the deaths of the applicants' relatives;
7. *Holds* that there has been a violation of Article 38 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 30,000 (thirty thousand euros) to the applicants in each application, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (ii) EUR 35,000 (thirty-five thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses, to be converted into pounds sterling at the rate applicable at the date of settlement and to be paid into applicants' representatives' bank account in the United Kingdom;
 - (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;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

FARMANYAN AND OTHERS v. ARMENIA JUDGMENT

Done in English, and notified in writing on 18 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Kateřina Šimáčková
President

APPENDIX**List of cases**

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality
1.	15964/11	Baghdasaryan and Antonyan v. Armenia	Varduhi BAGHDASARYAN 1981 Moscow Armenian Vahan ANTONYAN 1953 Yerevan Armenian
2.	15998/11	Farmanyan v. Armenia	Vachagan FARMANYAN 1951 Yerevan Armenian Lyudmila FARMANYAN 1954 Yerevan Armenian Vardanush FARMANYAN 1981 Yerevan Armenian
3.	16015/11	Mariam Hovhannisyan v. Armenia	Mariam HOVHANNISYAN 1972 Yerevan Armenian
4.	16024/11	Ruzanna Harutyunyan v. Armenia	Ruzanna HARUTYUNYAN 1953 Yerevan Armenian
5.	16030/11	Vardumyan v. Armenia	Jemma VARDUMYAN 1949 Vanadzor Armenian

FARMANYAN AND OTHERS v. ARMENIA JUDGMENT

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality
6.	16035/11	Khachatryan and Hovhannisyan v. Armenia	Hovsep KHACHATRYAN 1954 Yerevan Armenian Alla HOVHANNISYAN 1963 Yerevan Armenian Aram KHACHATRYAN 1986 Huy Belgian
7.	16046/11	Minasyan and Hovhannisyan v. Armenia	Lilya MINASYAN 1959 Yerevan Armenian Gayane HOVHANNISYAN 1990 Yerevan Armenian
8.	16055/11	Edik Harutyunyan v. Armenia	Edik HARUTYUNYAN 1955 Yeghegnavan village Armenian
9.	16060/11	Kloyan and Others v. Armenia	Sargis KLOYAN 1951 Yerevan Armenian Azatuhi MANUKYAN 1958 Yerevan Armenian Ruzanna HUNANYAN 1982

FARMANYAN AND OTHERS v. ARMENIA JUDGMENT

No.	Application no.	Case name	Applicant Year of Birth Place of Residence Nationality
			Yerevan Armenian