

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

FIFTH SECTION

CASE OF KHACHATRYAN v. ARMENIA

(Application no. 18635/16)

JUDGMENT

STRASBOURG

30 April 2026

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khachatryan v. Armenia,

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

Georgios A. Serghides*, President*,
Gilberto Felici,
Diana Sârcu*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 18635/16) 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") on 25 March 2016 by an Armenian national, Mr Movses Khachatryan ("the applicant"), who was born in 1968 and lives in the village of Spandaryan, and was represented by Mr M. Shushanyan, a lawyer practising in Yerevan;

the decision to give notice of the application to the Armenian Government ("the Government"), represented by their former Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters;

the withdrawal of Mr Vahe Grigoryan, the judge elected in respect of Armenia, from sitting in the case (Rule 28 § 3 of the Rules of Court);

the parties' observations;

Having deliberated in private on 2 April 2026,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the death of the applicant's son during compulsory military service and the ensuing investigation. It raises issues primarily under Article 2 of the Convention.

I. MEDICAL TREATMENT AND DEATH OF THE APPLICANT'S SON

2. In June 2011 the applicant's son, H. Khachatryan, was drafted into the Armenian army.

3. On 6 December 2011 H. Khachatryan was put on a 16-hour uninterrupted patrol, during which he felt cold and complained of facial pain.

4. On 8 December 2011 H. Khachatryan addressed the medical service of his military unit, complaining of acute facial pain. He was diagnosed with neuritis (inflammation) of the facial nerve and transferred to the Central Military Hospital in Yerevan ("the CMH") the next day.

5. On 9 December 2011 H. Khachatryan was admitted to the neurology unit of the CMH with the diagnosis of facial nerve mononeuropathy.

6. The medical records from 10-26 December 2011 indicate that H. Khachatryan had mainly complained of facial pain, had undergone various medical examinations and had been receiving treatment.

7. According to the medical records of 28 December 2011, H. Khachatryan had complained of abdominal pain in relation to which a surgeon had been invited.

8. On the same day H. Khachatryan was examined by a surgeon, who noted "no acute surgical pathology for the moment".

9. On the same day (in the morning) a doctor specialising in infectious diseases diagnosed H. Khachatryan with varicella (chicken pox) and noted that inpatient treatment was required in Nork Infectious Diseases Clinical Hospital (a specialist clinic for infectious diseases – "Nork Hospital"). On the same day a transfer note was issued for H. Khachatryan's referral to Nork Hospital.

10. On 29 December 2011 H. Khachatryan's health drastically deteriorated. At 5.40 a.m., he suddenly started having convulsions and lost consciousness. At 7.40 a.m. he experienced severe abdominal pain. Treatment was administered and a general practitioner invited.

11. At around 10.20 a.m. the same day H. Khachatryan started having convulsions again. Once his condition had stabilised, he underwent several medical examinations at the CMH, after which he was taken to Nork Hospital at around 11.10 a.m.

12. At around 11.30-11.40 a.m. the same day H. Khachatryan was admitted to the intensive care unit of Nork Hospital. He was diagnosed with visceral disseminated varicella and his condition was considered critical.

13. Following unsuccessful resuscitation measures, at 10.30 p.m. on 30 December 2011 H. Khachatryan was pronounced dead in Nork Hospital.

II. INTERNAL INVESTIGATION BY THE MINISTRY OF DEFENCE

14. An internal investigation into H. Khachatryan's death carried out by the Ministry of Defence established, *inter alia*, that prior to his admission to the CMH, two instances of varicella had taken place at the neurology unit. However, measures aimed at preventing the spread of the virus had not been undertaken immediately. Certain measures that had been undertaken (including airing out the rooms and disinfection) had clearly been insufficient; patients, including H. Khachatryan, had not been examined for the early detection of the virus. H. Khachatryan's blood test from 10 December 2011 had shown abnormalities in several relevant parameters but there had been no proper follow-up. Despite the recommendation of 28 December 2011 to refer H. Khachatryan to a specialised infectious diseases hospital, he had not been transferred on the same day. The internal investigation concluded that it would have been possible to avoid the fatal outcome for H. Khachatryan if, *inter alia*, he had been properly diagnosed with varicella in a timely manner and received the relevant specialist treatment and, further to the discovery of cases of varicella contamination in the neurology unit of the CMH, if the required measures had been undertaken

to prevent the spread of the virus. Furthermore, breaches of the relevant rules in relation to the organisation of patrol duty in December 2011 (see paragraph 3 above) were discovered.

15. On the basis of the results of the internal investigation, in February 2012 the Minister of Defence issued an order whereby a number of military and military medical officials and personnel were reprimanded. The head of the neurology unit of the CMH, M.M., was transferred to the reserve.

III. CRIMINAL PROCEEDINGS

16. In the meantime, on 9 January 2012 the Investigative Service of the Ministry of Defence instituted criminal proceedings.

17. Between 11 January and 2 February 2012 witnesses were questioned, including M.M. (see paragraph 15 above) and V.G. and S.S., respectively the head and senior resident of the surgical unit of the CMH, and Mi.M., the head of the CMH. H. Khachatryan's medical records were requested from the CMH and Nork Hospital and were examined.

18. On 18 January 2012 M.M. was charged with negligent attitude towards military service resulting in significant consequences and, on 22 January 2012, with aggravated medical negligence.

19. On 2 February 2012 the autopsy was completed. According to the ensuing report, H. Khachatryan had died as a result of multi-organ failure due to varicella.

20. A forensic examination by a medical expert panel (which issued a report on 8 May 2012) established, *inter alia*, that the treatment in respect of mononeuropathy had been adequate; after H. Khachatryan had been diagnosed with varicella on 28 December 2011 (in the morning), it had been necessary to urgently organise his transfer to Nork Hospital; since there had been shortcomings in H. Khachatryan's medical treatment and a negative outcome, it was not possible to predict what the outcome would have been had all the necessary treatments been administered.

21. In July 2012 the charge of aggravated medical negligence against M.M. (see paragraph 18 above) was dropped and the latter and Mi.M. were charged with negligent attitude of an official towards military service resulting in significant consequences. According to the charges, M.M. had failed to involve an infectious diseases doctor after H. Khachatryan had been diagnosed with varicella and to ensure his timely transfer to an infectious diseases hospital, where he had eventually been taken after already being in critical condition. As for Mi.M., according to the charges, he had failed to follow the relevant military protocol in the event of an occurrence of an infectious disease, thereby failing to undertake the requisite measures to prevent the spread of the infection at the CMH.

22. The investigation was completed on 19 July 2012. After consulting the case file, the applicant disagreed with the charges, arguing that M.M. and

Mi.M. should have been charged with aggravated negligent attitude towards military service (considering the grave consequences), that M.M. should have also been charged with aggravated medical negligence and that H. Khachatryan's treating doctors should be charged as well. The investigator dismissed his arguments for lack of a direct causal link between the death of his son and the actions of M.M. and Mi.M.

23. On 3 August 2012 the bill of indictment was finalised and the case was sent for examination to the Erebuni and Nubarashen District Court of Yerevan ("the District Court").

24. In the course of the trial two further (see paragraph 20 above) forensic examinations by medical expert panels were ordered. The first one, completed in October 2013, found, *inter alia*, that it had not been possible to anticipate the outcome of visceral disseminated varicella and it would have been proper to organise an additional consultation with an infectious diseases specialist, who could have discovered the disease in question. The second examination, completed in August 2014, essentially concluded that there had been no delay in transferring H. Khachatryan to Nork Hospital, considering that the CMH was a multi-profile hospital and that the fatal outcome had been inevitable.

25. On 5 February 2015 the District Court terminated M.M.'s and Mi.M.'s prosecutions by application of the Amnesty Act of 3 October 2013 (adopted by the National Assembly on the occasion of the 22nd anniversary of the independence of the Republic of Armenia). The applicant successfully disputed that decision, following which the case was remitted to the District Court for further examination.

26. In December 2015 the District Court granted a request by M.M. and Mi.M. to terminate the applicant's son's victim status and accordingly the applicant's status as the victim's legal heir. On appeals lodged by the applicant, that decision was eventually overturned by the Court of Cassation, which restored his procedural status in November 2016.

27. In February 2016 the District Court once again terminated M.M.'s and Mi.M.'s prosecutions by granting them amnesty (see paragraph 25 above). The applicant lodged a further appeal.

28. On 11 July 2017 the Criminal Court of Appeal terminated the proceedings on the grounds that M.M.'s and Mi.M.'s prosecutions had become time-barred. The applicant appealed against that decision but was unsuccessful.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

29. Relying on Articles 2, 3 and 13 of the Convention, the applicant complained that his son had lost his life as a result of lack of proper and timely

medical care during military service and that the domestic authorities had failed to conduct an effective investigation into the matter. Being 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, 124 and 126, 20 March 2018), the Court considers that the complaint falls to be examined solely under Article 2 of the Convention.

30. The Government submitted that the application was inadmissible for failure to comply with the six-month time-limit or failure to exhaust the domestic remedies. Having regard to the Court's relevant case-law and in view of the circumstances of the present case, the Court dismisses both inadmissibility pleas (see *Nana Muradyan v. Armenia*, no. 69517/11, §§ 107-11, 5 April 2022; *Ashot Malkhasyan v. Armenia*, no. 35814/14, §§ 69-71, 11 October 2022; *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, §§ 95-99, 8 November 2022; and *Hovhannisyan and Karapetyan v. Armenia*, no. 67351/13, §§ 67-69, 17 October 2023). It further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

31. Starting with the substantive limb of the complaint, the applicable legal principles have been summarised in *Kılınç and Others v. Turkey* (no. 40145/98, §§ 40-42, 7 June 2005); *Plokhovy v. Russia* (no. 45024/07, § 78, 22 December 2020); and *Dimaksyan v. Armenia* (no. 29906/14, §§ 59-62, 17 October 2023).

32. H. Khachatryan was healthy when he was drafted for military service. He asked for medical assistance on 8 December 2011, at which point he was examined by the military medical service personnel, who referred him to the CMH (see paragraphs 3 and 4 above). He was then treated at the CMH until 29 December 2011, when he was transferred to Nork Hospital where he died on 30 December 2011 (see paragraphs 5, 11 and 13 above). The autopsy performed in the course of the ensuing criminal proceedings concluded that the cause of his death had been multi-organ failure due to varicella (see paragraph 19 above).

33. The internal investigation carried out by the Ministry of Defence established, *inter alia*, that (i) despite the known instances of varicella at the neurology unit of the CMH, measures aimed at preventing the spread of the virus had not been undertaken immediately; (ii) H. Khachatryan had not been diagnosed properly and in a timely manner with varicella; and (iii) the recommendation to refer him to an infectious diseases hospital had not been duly followed in a timely manner (see paragraph 14 above). There is no reason for the Court not to rely in its assessment on the factual findings of the internal investigation (see *Dimaksyan*, cited above, § 73, with further references).

34. Within the framework of the criminal proceedings it was similarly established that (i) H. Khachatryan's medical treatment at the CMH had been

deficient; (ii) his transfer to an infectious diseases hospital – which had been deemed urgent – had been belated; and (iii) there had been a failure to follow the relevant protocols to prevent the spread of the varicella infection (see paragraphs 20, 18 and 24 above). Even though the other medical experts later expressed doubt as to whether there had been a delay in transferring H. Khachatryan (see paragraph 24 *in fine* above), they did so by making a general reference to the fact that the CMH was a "multi-profile" hospital, without indicating, however, what specialist anti-viral treatment, if any, he had received at the CMH as an alternative to his being transferred to an infectious diseases hospital as soon as he had been diagnosed with varicella, as recommended by the infectious diseases doctor (see paragraph 9 above).

35. While the Court cannot speculate as to whether matters would have turned out differently if relevant measures to prevent the transmission of varicella virus had been undertaken, if H. Khachatryan had been diagnosed with varicella sooner, or if he had been transferred to an infectious diseases hospital in a timely manner, the relevant test under Article 2 cannot require it to be shown that "but for" the failing or omission of the authorities the death would not have occurred. What is decisive is whether all the reasonable measures in the given situation were undertaken to safeguard life, which, in the Court's opinion, did not occur in the present case (see, *mutatis mutandis*, *Dimaksyan*, cited above, § 83; see also, *mutatis mutandis*, *Plokhovy*, cited above, § 81).

36. In view of the foregoing considerations, the Court concludes that the authorities in the present case failed to comply with their positive obligation to protect H. Khachatryan's right to life while he was under their control.

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

38. As regards the procedural limb of the complaint, the general principles concerning the effectiveness of a criminal investigation under Article 2 of the Convention have been summarised in *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 172-81, 14 April 2015).

39. The Court notes that the Investigative Service of the Ministry of Defence opened an investigation of its own motion within several days after the death, that is, on 9 January 2012 (see paragraphs 13 and 16 above), and undertook a number of investigative measures starting from the first days of the investigation (ordering an autopsy, examining medical records and questioning witnesses; see paragraphs 17 and 19 above).

40. Furthermore, the investigation was completed within six months, that is, in July 2012, and the case was sent for trial in August 2012 (see paragraphs 22 and 23 above). There was therefore no unjustified delay in the pre-trial stage of the proceedings.

41. However, the trial proceedings lasted several years, including as a result of several remittals (see paragraphs 25 and 26 above), and were eventually terminated in July 2017 – that is, five years after the completion

of the investigation – as a result of the accuseds' prosecution becoming time-barred (see paragraphs 22 and 28 above). The Government did not put forward convincing and plausible reasons to justify such delay in the trial stage of the proceedings (see *Bilbija and Blažević v. Croatia*, no. 62870/13, § 107, 12 January 2016, and, *mutatis mutandis*, *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 96, 7 May 2020). The Court reiterates in this connection that the procedural obligations arising under Articles 2 and 3 of the Convention can hardly be considered to have been met where an investigation is terminated, as in the present case, through statutory limitation of criminal liability resulting from the authorities' inactivity (see *Ashot Malkhasyan*, cited above, §§ 117-18).

42. The foregoing considerations are sufficient for the Court to conclude that the criminal investigation into the death of the applicant's son was not effective.

43. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage and EUR 9,650 in respect of costs and expenses incurred in the domestic proceedings and before the Court, including legal costs and postal expenses.

45. The Government contested those claims.

46. The Court awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

47. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 2,500 covering all costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention both under its substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 30 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Georgios A. Serghides President