

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

FIFTH SECTION

CASE OF GURBANOV v. ARMENIA

(Application no. 7432/17)

JUDGMENT

Art 8 • Private and family life • Elapse of thirty-eight days before repatriation of the body of the applicant's son, an Azerbaijani soldier, following his death during a shooting incident at the Armenian-Azerbaijani border • Legitimate aim of establishing circumstances of incident which also led to the death of a number of Armenian soldiers • Diligent forensic examinations conducted within domestic law time frame and not excessive or misplaced given overall conflictual relations between the respondent State and Azerbaijan • International Committee of the Red Cross kept informed throughout period of need for various investigative steps • Overall period not unreasonable • Fair balance struck between applicant's Art 8 rights and legitimate aim pursued
Art 14 (+ Art 8) • Discrimination • Objective and reasonable justification for different treatment in returning the applicant's son's body and bodies of deceased Armenian soldiers • General context of hostility and tension between the two countries requiring different measures for those different situations • Different treatment proportionate to aim pursued • No indication of any ethnic prejudice in the handling of the criminal file involving the applicant's son

STRASBOURG

5 October 2023

FINAL

05/01/2024

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



In the case of Gurbanov v. Armenia,

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

Georges Ravarani*, President*,
Carlo Ranzoni,
Armen Harutyunyan,
Stéphanie Mourou-Vikström,
María Elósegui,
Erik Wennerström,
Mattias Guyomar*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 7432/17) 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 an Azerbaijani national, Mr Salman Gurbanov ("the applicant"), on 24 January 2017;

the decision to give notice to the Armenian Government ("the respondent Government") of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Azerbaijani Government, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 12 September 2023,

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

INTRODUCTION

1. The application concerns the applicant's complaints relating to the delayed return by the Armenian authorities of his son's body. It was alleged that this amounted to inhuman treatment under Article 3 of the Convention in relation to the applicant and his family members, whose rights to respect for their private and family life had also been breached on the same account; it had also prevented them from burying the body in accordance with their religious tradition, in breach of Article 8 of the Convention. Complaints alleging that no effective remedies for the above-mentioned breaches were available and that the underlying reasons for the refusal to return the body were discriminatory were raised under Article 13 and Article 14 of the Convention respectively.

THE FACTS

2. The applicant was born in 1968 and lives in Baku. He was represented by Mr A. Bagirov, a lawyer practising in Baku.

3. The respondent Government were represented by their Agent, Mr G. Kostanyan.

I. BACKGROUND TO THE CASE

4. On 29 December 2016 military clashes took place on the border between Azerbaijan and Armenia. The applicant's son, Chingiz Gurbanov, who was born in 1994 and was a soldier in the Azerbaijani Armed Forces, was killed in the fighting and his body was found close to the village of Chinari in the Tavush region of Armenia.

5. On 9 January 2017 the Co-Chairs of the OSCE Minsk Group released the following statement:

> "Baku and Yerevan continue to accuse each other of a December 29, 2016 attempted incursion on the Armenian-Azerbaijani border resulting in casualties. Armenian Armed Forces are still holding the body of an Azerbaijan serviceman killed in the fighting.
>
> Violations of the ceasefire are unacceptable and are contrary to the acknowledged commitments of the Parties, who bear full responsibility, not to use force. The Co-Chairs urge the leaders of Armenia and Azerbaijan to strictly observe the agreements reached during summits in Vienna and St. Petersburg in 2016, including obligations to finalize in the shortest possible time an OSCE investigative mechanism. The Co-Chairs also urge the return, without delay, of human remains, in accord with the agreements of the Astrakhan Summit of 2010, bearing in mind the exclusively humanitarian nature of this issue. We call upon the Parties to cease mutual accusations and undertake all necessary measures to stabilize the situation on the ground."

6. In a statement of 11 January 2017 Thorbjørn Jagland, Secretary General of the Council of Europe at the time, said:

> "[W]e are concerned about the humanitarian aspects of the conflict. I am aware that the violations of the ceasefire on 29 December resulted in casualties, and that the Armenian Armed Forces are still holding the body of an Azerbaijani serviceman killed in the fighting. I urge the parties to respect the ceasefire, and I fully support the Co-Chairs of the OSCE Minsk Group's call for the return, without delay, of human remains – in accordance with the agreements of the Astrakhan Summit of 2010 – bearing in mind the humanitarian nature of this issue."

II. THE CIRCUMSTANCES OF THE CASE

7. The facts of the case are disputed. They may be summarised as follows.

A. Facts as submitted by the applicant

8. The applicant submitted that in the morning of 29 December 2016 a group of soldiers of the Armenian Armed Forces crossed the border into Azerbaijan, where they were ambushed by the Azerbaijani army and lost some men. Chingiz Gurbanov, the applicant's son, went missing; it was later

found out that he had been killed during that shooting incident and that his body had been taken into Armenian territory.

9. The Azerbaijani authorities appealed to the International Committee of the Red Cross (ICRC). The OSCE Minsk Group, the ICRC and Azerbaijan's State Commission on Prisoners of War, Hostages and Missing People made efforts aimed at the repatriation of the body of the applicant's son. Allegedly, Armenia delayed the process under the pretext that there was an ongoing investigation into the matter.

10. On 5 February 2017, thirty-eight days after the applicant's son's death, his body was returned to Azerbaijan and handed over to the family.

B. Facts as submitted by the respondent Government

11. The respondent Government submitted that on 29 December 2016, early in the morning, the applicant's son had been killed in a military clash that had taken place on Armenian territory within the Bitlis military base (in the Tavush region), which had been invaded by an Azerbaijani sabotage group of which the applicant's son was a member. In the clash three members of the Armenian military forces (Shavarsh Melikyan, Edgar Narayan and Erik Abovyan) had also been killed.

12. On that same day a criminal investigation into the cross-border incident was launched, on the basis of the relevant provisions of the Armenian Code of Criminal Procedure (hereinafter "the CCP"). Subsequently, examinations of the crime scene and of the applicant's son's body were carried out by the Armenian investigative authorities. According to the report on the examination of the body drawn up on that occasion in the presence of M.D.H., a forensic doctor from the nearest Armenian town, and of two attesting witnesses, no signs of torture or ill-treatment were found.

13. The forensic medical examination of the body was set for 30 December 2016; in conformity with humanitarian principles, and, given that the Azerbaijani authorities might raise concerns that the applicant's son's body had shown signs of mutilation or disrespectful treatment, the Armenian authorities invited representatives of the ICRC, in particular its coordinator of issues relating to forensic medicine, to participate in the examination; however, no response to the invitation was received because, as it later transpired, the relevant specialist was not in Armenia at the time. In that connection, the respondent Government submitted information extracted from the Border Management Information System showing that M.V., the ICRC coordinator of issues relating to forensic medicine, had left Armenia on 17 December 2016 and then entered the country again on 3 January 2017; M.V. had then left Armenia again the following day, and returned on 8 January 2017.

14. On 14 January 2017 the body was re-examined in the presence of M.V. The report drafted on that day noted that no signs of torture had been

found. M.V. had confirmed those findings, noting also that the body had been well preserved.

15. On the basis of the two above-mentioned forensic examinations (see paragraphs 13 and 14 above), further biological, chemical and criminological conclusions as to the absence of traces of sexual abuse or of alcohol or drug intoxication were issued on 9, 18 and 30 January 2017 respectively. The final forensic conclusions, confirming death as a result of gunshot injuries, were issued on 22 February 2017.

16. On 3 February 2017 the Armenian National Forensic Medicine Authority informed the investigative authorities that the forensic examinations had been concluded and therefore there was no further need to keep the applicant's son's body.

17. Consequently, on 5 February 2017 the body was transferred to ICRC representatives with a view to its being repatriated to Azerbaijan. That was done on the same day.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. Article 102 of the CCP, as in force at the material time, provided that all applications and petitions lodged by parties or other participants in criminal proceedings had to be examined and determined immediately upon their being lodged unless otherwise provided for by the Code. Decisions taken in that respect had to be reasoned and notified to the applicant or petitioner, and were subject to appeal.

19. Article 14 of the Armenian Criminal Code, as in force at the material time, provided that any person who committed a crime on Armenian territory would be subject to criminal liability under the Armenian legislation; a crime was considered to have been committed on Armenian territory if, among other things, it started, continued or ended on that territory.

20. Article 4 of the Order of the Minister of Health of 24 December 2013 approving the standard for the organisation of forensic medical examinations within the scope of State-guaranteed medical service and assistance set out strict time limits for forensic medical examinations of a body. Thus, the examination of the body could take up to thirty days, a time-limit which could be extended by a further twenty days.

THE LAW

I. ADMISSIBILITY OF THE COMPLAINTS UNDER ARTICLES 3, 8 AND 14 OF THE CONVENTION

21. The applicant complained under Articles 3, 8 and 14 of the Convention, initially about the failure of the Armenian authorities to return the body of his son to the family. The complaint was subsequently amended

to concern the allegedly excessive delay in returning the body, such that the applicant had been prevented from giving his son a proper burial; he also argued that the alleged violations had occurred as a result of discrimination based on ethnic origin.

A. Jurisdiction

22. The Court must first determine whether, for the purposes of the matters complained of (see paragraph 21 above), the application falls within the jurisdiction of the respondent State, within the meaning of Article 1 of the Convention.

1. The parties' submissions

(a) The respondent Government

23. As the matters complained of (see paragraph 21 above) had occurred within Armenian territory, and noting that pursuant to Armenian criminal legislation, the investigation of any crime on Armenian territory was conducted by the Armenian authorities (see paragraph 19 above), the respondent Government accepted that the facts of the case fell within Armenia's jurisdiction.

(b) The applicant

24. The applicant submitted that given that the respondent Government had confirmed Armenia's jurisdiction in relation to the complaints raised by the present application, there was no longer any issue as to jurisdiction.

(c) The Azerbaijani Government, third-party intervener

25. The Azerbaijani Government fully shared the applicant's position on this issue.

2. The Court's assessment

26. The Court notes that in view of the nature of the complaints raised by the applicant, which exclusively concern the return by the Armenian authorities of his son's body, and having regard also to the parties' submissions on this issue (see paragraphs 23-24 above), the question of Armenia's jurisdiction in the present case is beyond dispute.

B. Exhaustion of domestic remedies

1. The parties' submissions

(a) The respondent Government

27. The respondent Government submitted that neither the applicant nor the Azerbaijani Government had applied to the Armenian authorities to have the body of the applicant's son repatriated, nor had they requested any related information. They further argued that in accordance with the Armenian CCP (see paragraph 18 above), the applicant could have lodged an application with the investigating authorities on any matter relating to the investigation, in the same way as any participant in criminal proceedings, or indeed any persons whose rights or obligations were concerned in a criminal case. Such an application could also involve a request to the authorities to return the body to the family, and, if the application had been rejected, there was a right of appeal against that decision. The procedure set out in the CCP was explicit and easily available, making that remedy effective and in full compliance with the provisions of Article 13 of the Convention (see also paragraph 79 below).

28. Moreover, the circumstances of the present case and the complaints raised in it differed essentially from those examined by the Court in *Chiragov and Others v. Armenia* ([GC], no. 13216/05, §§ 115-20, ECHR 2015), which concerned the denial of access to the applicants' possessions and homes in the district of Lachin (ibid., § 214), that essential difference being sufficient to render the Court's findings as to the lack of an effective remedy in that case inapplicable to the present one.

29. The respondent Government also admitted that the lack of diplomatic relations with the Azerbaijani State could be seen as representing a practical obstacle preventing the applicant from having recourse to the above-mentioned remedy; however, the Armenian authorities had shown their willingness and readiness to cooperate with the relevant Azerbaijani authorities when mutual legal assistance was needed.

30. Against that background, the respondent Government submitted that the Armenian authorities could not be held responsible for any practical obstacles; moreover, the applicant had not substantiated in any way his argument that the Armenian authorities had failed to show due diligence when adjudicating on any request received from a national of Azerbaijan. In the absence of any requests made by or on behalf of Azerbaijani citizens, who always alleged that the remedies set out in the Armenian legislation were ineffective, the respondent Government were unable to provide the Court with any examples showing that those remedies were indeed effective, and so the issue proceeded in a vicious circle.

(b) The applicant

31. The applicant emphasised that, as a result of the armed conflict between the respondent State and Azerbaijan, the lack of diplomatic relations between the two countries meant that Azerbaijani citizens faced considerable practical difficulties in bringing and pursuing legal proceedings in Armenia; moreover, given the lack of any viable postal services linking the two countries as well as the closure of the border between them, the applicant could not be required to pursue any remedy in Armenia.

32. In any event, the Armenian authorities' willingness to cooperate was questionable given their refusal to answer the international calls from the ICRC, the Co-Chairs of the OSCE Minsk Group and the Council of Europe urging them to return the applicant's son's body (see paragraphs 5-6 above).

33. Lastly, the criminal procedure provisions relied on by the Armenian authorities were of a general nature and did not directly address the applicant's grievance; in the same vein, no concrete example showing the effectiveness of the remedy in question had been provided by the respondent Government.

(c) The Azerbaijani Government, third-party intervener

34. The Azerbaijani Government submitted that they had no diplomatic relations with the respondent State and that there was no communication between the authorities of the two States.

2. The Court's assessment

35. In assessing the respondent State's arguments as to the effectiveness of the domestic remedies available to the applicant in the present case, the Court will refer to its principled findings in the recent case of *Saribekyan and Balyan v. Azerbaijan* (no. 35746/11, §§ 45-48, 30 January 2020). In that case, which admittedly was brought against Azerbaijan, the Court referred to the Grand Chamber case of *Sargsyan v. Azerbaijan* ([GC], no. 40167/06, § 117, ECHR 2015) and confirmed once again that a person from one country would have considerable practical difficulties in bringing and pursuing legal proceedings in the other country; furthermore, the Azerbaijani Government had not provided any example of a domestic case or remedy showing that individuals in the applicants' situation were able to seek redress through the Armenian authorities.

36. Similarly, in the present case the Court considers that the practical obstacles to the proper functioning of the system for the administration of justice have to be seen as material to the potential attempts of citizens of both countries involved in the conflict to bring their complaints before the authorities of the other country, notwithstanding the potential good will of the domestic authorities on both sides.

37. Moreover, the respondent Government have not provided any concrete example that could show how the domestic provisions of a general nature set out in the CCP could constitute a remedy to be used for exhaustion purposes in Armenia in respect of the applicant's particular complaints relating to the return of his son's body.

38. Consequently, the Court considers that the Government's objection concerning the exhaustion of domestic remedies (see paragraph 27 above) should be dismissed (see, *mutatis mutandis*, *Saribekyan and Balyan*, cited above, § 48).

C. Abuse of the right to individual petition

39. The respondent Government submitted that the applicant had unjustifiably withheld from the Court the information that his son's body had been repatriated on 5 February 2017, ten days after he had lodged his application with the Court. As he was represented by a professional lawyer, such behaviour had to be characterised as an intention to mislead the Court on a decisive issue for the determination of the case as it related directly to the victim status of the applicant (the respondent Government cited *Bekauri v. Georgia*, no. 14102/02, § 21, 10 April 2012).

40. The applicant reiterated that his complaints referred to the prolonged and unjustifiable delay in returning the body of his son to the family, during which time they had suffered profound and continuous anguish; this had also prevented them from giving the deceased a decent and proper burial in compliance with Muslim traditions (see also paragraph 21 above). For those reasons, the applicant's victim status was beyond question; furthermore, there had been no intention to mislead the Court, the applicant having been consistent in challenging the excessive and unjustified delay in repatriating the body of his son.

41. Relying on its consistent case-law in relation to this issue (see, for instance, *Belošević v. Croatia* (dec.), no. 57242/13, § 47, 3 December 2019, with further references), and having regard in particular to the applicant's complaints, which referred firstly to the Armenian authorities' failure to return the body and were subsequently amended to challenge the excessive delay in returning the body (see paragraph 21 above), the Court considers that the applicant's failure to inform it promptly about the return of his son's body did not amount to an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention (see also, *mutatis mutandis*, *Veres v. Spain*, no. 57906/18, §§ 59-60, 8 November 2022).

D. Conclusions as to admissibility

42. The Court considers, in the light of the parties' submissions and having regard to the context of the present case (see paragraphs 4-6 above),

that the complaints summarised in paragraph 21 above raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

43. The applicant complained about the Armenian authorities' failure to repatriate the body of his son within a reasonable time, arguing that the refusal to do so had caused him and his family members mental anguish and suffering in breach of Articles 3 and 8 of the Convention. Furthermore, the difficulties in recovering the body intact after death had prevented the family from burying it in accordance with the family's religious traditions, demonstrating a disregard for the provisions of Article 8 of the Convention. The two relevant Convention Articles read as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicant

44. The applicant contended that the excessively prolonged failure to return his son's body, as well as the unnecessary examinations of the body conducted by the respondent State, had amounted to inhuman treatment under Article 3 of the Convention in relation to himself and his family members. The failure to return the body had caused the family profound anguish and distress, exacerbated by uncertainty as to whether it would be returned at all. The applicant stated that the Armenian Armed Forces had acted deliberately with the intention of humiliating him and his family and causing fear and

suffering to both the relatives and the Azerbaijani public. The facts of the case therefore fell within the ambit of both Articles 3 and 8 of the Convention.

45. The applicant further expressed his strong belief that the refusal of the Armenian authorities to swiftly return his son's body had been prompted by the need to hide acts of mutilation and abuse and not, as claimed by the respondent State, because the authorities had needed to conduct a comprehensive investigation into the death of his son. Indeed, and in contrast to the situation of his son, the Armenian authorities had not considered it necessary to carry out any comprehensive investigation in respect of the deaths of the three Armenian soldiers killed on the same occasion, their bodies having been returned to their families and buried immediately after the shooting incident (namely, on 31 December 2016). From that point of view, the measures taken by the respondent State concerning the body of the applicant's son had been disproportionate and lacked any foreseeable legal basis.

46. Also, when ultimately it had been returned, the body of the applicant's son was naked, showing a malicious intent on the part of the Armenian authorities to further humiliate the applicant's son in front of his family.

47. The applicant lastly argued, without any further details, that the failure to return his son's body within a short time frame had involved a further breach of Article 8 of the Convention, in that he and his family members had been prevented from burying the body in accordance with their religious tradition.

2. The respondent Government

48. The respondent Government argued that the delay in repatriating the body of the applicant's son had been necessary in order to carry out a comprehensive medical examination to discover primarily the cause and time of death, but also any possible acts of mutilation or disrespect towards the body. Domestic law required the circumstances of the applicant's son's death to be formally established, as in all cases of violent death or death in suspicious circumstances (see paragraph 19 above), but it had also been necessary to identify any traces of possible ill-treatment of the body in order to be able to argue effectively against any potential accusations from the Azerbaijani side attributing blame to the Armenian authorities. Indeed, the Armenian authorities had taken greater care in examining the applicant's son's body before repatriation because they had assumed that no further investigative activities could be undertaken afterwards, given the lack of cooperation with the Azerbaijani authorities. Conversely, the situation of the Armenian soldiers was different in that if exhumation subsequently became necessary, it would be possible because their bodies were buried on Armenian land.

49. In any event, the examination of the applicant's son's body, carried out both immediately after its discovery and also later on in the presence of

the ICRC specialist (see paragraphs 13 and 14 above), had revealed no traces of ill-treatment. The applicant's contentions as to the alleged mutilation of his son's body were not supported by any evidence whether of a medical or forensic nature or of any other type.

50. Concerning the foreseeability of the measures taken in respect of the applicant's son's body, the respondent Government argued that the time-limit set out in domestic law for carrying out forensic examinations on a body (see paragraph 20 above) had been fully complied with in the present case. Also, the ICRC representatives had been informed that the body would be returned once the forensic medical examination had been finalised; as soon as the examination was considered to have been concluded, the body had been transferred to the Azerbaijani authorities. The applicant's allegations of uncertainty caused by their lack of response were therefore unsubstantiated.

51. The body had indeed been returned naked, which was the usual practice following an autopsy; also, the applicant's son's clothes had been impounded by the investigative authorities for forensic trace examinations.

52. The respondent Government concluded that the above-mentioned elements proved that the applicant's alleged mental anguish and suffering was not sufficiently substantiated and that if there had been any interference with his Article 8 rights, it had been lawful, legitimate and proportionate to the aim pursued.

3. The Azerbaijani Government, third-party intervener

53. The Azerbaijani Government fully shared the applicant's position on the merits of the case, contending that the actions taken by the authorities of the respondent State had been aimed at humiliating him and causing him emotional distress and suffering.

B. The Court's assessment

1. Characterisation of the complaint

54. The Court reiterates that the applicant's complaints refer essentially to an unjustified delay in the return of his son's body, as well as to unjustified examinations the body had been subjected to, meaning, among other things, that it had been impossible for the family to bury their son in accordance with Muslim rituals.

55. On the basis of the documents on file (see paragraphs 12, 13, 14 and 15 above) and the lack of any evidence to the contrary (see also paragraph 49 *in fine* above), the Court finds it established at the outset that the body of the applicant's son had not been subjected to any form of ill-treatment, such as mutilation or any other form of physical abuse.

56. In view of the above, and having regard to its relevant case-law on the matter (see, for instance, *Maskhadova and Others v. Russia*, no. 18071/05,

§ 208, 6 June 2013, and the references cited therein; *mutatis mutandis*, *Polat v. Austria*, no. 12886/16, § 48, 20 July 2021, in which complaints about the treatment of the applicants' relatives' bodies were examined under Article 8 of the Convention; and, in contrast, *Akpınar and Altun v. Turkey*, no. 56760/00, §§ 84-87, 27 February 2007, in which a complaint about the mutilation of the applicants' relatives' bodies was examined under Article 3 of the Convention), the Court, as master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §114, 20 March 2018), considers that the complaints raised by the applicant should be addressed under Article 8 of the Convention alone.

57. In the same vein, the Court finds that the actions complained of by the applicant constituted an interference with his "private" and "family life" within the meaning of Article 8 of the Convention. It remains to be seen whether this interference was justified under the second paragraph of that provision.

2. Justification of the interference

58. The Armenian investigative authorities decided that a criminal investigation into the cross-border shooting incident of 29 December 2016 which had led to the deaths of three Armenian soldiers and one Azerbaijani soldier (the applicant's son – see paragraphs 4 and 8 above) was necessary on the basis of the provisions of the CCP (see paragraph 12 above). The investigation included making findings about the crime scene and forensic reports on the bodies and was conducted in compliance with the relevant national criminal legislation, and it aimed to elucidate the circumstances of the soldiers' deaths.

59. The Armenian investigators decided to examine the applicant's son's body for signs of ill-treatment in the presence of a neutral authority (the ICRC forensic expert) as a precaution given the conflictual relations with the Azerbaijani authorities. That examination had to be conducted while the body was still with the Armenian authorities, which acted under the assumption that once repatriated, the body would no longer be easily accessible for the purposes of further forensic investigation (see paragraph 48 above).

60. Although an initial forensic examination had taken place in the exclusive presence of Armenian parties in the immediate aftermath of the cross-border shooting incident of 29 December 2016 (see paragraph 12 above), the forensic examination which confirmed the previous conclusions concerning the death of the applicant's son and the fact that his body had not been ill-treated (see paragraph 14 above) was carried out on 14 January 2017, since the ICRC expert had not been available earlier (see paragraph 13 *in fine* above). Further forensic investigations of a biological, chemical and criminological nature were subsequently performed, giving a clearer picture

of the circumstances leading to the death of the applicant's son (see under paragraph 15 above).

61. All these forensic examinations were conducted within some thirty days, and therefore in compliance with the relevant national legal provisions, which provided for an initial thirty-day time frame that could be extended by twenty days.

62. Within two days of the Armenian forensic authorities' having established that the body was no longer needed for the purposes of further investigation, and thirty-eight days after it had been discovered on Armenian territory, the body had been returned to the Azerbaijani authorities (see paragraph 10 above).

63. Regard being had to the above circumstances, the Court is satisfied that the failure to return the body earlier can be seen as having pursued the legitimate aim of enabling the criminal investigative authorities to establish the circumstances of the 29 December 2016 cross-border shooting incident which had led to the death of one Azerbaijani and three Armenian soldiers.

64. Furthermore, the particularly diligent measures taken by the Armenian authorities in conducting forensic examinations of the applicant's son's body (see paragraphs 59-60 above) must be seen in the context of their margin of appreciation and in any event do not appear either excessive or misplaced, given the overall conflictual relations between the respondent State and Azerbaijan, marred by mutual accusations and suspicions about the other State's alleged failure to observe international agreements and comply with ceasefire obligations (see paragraphs 5 and 6 above).

65. The Court also notes that throughout the thirty-eight days when the applicant's son's body was kept by the Armenian authorities, the ICRC authorities were kept informed about the need for various investigative steps to be taken in the case (see paragraphs 9, 13 and 17 above), a measure which should have alleviated the applicant's uncertainty about the return of the body, as complained about by him in the present case.

66. Lastly, having regard to the particular factual circumstances of the present case and in view of the above findings (see paragraphs 64-65 above), the Court considers that the overall period of thirty-eight days which passed before the Armenian authorities returned the applicant's son's body to Azerbaijan cannot be seen as unreasonable (see, *mutatis mutandis*, *Saribekyan and Balyan*, cited above, § 90; and, by way of contrast, *Pannullo and Forte v. France*, no. 37794/97, §§ 38-39, ECHR 2001-X, and *Girard v. France*, no. 22590/04, § 107, 30 June 2011, where the Court found it unreasonable that the French authorities had delayed eight months and four months respectively before returning the applicants' daughters' bodies after autopsies).

67. With regard to the applicant's complaint that the Armenian authorities acted maliciously in returning his son's body naked, aiming to humiliate him and preventing the family from organising a burial in compliance with the

Muslim requirements, the Court notes that the body was returned to the Azerbaijani authorities following an autopsy and in compliance with the usual practice in such cases (see also paragraph 20 above). In the absence of any further evidence as to the bad faith of the Armenian authorities in that respect, the Court cannot discern sufficient substantiation in the file to support the applicant's allegations.

68. The foregoing considerations are sufficient for the Court to conclude that, notwithstanding the tragedy for the applicant of losing his son, due regard must be had to the overall context in which that tragedy occurred, and from that perspective, the Armenian authorities struck a fair balance between the applicant's right to respect for his private and family life on the one hand and the legitimate aim pursued on the other.

69. There has accordingly been no violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 3 AND 8 OF THE CONVENTION

70. The applicant complained that the breaches of the Convention alleged in the present case had come about by means of discriminatory treatment based on ethnicity and national origin, in violation of Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The respondent Government

71. The respondent Government submitted that the applicant had failed to produce any evidence or statistics supporting his contention that the alleged violations had been influenced by his ethnic and national origin. They reiterated that the delay in handing over the applicant's son's body had been caused by the need to conduct a comprehensive and detailed forensic medical examination of the body that was capable of revealing any possible mutilation or disrespect towards the corpse and therefore of giving them sufficient security from any further accusations from the Azerbaijani side in that regard.

2. The applicant

72. The applicant argued that his son's body had been returned after an excessive delay merely because he was an Azerbaijani soldier; indeed, the bodies of the Armenian soldiers who had been killed during the same

shooting incident of 29 December 2016 had been promptly handed over to their families and buried shortly after their death.

3. The Azerbaijani Government, third-party intervener

73. The Government of Azerbaijan supported the applicant's submissions.

B. The Court's assessment

74. A difference in treatment may raise an issue from the point of view of the prohibition of discrimination, as provided by Article 14 of the Convention, only if the persons subjected to different treatment are in a relevantly similar situation, taking into account the elements that characterise their circumstances in the particular context. The Court notes that the elements that characterise different situations and determine their comparability must be assessed in the light of the subject matter and the purpose of the measure that makes the distinction in question (see, among other authorities, *Fábián v. Hungary* [GC], no. 78117/13, § 121, 5 September 2017).

75. In the present case, the Court notes that the applicant's complaints under Article 14 have also been presented under Articles 3 and 8 and that the allegations are essentially based on the same facts that have already been examined under the latter provisions. In particular, as part of its findings above (see in particular paragraphs 59 and 64 above), the Court has taken into account the general context of hostility and tension between Armenia and Azerbaijan and found that precisely because of that context, different measures were required by the different situations of the applicant's son on the one hand and the dead Armenian soldiers on the other; consequently, the different treatment by the Armenian authorities in returning the applicant's son's body was reasonably and objectively justified and in any event proportionate to the aim pursued for the purposes of the applicant's rights to respect for his private and family life.

76. Having that as a starting-point, in the present case the Court does not discern any further element entitling it to find that there was any ethnic prejudice in the handling of the criminal file involving the applicant's son (see, *mutatis mutandis*, *M.B. and Others v. Slovakia*, no. 45322/17, §§ 106-08, 1 April 2021).

77. It follows that there has been no violation of Article 14 of the Convention.

IV. OTHER ALLEGED VIOLATION

78. Lastly, the applicant complained that there was no judicial review or other effective remedy for challenging the failure to return his son's body, in breach of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The respondent Government

79. The respondent Government referred to the arguments in their objection concerning the exhaustion of domestic remedies (see paragraphs 27-30 above). In essence, they submitted that the Armenian CCP clearly provided the applicant with an opportunity to address a question or request to the Armenian investigative authorities on any matter concerning the pending criminal investigations (see paragraph 19 above), the procedure being explicit and easily available to the applicant; any hindrance in the exercise of that right could in any event not be attributed to the Armenian authorities.

2. The applicant

80. The applicant reiterated that in view of the tense relationship between the respondent State and Azerbaijan, any possibility of making a request to the Armenian authorities was illusory and unrealistic.

3. The Azerbaijani Government, third-party intervener

81. The Azerbaijani Government did not submit any comments on this point.

B. The Court's assessment

82. Article 13 guarantees the availability of a remedy at national level to enforce – and hence to allege non-compliance with – the substance of Convention rights in whatever form they may happen to be secured in domestic law. However, that Article cannot reasonably be interpreted as requiring such a remedy in respect of any supposed grievance under the Convention that a person may have, no matter how unmeritorious; the grievance must be an arguable one in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The Court has abstained from giving an abstract definition of the notion of arguability, preferring in each case to determine, in the light of the particular facts and the

nature of the legal issues raised, whether a claim forming the basis of a complaint under Article 13 was arguable. It has held that the admissibility decision in a case is not binding in that respect, but may provide useful pointers (ibid., §§ 54 and 55, and see also *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 27, Series A no. 139).

83. As a rule, the fact that a complaint has been declared admissible is a strong indication that it can be regarded as arguable for the purposes of Article 13, even if the Court ultimately finds no breach of the substantive provision in issue (see, for example, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 137, ECHR 2003-VIII). However, as pointed out above, the determination as to whether a claim is arguable does not depend so much on the case's procedural background as on the particular facts and the nature of the legal issues raised.

84. In the present case the Court, having regard to the particular circumstances and the available evidence, has not been persuaded that the measures taken by the Armenian authorities in relation to the return of the applicant's son's body had a disproportionate impact on the applicant's Article 8 rights. Moreover, during the relatively short period of thirty-eight days when the applicant's son's body was kept by the Armenian authorities for the purposes of conducting effective criminal investigation into his death, the ICRC were kept informed (see paragraphs 50, 59 and 65 above) and hence the applicant could have sought and obtained information about the unfolding of the investigation and the intention of the Armenian authorities to return the body as soon as the forensic investigations were completed (see paragraphs 9, 13 and 63-66 above).

85. Having regard to the above, and even assuming that the complaint raised under Article 8 could be seen as arguable and hence that Article 13 applied, for the specific reasons outlined in the preceding paragraph, it is doubtful whether the applicant was genuinely in a situation in which he actually needed to use an effective complaint procedure in Armenia but was unable to do so. The Court considers, therefore, that in the particular circumstances the complaint under Article 13 is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under its Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 3, Article 8 and Article 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

3. *Holds* that there has been no violation of Article 14 of the Convention.

Done in English, and notified in writing on 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Georges Ravarani President