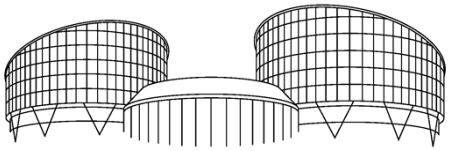

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MALIK BABAYEV v. AZERBAIJAN

(Application no. 30500/11)

JUDGMENT

STRASBOURG

1 June 2017

FINAL

01/09/2017

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

In the case of Malik Babayev v. Azerbaijan,

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

Angelika Nußberger, *President,*
Erik Møse,
Nona Tsotsoria,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 2 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 30500/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Malik Seyfal oglu Babayev (*Malik Seyfəl oğlu Babayev* – "the applicant"), on 2 May 2011.

2. The applicant was represented by Mr Y. Aliyev, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant complained about the death of his son during his compulsory military service and the absence of an effective investigation into his death.

4. On 12 October 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Khachmaz.

6. The applicant's son, Zakir Babayev (Z.B.), was born in 1991; on 3 July 2009 he was drafted into the army to perform his compulsory military service. From October 2009 he served as a sniper in Gadabay region in military unit no. 171.

A. Death of the applicant's son

7. On the morning of 14 November 2009 Z.B. was on guard duty with one other soldier (Q.S.) at a military post called "A" in Gadabay region. At around 11 a.m. he left his post and went into the nearby forest, where two peasants were cutting wood. Z.B. called the applicant using the telephone of one of the peasants and asked his father to provide him with some belongings. He also asked the applicant to send him a mobile telephone top-up card worth ten Azerbaijani manats (AZN). During the telephone conversation he was in a good mood and did not complain about any problems. Z.B. also asked the applicant to tell his mother to leave her mobile telephone turned on as he would call her later. Following that conversation, the applicant bought mobile telephone top-up cards and sent their passwords to his son by a telephone message.

8. According to the material in the case file, following the telephone conversation with the applicant, Z.B. returned to his guard duty post. At around noon Q.S. left the post in order to change the guard and Z.B. remained alone. A few minutes later the soldiers heard a gunshot and went to the post, where they discovered Z.B.'s body.

B. The criminal investigation

9. On 14 November 2009 criminal proceedings were instituted under Article 125 (incitement to suicide) of the Criminal Code by the Gazakh Military Prosecutor.

10. On the same day a record of an inspection of the scene of the crime was drawn up and signed by the commander of military unit no. 171, Major A.F. It was also signed by two attesting witnesses, E.Q. and N.D., who were soldiers in the same military unit. The record states that the inspection began at 4.30 p.m. and ended at 6 p.m. According to the record, Z.B. had been wearing a shoe and four socks on his left foot; however, the shoe and the sock of his right foot had been taken off. His right shoe had been found next to his body. According to the record, one cartridge, a pen and a note written on a cigarette pack were found at the crime scene. Various photographs of Z.B.'s body, the cartridge, the pen and the note were taken. The note read as follows:

> "I, Z.B., commit suicide and nobody is responsible for that. I commit suicide because I don't want to be a burden to anyone. Mum and Dad, forgive me. Goodbye to everyone; goodbye to life. Signature. Z.B."

11. On the same day a record of the examination was drawn up by the investigator in charge of the case, who examined Z.B.'s body at the headquarters of military unit no. 171 in Gadabay region. According to the record, the examination began at 9 p.m. and ended at 10 p.m. Various photographs of Z.B.'s body were taken.

12. On 15 November 2009 a record of the examination of the body was drawn up in the presence of a forensic expert in the city of Ganja.

13. On the same date a post-mortem examination of Z.B.'s body was carried out. Report no. 02 dated 15 November 2009 showed that death had resulted from one gunshot wound to the left part of the rib cage. The expert found that the seam of the left pocket of Z.B.'s uniform had become unstitched. The expert did not find any other injury on Z.B.'s body or uniform.

14. On 17 November 2009 the investigator questioned nine soldiers of the military unit in which Z.B. had served. The soldiers stated that Z.B. had never been ill-treated during his military service. One of the soldiers, Q.S., further stated that when they had been on guard duty on 14 November 2009, Z.B. had been in a bad mood and had told him about his family problems. In particular, according to Q.S., the applicant's son told him that he had talked to his mother-in-law, who had said that his parents had gone to Russia and would not be visiting him. However, another soldier (N.D.) stated that on 14 November 2009 Z.B. had been in a good mood and had told him that he had talked to his mother-in-law by telephone.

15. On 17 November 2009 the investigator also took signature and writing samples from the soldiers of the military unit in order to identify the author of the written note found at the crime scene.

16. On 19 November 2009 the investigator requested the Khachmaz District Department of Education to provide the investigation with the signature and samples of the applicant's son's writing.

17. On 24 November 2009 the investigator also sent an operational request (*əməliyyat tapşırığı*) to the head of the military counterintelligence department of military unit no. 171, asking him to investigate whether Z.B. had been subjected to unlawful actions during his military service. In a letter dated 30 November 2009 and marked "secret", the head of the military counterintelligence department of military unit no. 171, a lieutenant-colonel (Y.S.), replied to the investigator's request of 24 November 2009. He noted that according to the information obtained after having taken operational measures (*əməliyyat tədbirləri*), on 14 November 2009, before going to the guard post, Z.B. had had a dispute with a sergeant (S.H.) and a soldier (Q.S.), who had beaten him. Around five minutes after this incident, a gunshot had been heard and Q.S., S.H. and another soldier (K.M.) had gone to the post, where they had discovered Z.B.'s body. It was also indicated in the letter that the soldiers had removed Z.B.'s body after the incident in order to help him, but upon realising that he was dead they had laid the body back in its original place.

18. On 24 November 2009 the investigator sent another operational request to the head of the Khachmaz District Police Office, asking him to investigate whether Z.B. had had any family problems, whether Z.B. had been engaged to anyone, or whether any of his close relatives had been

suffering from any psychological illnesses. By a letter of 7 December 2009, the head of the Khachmaz District Police Office informed the investigator that Z.B. had had no family problems, that he had not been engaged to anyone and that his relatives had not been suffering from any psychological illnesses.

19. By a decision of 25 November 2009, the investigator recognised the applicant as a legal heir of the victim (*zərərçəkmiş şəxsin hüquqi varisi*). On the same day the applicant was questioned by the investigator. He stated that at around 11 a.m. on 14 November 2009 he had talked to his son by telephone. Z.B. had been in a good mood and had not complained about anything. Z.B. had asked the applicant to tell his mother to leave her mobile telephone turned on as he would call her later. The applicant further stated that at the request of his son he had bought mobile top-up cards and sent their passwords to him by a telephone message. The applicant also stated that his son had not had a fiancée or a mother-in-law and that he had not had any family problems.

20. On 4 December 2009 the investigator ordered forensic medical, ballistic, chemical and trace examinations. Report no. 16771/72/73 dated 29 December 2009 showed that Z.B. had used his service weapon – an SVD-type D6197 sniper rifle – to commit suicide. The report further found that the seam of the left pocket of Z.B.'s uniform had become unstitched and that this could have resulted either from contact with a blunt object or the use of physical force.

21. On 7 December 2009 the investigator ordered a handwriting examination of the written note found at the crime scene. Report no. 16713 dated 28 December 2009 concluded that a comparison of the samples submitted to the examination showed that the note had similarities with Z.B.'s writing and signature. Report no. 709 dated 27 January 2010 concluded that the coloured elements used in the writing of the note in question and of the pen found at the scene of the crime had the same chemical characteristics.

22. According to a document entitled "Instruction" (*Göstəriş*) dated 14 December 2009 the Deputy Military Prosecutor of the Republic of Azerbaijan gave various instructions to the prosecuting authorities in connection with the criminal proceedings relating to Z.B.'s death. In particular, he asked the prosecuting authorities to inspect the scene of the crime. The relevant part of the document reads as follows:

> "It appears from the case material that the Gazakh Military Prosecutor's Office received the information that Z.B. died ... and the agents of the prosecuting authorities went to the scene of the crime, but it was not possible for them to inspect the scene of the crime, given the foggy weather conditions in the mountainous area. The military commander who carried out the preliminary inspection of the scene of the crime presented the collected material evidence to the Gazakh Military Prosecutor's Office. In order to reconstruct the conditions in which the incident took place, the scene of the crime should again be inspected ..."

23. On 11 January 2010 the investigator visited the "A" military post and inspected the scene of the crime. According to the record of the inspection (dated 11 January 2010), it began at 2.30 p.m. and ended at 3.40 p.m. The investigator took various photographs of the area where the military post was situated.

24. On the same day the investigator questioned four soldiers, including S.H. and Q.S. They denied having beaten Z.B. on 14 November 2009 and submitted that Z.B. had never been subjected to ill-treatment. As regards the investigator's question regarding the fact that the seam of the left pocket of Z.B.'s uniform had been unstitched, they stated that they had not noticed it.

25. On 12 January 2010 the investigator questioned the two peasants who had seen Z.B. on 14 November 2009. They stated that on 14 November 2009, as they had been cutting wood in the forest, Z.B. and Q.S. had approached them. Z.B. had used their mobile telephone to call his father; Z.B. and Q.S. had then left the area. They also stated that Z.B. had been in a good mood before and after the telephone conversation.

26. On 18 January 2010 the investigator carried out a reconstruction of the events in order to establish whether Z.B. had been technically able to commit suicide with his service weapon. The investigator concluded that it would have been possible if he had pressed the trigger of the weapon with the toe of his right foot when standing up or lying down.

27. On 21 January 2010 the applicant was again questioned by the investigator.

28. On the same day the investigator ordered a post-mortem psychiatric and psychological examination (*məhkəmə-psixiatrik və psixoloji ekspertizası*) of Z.B. Report no. 19 of that examination, dated 1 February 2010, concluded on the basis of the statements available in the case file that Z.B. had not been suffering from any mental disorder, but that he had probably been in a state of depression before his death. However, it was not possible to determine the reason for that depression.

29. On 3 February 2010 the investigator questioned five soldiers of the military unit in which Z.B. had served.

30. On 9 February 2010 the investigator decided to terminate the criminal proceedings, finding that there had been no criminal element in Z.B.'s death. The investigator concluded that Z.B. had committed suicide because he had probably been in a state of depression. The investigator further held that it had not been established that Z.B. had been ill-treated by other soldiers. The investigator also decided to destroy the material evidence found at the crime scene, including the written note found next to Z.B.'s body.

31. On 27 February 2010 the applicant lodged a complaint with the Gazakh Military Court against the investigator's decision of 9 February 2010, complaining of the ineffectiveness of the criminal investigation. He disputed the investigator's conclusions relating to the

suicide of his son, pointing out that Z.B. had not suffered from any mental disorder. He submitted in that connection that the statements of the soldiers had been contradictory and had been fabricated, as his son had never had a fiancée or a mother-in-law. The applicant alleged that his son had been either killed or had been driven to suicide by S.H. and Q.S. In that connection, he relied on the content of the letter of 30 November 2009 from the military counterintelligence department of the military unit. He also submitted that the fact that the seam of the left pocket of Z.B.'s uniform had become unstitched proved that his son had been beaten before his death. The applicant further pointed out that the note found at the crime scene had been written using certain words that his son had never used. In particular, he noted that even though Z.B. had never called his parents "*ana*" (mum) and "*ata*" (dad), but rather "*mama*" and "*papa*", he had addressed them as "*ana*" and "*ata*" in that note. The applicant also complained that his son had been harassed by S.H., who had regularly forced Z.B. to ask the applicant to send mobile telephone top-up cards for S.H. In that connection, he asked for an examination of the list of calls made to and from his mobile telephone during the entire period during which his son had been undertaking military service.

32. On 18 March 2010 the Gazakh Military Court overruled the investigator's decision and remitted the case to the prosecuting authorities for fresh examination. The court ordered the investigating authority to examine the applicant's particular complaints. It further found that the investigator had not had the right to decide to destroy the material evidence found at the scene of the crime.

33. As can be seen from the documents submitted by the Government, following the Gazakh Military Court's decision of 18 March 2010, on 19 March 2010 the investigator decided to continue the investigation.

34. On 23 March 2010 the investigator questioned the expert who had conducted forensic medical, ballistic, chemical and trace examinations (see paragraph 20 above). The expert stated that the seam of the left pocket of Z.B.'s uniform could have come unstitched because it had come into contact with his service weapon after his suicide.

35. On 25 March 2010 the investigator also questioned two soldiers, who stated that they did not remember whether Z.B. had called his parents "*ana*" (mum) and "*ata*" (dad) or "*mama*" and "*papa*".

36. On 29 March 2010 the same investigator again decided to terminate the criminal proceedings. That decision was identical in its wording to the investigator's previous decision of 9 February 2010, except for the part concerning the preservation of the written note found at the scene of the crime and two newly added paragraphs. In those paragraphs, the investigator noted that the two soldiers questioned during the investigation had not remembered whether Z.B. had called his parents "*ana*" (mum) and "*ata*" (dad) or "*mama*" and "*papa*". Moreover, relying on the questioning of

the expert on 23 March 2010, the investigator concluded that the seam of the left pocket of Z.B.'s uniform had been unstitched because it had come into contact with his service weapon after his suicide and not as a result of any ill-treatment.

37. On 10 April 2010 the applicant lodged a complaint with the Military Prosecutor of the Republic of Azerbaijan against that decision. He complained of the ineffectiveness of the criminal investigation, pointing out that, taking into consideration that there had been a national holiday in the country from 20 to 28 March 2010, it had been impossible to carry out a new investigation between 19 and 29 March 2010. The applicant also argued that the investigator should have questioned Z.B.'s parents and relatives – not the two soldiers in question – in order to establish whether Z.B. had called his parents "*ana*" (mum) and "*ata*" (dad) or "*mama*" and "*papa*". He further disputed the investigator's interpretation of the expert's conclusion (see paragraphs 20 and 34 above), alleging that the investigator had substituted his own opinion for the expert's conclusion. Lastly, he complained that his lawyer had not had access to the case file.

38. As can be seen from the documents in the case file, on 21 April 2010 the Military Prosecutor of the Republic of Azerbaijan overruled the investigator's decision of 29 March 2010 and remitted the case for fresh examination. Despite the Court's explicit request to the Government that they submit copies of all the documents relating to the criminal proceedings concerning Z.B.'s death, the Government failed to provide the Court with a copy of the decision of 21 April 2010 of the Military Prosecutor of the Republic of Azerbaijan.

39. The criminal case was allocated to another investigator at the Gazakh Military Prosecutor's Office.

40. In May and June 2010 the new investigator questioned Z.B.'s parents, two schoolmates, and five soldiers (including Q.S.) who had served in the same military unit. During the questioning, despite stating that Z.B. had never complained before his death about being ill-treated, the applicant reiterated his previous complaints. It further appears that, even though on 5 June 2010 the investigator questioned the five soldiers separately, the wording of their statements was identical. They each stated that Z.B. had never been ill-treated during his military service.

41. On 18 June 2010 the investigator in charge of the case decided to terminate the criminal proceedings. The investigator found that the allegation of Z.B.'s ill-treatment by Q.S. and S.H. had not been proved during the investigation and that Z.B. had committed suicide because he had probably been in a state of depression.

42. On 13 July 2010 the applicant lodged a complaint against that decision, reiterating his previous arguments. He also noted that the investigator's decision of 18 June 2010 was almost identical in its wording to the previous decisions of the prosecuting authorities. He further

complained that the new investigator had failed to question S.H. again or to address the contradictions in the statements of the soldiers. In that connection, he pointed out that, although Z.B. had had no fiancée or mother-in-law – which had been confirmed in a letter dated 7 December 2009 from the Khachmaz District Police Office – the soldiers had referred in their statements to an alleged telephone conversation with a mother-in-law. The applicant lastly complained about the investigator's failure to attach any importance to the letter dated 30 November 2009 from the head of the military counterintelligence department of military unit no. 171.

43. On 23 July 2010 the Military Prosecutor of the Republic of Azerbaijan again quashed the investigator's decision and remitted the case to the prosecuting authorities for fresh examination. The Government failed to provide the Court with a copy of the decision of 23 July 2010 of the Military Prosecutor of the Republic of Azerbaijan.

44. On 27 July 2010 the investigator again questioned Z.B.'s parents, who reiterated their previous complaints. They also stated that Q.S. and S.H. had regularly harassed their son into obtaining mobile telephone top-up cards.

45. In August 2010 the investigator also questioned various soldiers, who denied any ill-treatment or harassment of Z.B. during his military service.

46. According to the documents submitted by the Government, on 27 August 2010 the investigator again sent an operational request to the head of the military counterintelligence department of military unit no. 171. The investigator noted that, although in the letter dated 30 November 2009 it was stated that Z.B. had been beaten by S.H. and Q.S. on the day of the incident, that allegation had not been proved during the investigation. The investigator further asked the head of the military counterintelligence department to investigate whether S.H. and Q.S. had tried to extort money from Z.B. during his military service.

47. By a letter dated 10 September 2010, the head of the military counterintelligence department of military unit no. 171, Y.S., replied to the investigator's request of 27 August 2010. Y.S. noted that, although he had previously indicated in his letter of 30 November 2009 that Z.B. had been beaten by S.H. and Q.S., that information had not been subsequently confirmed. He further informed the investigator that the military counterintelligence department had not received any information relating to the extortion of money.

48. On 20 September 2010 the investigator at the Gazakh Military Prosecutor's Office again decided to terminate the criminal proceedings, finding that there had been no criminal element in Z.B.'s death. In that connection, the investigator found that Z.B. had committed suicide because he had probably been in a state of depression. Relying on the letter dated 10 September 2010 from the intelligence department of military unit

no. 171, he also concluded that the allegation that Z.B. had been ill-treated by S.H. and Q.S. had not been confirmed during the investigation.

49. On 9 October 2010 the applicant lodged a complaint against that decision with the Military Prosecutor of the Republic of Azerbaijan. He reiterated his previous complaints, pointing out that the investigator had tried to cover those who had ill-treated his son and driven him to suicide.

50. On 15 October 2010 the Deputy Military Prosecutor of the Republic of Azerbaijan dismissed the applicant's complaint, finding that the criminal investigation had been effective.

51. On 1 November 2010 the applicant lodged a complaint against that decision with the Baku Military Court, arguing that the investigator had failed to carry out an effective investigation. In particular, he alleged that the appearance of a new letter from the military counterintelligence department of military unit no. 171 (see paragraph 47 above), which clearly contradicted the previous letter from the same organ, had shown that the domestic authorities had tried to cover S.H. and Q.S., who had beaten his son. He also complained of the investigator's failure to address the contradictions in the statements of the soldiers relating to the alleged existence of a fiancée and a mother-in-law and the alleged family problems of Z.B.

52. On 13 November 2010 the Baku Military Court dismissed the applicant's complaint. The court found, without providing any explanation, that the applicant's complaints were groundless.

53. On 1 December 2010 the applicant appealed against that decision, reiterating his previous complaints.

54. On 29 December 2010 the Baku Court of Appeal dismissed the applicant's appeal and upheld the Baku Military Court's decision of 13 November 2010.

II. RELEVANT DOMESTIC LAW

55. Article 125 (incitement to suicide) of the Criminal Code provides that inciting a person who is dependent on the inciter for material, professional or other reasons to commit or attempt suicide by means of treating that person cruelly, or by means of the systematic denigration of his or her dignity, or by means of threats, is a crime punishable by imprisonment for a term of three to seven years.

56. Under Article 87 § 6 of the Code of Criminal Procedure, a person recognised as a victim or a legal heir of a victim has various procedural rights and is entitled to submit material to the criminal case file, object to actions undertaken by the prosecuting authority, lodge applications, have access to transcripts and documents in the case file, be informed and obtain copies of any procedural decision by the prosecuting authority affecting his

rights and interests (including a decision to discontinue proceedings), and to lodge appeals against procedural steps or decisions.

III. RELEVANT INTERNATIONAL DOCUMENTS

57. On 24 February 2010 the Committee of Ministers of the Council of Europe issued Recommendation CM/Rec(2010)4 concerning the enjoyment of human rights and fundamental freedoms by members of the armed forces in the context of their work and service life. The relevant parts read as follows:

> "7. There should be an independent and effective inquiry into any suspicious death or alleged violation of the right to life of a member of the armed forces.
>
> ...
>
> 11. Where members of the armed forces raise an arguable claim that they have suffered treatment in breach of Article 3 of the Convention, or when the authorities have reasonable grounds to suspect that such treatment has occurred, there should promptly be an independent and effective official investigation."

58. In November 2015 the UN Committee Against Torture considered the fourth periodic report of Azerbaijan, which covered the period from 2009 to 2015, and adopted, *inter alia*, the following conclusions (CAT/C/AZE/CO/4):

> "Violence in the armed forces
>
> 28. The Committee is concerned at the reported prevalence of violence and ill-treatment of conscripts in the army, commonly called *Dedovshchina* (hazing or bullying), which has reportedly led to serious injuries, and of unexplained deaths of conscripts, including suicides (arts. 2 and 16).
>
> 29. The State party should initiate prompt and effective investigation into every case of non-field-related deaths, including suicides, of soldiers in the armed services, should prosecute and punish any perpetrators of actions leading to these deaths and should take measures to prevent such incidents in the future."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

59. Relying on Articles 2, 3 and 6 of the Convention, the applicant complained about the death of his son during his compulsory military service and alleged that the domestic authorities had failed to carry out an effective investigation into the circumstances surrounding the death of his son.

60. The Court considers that the applicant's complaints should be examined solely under Article 2 of the Convention, which provides, in so far as relevant:

"1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

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

B. Merits

1. Substantive aspect of Article 2 of the Convention

(a) The parties' submissions

62. The applicant submitted that the State had failed to protect the life of his son, who had been within the exclusive control of the State during his military service. In particular, he submitted that although the domestic authorities had found that his son had been probably in a state of depression before his death they had failed to establish the reason for that depression. In his opinion, the reasons put forward by the domestic authorities to explain the cause of the suicide had lacked sufficient credibility and his son had been driven to suicide as a result of his being ill-treated during his military service. In support of his claim, the applicant relied on the letter dated 30 November 2009 from the military counterintelligence department of military unit no. 171 and the expert's findings that the seam of the left pocket of Z.B.'s uniform had been unstitched.

63. The Government contested the applicant's submissions. They submitted that the applicant's son had not been driven to suicide as a result of his being ill-treated and that the allegation of ill-treatment in the letter dated 30 November 2009 from the military counterintelligence department of military unit no. 171 had been subsequently denied in a letter of 10 September 2010 from the same department.

(b) The Court's assessment

(i) General principles

64. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and

purpose of the Convention as an instrument for the protection of individual human beings requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324).

65. The first sentence of 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 (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual or, in certain particular circumstances, against him or herself (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III; and *Kılınç and Others v. Turkey*, no. 40145/98, § 40, 7 June 2005).

66. In the context of individuals undergoing compulsory military service, the Court has previously had occasion to emphasise that, as with persons in custody, conscripts are within the exclusive control of the authorities of the State, since any events in the army lie wholly, or in large part, within the exclusive knowledge of the authorities, and that the authorities are under a duty to protect them (see *Beker v. Turkey*, no. 27866/03, §§ 41-42, 24 March 2009; *Mosendz v. Ukraine,* no. 52013/08, § 92, 17 January 2013; and *Perevedentsevy v. Russia*, no. 39583/05, § 93, 24 April 2014). However, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising (see *Ataman v. Turkey*, no. 46252/99, § 55, 27 April 2006, and *Salgın v. Turkey*, no. 46748/99, § 78, 20 February 2007).

67. A positive obligation will arise, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Shumkova v. Russia*, no. 9296/06, § 90, 14 February 2012; *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 50-51, 15 January 2009; and *Keenan*, cited above, §§ 89 and 92).

68. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody or in the army, strong presumptions of fact will arise in respect of injuries and death occurring during that detention or service. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109−11, ECHR 2002−IV).

(ii) Application to the present case

69. The Court does not see any reason to contest the findings of the domestic authorities that the applicant's son committed suicide. Having regard to the evidence before it, the Court considers that any allegation that the applicant's son was murdered would be purely speculative (compare *Ataman*, cited above, §§ 48-53; *Salgın*, cited above, §§ 69-74; *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 59, 17 June 2008; and *Durdu v. Turkey*, no. 30677/10, §§ 59-61, 3 September 2013).

70. In those circumstances, the Court will examine whether the authorities knew or ought to have known of the existence of a real and immediate risk that Z.B. would commit suicide, and, if so, whether they did all that could reasonably have been expected of them to avoid that risk from materialising.

71. In that connection, the Court firstly notes that the present case should be distinguished from cases where conscripts who had committed suicide had been suffering from mental troubles or had not been psychologically stable or had had a history of suicide in their family (see, among many other authorities, *Kılınç and Others*, cited above, §§ 44-46; *Ataman*, cited above, § 58; *Perevedentsevy*, cited above, § 98; *Tikhonova v. Russia*, no. 13596/05, §§ 72-75, 30 April 2014; and *Abdullatif Arslan and Zerife Arslan v. Turkey*, no. 40862/08, §§ 34-37, 21 July 2015). In the present case, nothing in the case file indicates that, either prior to being drafted into the army or while undergoing his military service, Z.B. had suffered from mental troubles which should have alerted the domestic authorities to the possibility that he might commit suicide. Moreover, the applicant did not claim that Z.B. had been suffering from any mental troubles or psychological illness. It was also confirmed by post-mortem psychiatric and psychological report no. 19 dated 1 February 2010 that Z.B. had not suffered from any mental disorder, but that he had probably been in a state of depression before his death.

72. As regards the allegation that on 14 November 2009 approximately five minutes before his suicide Z.B. had had a dispute with a sergeant and a soldier, who had beaten him, the Court firstly notes that unlike in those

cases where it was established in the domestic proceedings that conscripts who had committed suicide had been subjected to physical and verbal violence before their respective suicides (compare *Abdullah Yılmaz*, cited above, §§ 7-10, and *Seyfi Karan v. Turkey* (dec.), no. 20192/04, 23 February 2010), in the present case the applicant's allegation was based on a letter from the military counterintelligence department of military unit no. 171, which was subsequently denied by the same authority (see paragraphs 17 and 47 above). Moreover, although the expert found that the seam of the left pocket of Z.B.'s uniform had been unstitched, there was no clear conclusion as to how it had come to be unstitched (see paragraph 20 above).

73. In any event, even assuming that the applicant's version of the event was accurate and that Z.B. was subjected to physical violence five minutes before his suicide, the Court finds that in the present case the events took place within a very short space of time, which distinguishes the instant case from the case of *Abdullah Yilmaz*. In the latter case, the applicant committed suicide as a result of a series of events which took place in the early morning and continued until the middle of afternoon of the same day, giving the applicant's superior the opportunity to realise that there was a real and immediate risk of suicide (see *Abdullah Yılmaz*, cited above, §§ 7-10). However, the present case is similar to cases previously examined by the Court where there was a very short lapse of time between acts of violence being committed against conscripts and the time at which those conscripts committed suicide; in these cases the conscripts' superiors had had no possibility to foresee the existence of a real and immediate risk of suicide (see *Seyfi Karan*, cited above; *Şahinkuşu v. Turkey*, no. 38287/06, §§ 59-60, 21 June 2016; and *Gülten Önal v. Turkey* (dec.), no. 31420/11, §§ 86-87, 30 August 2016).

74. In that connection, the Court reiterates that in that type of case the unpredictability of human conduct must not be ignored and the State's positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Şahinkuşu*, cited above, § 58, and *Gülten Önal*, cited above, § 80).

75. In the present case there were no indications that Z.B. was suicidal and that the domestic authorities knew or ought to have known at the time of the existence of a real and immediate risk that the applicant's son would commit suicide. For those reasons, the Court finds that the present case does not disclose any appearance of a failure on behalf of the respondent State to protect the right to life of the applicant's son as required by Article 2 of the Convention.

76. Accordingly, there has been no violation of the substantive limb of Article 2 of the Convention.

2. Procedural aspect of Article 2 of the Convention

(a) The parties' submissions

77. The applicant maintained that the criminal investigation had been ineffective. He argued that the domestic authorities had discontinued the criminal proceedings in order to avoid any harm being done to the reputation of the Ministry of Defence. He further submitted that the domestic authorities had failed to question Y.S., who had informed the investigating authorities that his son had been ill-treated before his death. The applicant also pointed out that the domestic authorities had failed to address various contradictions in the statements made by the soldiers concerning the alleged existence of Z.B.'s fiancée and an alleged telephone conversation with his mother-in-law.

78. The Government submitted that the criminal investigation had been effective and had complied with the procedural guarantees provided by Article 2 of the Convention. In particular, the domestic authorities had immediately instituted criminal proceedings and had taken all the relevant investigative actions, such as questioning the witnesses and carrying out various forensic examinations.

(b) The Court's assessment

79. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV; *Branko Tomašić and Others*, cited above, § 62; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 169, 14 April 2015; and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 230, ECHR 2016). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II, and *Mezhiyeva v. Russia*, no. 44297/06, § 72, 16 April 2015). The same standards also apply to investigations concerning fatalities during compulsory military service, including the suicide of conscripts (see *Hasan Çalışkan and Others v. Turkey*, no. 13094/02, § 49, 27 May 2008, and *Abdullah Yılmaz*, cited above, § 58).

80. The investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means.

The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63).

81. Moreover, the persons responsible for the investigations should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mustafa Tunç and Fecire Tunç*, cited above, § 177). There must also be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the next of kin of the victim must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011, and *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 70, 31 July 2014).

(c) Application to the present case

82. The Court notes that criminal proceedings were instituted by the prosecuting authorities immediately after the death of Z.B. on 14 November 2009. However, following a series of domestic proceedings, on 20 September 2010 the Gazakh Military Prosecutor's Office decided to discontinue the criminal proceedings in connection with the death of the applicant's son; that decision was upheld by the domestic courts. It remains to be assessed whether the criminal proceedings were effective, as required by Article 2.

83. In that connection, the Court firstly observes that on three occasions, in less than a year, the domestic prosecutors and courts overruled the relevant decisions taken by the investigator, citing a failure to carry out a comprehensive criminal investigation. It was repeatedly noted that the investigation had been incomplete and that the decisions to terminate the criminal proceedings had been ill-founded. In the Court's opinion, the above-mentioned findings of the national authorities' as regards the quality and scope of the investigation and the repeated remittals of the case disclose a serious deficiency in the criminal investigation carried out by the domestic authorities (see *Banel v. Lithuania*, no. 14326/11, § 71, 18 June 2013, and *Tikhonova*, cited above, § 91).

84. The Court has repeatedly stressed that the procedural obligation under Article 2 requires an investigation to be independent and impartial, both in law and in practice (see paragraph 81 above). However, the Court observes that on 14 November 2009 the inspection of the scene of the crime and the collection of the evidence were carried out by the commander of military unit no. 171, Major A.F., in the presence of two attesting witnesses,

E.Q. and N.D., who were soldiers in the same military unit. In that connection, the Court notes that such an inspection – carried out by military staff belonging to the military unit in which Z.B. had served – cannot be considered to have been part of an "effective investigation" for the purposes of Article 2 of the Convention as it was carried out by persons who could not be considered as independent of anyone likely to be implicated in the events (see *Aktaş v. Turkey*, no. 24351/94, § 301, ECHR 2003-V (extracts), and *Güzelaydın v.Turkey*, no. 26470/10, § 87, 20 September 2016).

85. The Court is also struck by the fact that the investigator in charge of the case did not visit and inspect the scene of the crime until 11 January 2010, following an instruction given by the Deputy Military Prosecutor of the Republic of Azerbaijan (see paragraphs 22 and 23 above). Moreover, it does not appear from the documents in the case file that the investigating authorities took all the available measures for examining the applicant's allegation relating to the extortion of mobile telephone top-up cards.

86. The Court further observes that the prosecuting authorities failed to take all the reasonable steps available to them to secure the evidence concerning the death of the applicant's son. In particular, even though the head of the military counterintelligence department of military unit no. 171, Y.S., informed the investigating authorities by a letter of 30 November 2009 that on 14 November 2009 Z.B. had been beaten by a sergeant and a soldier (see paragraph 17 above), he was never questioned during the investigation. The Court considers that the need to question Y.S. was all the more important in the present case as on 10 September 2010 he sent to the investigating authorities another letter which totally contradicted the contents of his previous letter (see paragraph 47 above). No explanation for that omission was provided by the Government.

87. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's son. It accordingly holds that there has been a violation of Article 2 under its procedural limb

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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

1. Pecuniary damage

89. The applicant claimed 5,400 euros (EUR) in respect of pecuniary damage. He submitted that the amount in question was what he had spent following the death of his son on funeral arrangements and for commemoration ceremonies, as required by tradition.

90. The Government agreed that the applicant had had the right to spend a certain amount of money in funeral expenses. However, they submitted that the applicant's claim lacked documentary evidence. The Government also submitted that at the material time the applicant was entitled to an insurance payment in the amount of EUR 11,000 in respect of the death of his son.

91. However, the Court notes that in the present case it found only a violation of the procedural aspect of Article 2 of the Convention and that the applicant is therefore not entitled to the reimbursement of funeral expenses (see *Rantsev v. Cyprus and Russia*, no. 25965/04, § 347, ECHR 2010 (extracts)). Accordingly, it rejects the applicant's claim in respect of pecuniary damage.

2. Non-pecuniary damage

92. The applicant claimed EUR 35,000 in respect of non-pecuniary damage.

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

94. The Court considers that the applicant has suffered non-pecuniary damage for which he cannot be compensated solely by the finding of a violation and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 15,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

95. The applicant claimed EUR 3,900 for legal services incurred in the proceedings before the domestic courts and the Court.

96. The Government considered that the claim was unsubstantiated and was not supported by documentary evidence. They also submitted that the applicant's representative before the Court had not represented him in the proceedings before the domestic courts.

97. 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 (see *Jalloh v. Germany* [GC], no. 54810/00, § 133, ECHR 2006-IX, and *Asadbeyli and Others v. Azerbaijan*, nos. 3653/05 and 5 others, § 204, 11 December 2012). The Court also points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part. However, in the present case the applicant failed to produce any documentary evidence showing that the costs of legal representation claimed were actually and necessarily incurred and are reasonable as to quantum. Moreover, unlike the cases in which the applicants were able to produce a contract for legal services, according to which, the amounts due were to be paid in the event that the Court found a violation of the applicants' rights (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, §§ 72-75, 3 February 2011, and *Rizvanov v. Azerbaijan*, no. 31805/06, §§ 85-89, 17 April 2012), in the present case no such a contract was submitted to the Court. Therefore, the Court dismisses the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, which is to be converted into Azerbaijani manats (AZN) at the rate applicable on the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President