

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

FOURTH SECTION

CASE OF MANUKYAN v. ARMENIA

(Application no. 2303/12)

JUDGMENT

STRASBOURG

21 June 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Manukyan v. Armenia,

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

Jolien Schukking, *President,*
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 2303/12) 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 19 December 2011 by an Armenian national, Ms Lamara Manukyan, born in 1960 and living in Gyumri ("the applicant"), who was represented before the Court by Mr T. Muradyan, a lawyer practising in Yerevan;

the decision to give notice of the complaints concerning the death of the applicant's son to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 31 May 2022,

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

SUBJECT MATTER OF THE CASE

1. The applicant is the mother of S. Manukyan who died at the age of 19 during his compulsory military service.

2. On 10 November 2009, when S. Manukyan was on duty in the sentry post, an argument started between him and Chief Lieutenant V.G., the platoon commander, when the latter insulted and punched S. Manukyan a number of times. Later that day, G.A., the commander of the military unit, punched S. Manukyan in the face because he had been late opening the gates for G.A.'s car. About ten minutes later S. Manukyan was found dead with a gunshot wound to the head. During the examination of the scene of the incident on the same day, traces of blood were found at a distance of about sixteen metres from the body.

3. Criminal proceedings were instituted under Article 110 of the Criminal Code (incitement to suicide). The investigation concluded that S. Manukyan had committed suicide using his service gun. It was established that on 14 May 2009 S. Manukyan had already tried to commit suicide after V.G. had humiliated, verbally abused and punched him. V.G. had then ordered the other soldiers not to tell anyone about what had happened. The next day

Captain M.S., the commander of the tank company, learnt about the incident but did not report it.

4. According to an autopsy report, the cause of S. Manukyan's death was a perforating ballistic trauma to the head. A number of other injuries were discovered on the body, such as a bruise on the left side of the chin and abrasions in the areas of the left glenohumeral joint, the right scapula, the right radiocarpal joint and the fifth digit of the right hand. During questioning, the forensic medical expert stated that it could not be ruled out that the bruise on the left side of the chin had been inflicted when G.A. had punched S. Manukyan.

According to the ballistic report, no identifiable fingerprints were found on S. Manukyan's service gun or on the bullets.

An initial psychiatric and psychological *post-mortem* examination concluded that S. Manukyan had suffered extreme mental stress before committing suicide. V.G.'s actions had significantly affected S. Manukyan's psychological condition and it could be assumed that there had been a causal link between them. The information available was not sufficient to conclude whether there had been a causal link between S. Manukyan's psychological condition before the suicide and the actions of G.A. or to determine precisely whose actions had caused S. Manukyan to commit suicide.

An additional psychological *post-mortem* examination concluded that S. Manukyan had committed suicide as a result of extreme emotional stress initially caused by V.G.'s unlawful actions and then exacerbated by the unlawful actions of G.A.

The forensic examination of the blood samples, which had been discovered at a distance of about sixteen metres from the body (see paragraph 2 above), confirmed that they were of the same blood type as that of S. Manukyan, so they could have come from him.

5. In April 2010 V.G. was charged with abuse of power for having provoked extremely intense psychological stress, causing S. Manukyan to commit suicide. V.G. was also charged for having physically abused another soldier several times in September 2009. M.S. was charged with abuse of power for not having informed the superior military command about the incident of 14 May 2009 out of fear of being reprimanded and for the lack of discipline and the unstable mental state of the conscripts in the unit under his leadership.

6. In June 2010 G.A. was charged with abuse of power for not having reported the incidents of physical abuse of soldiers by V.G. and having issued unlawful orders to soldiers to open the gate of the sentry point without the permission of the sentry post leader or without the latter accompanying them. G.A. was also charged with punching S. Manukyan on 10 November 2009, which had not caused severe damage to his health, but had brought about a grave consequence, in that several minutes afterwards, S. Manukyan had committed suicide.

G.A. was released on bail, after which he was dismissed from the post of commander of the military unit and moved to another position. Later, the investigator decided to suspend G.A.'s service on the basis of evidence that he had used his official capacity to exert undue influence on the participants in the proceedings. During the trial, which started in July 2010, the applicant lodged several requests seeking to have G.A. detained. Eventually the Syunik Regional Court placed G.A. under detention on 3 December 2010.

7. By a judgment of 20 December 2010, which was fully upheld on appeal, the Regional Court found V.G., M.S. and G.A. guilty as charged (see paragraphs 5 and 6 above) and sentenced them to imprisonment for six, two and seven years respectively. M.S. was exempted from serving his sentence following the application of an amnesty.

8. Relying on Articles 2, 8 and 13 of the Convention, the applicant complained about the death of her son during military service and that the authorities had failed to carry out an effective investigation into the matter. She alleged that her son had been murdered.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

9. The applicant relied on Articles 2, 8 and 13 of the Convention. Since it is 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 finds it appropriate to examine the applicant's complaints solely under Article 2 of the Convention.

10. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other ground. It must therefore be declared admissible.

A. Procedural limb

11. The applicable general principles have been summarised in the Grand Chamber's judgment in *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015).

12. Notably, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (ibid., § 175).

13. The authorities conducted a prompt investigation. They sought forensic evidence and witnesses were heard (see paragraphs 3 and 4 above). The investigation led to the prosecution and conviction of S. Manukyan's

hierarchical military supervisors albeit one of them received an amnesty (see paragraphs 6 and 7 above).

14. However, the investigation failed to elucidate a number of important circumstances surrounding S. Manukyan's death. No proper explanation was given in relation to the several other injuries (apart from the ballistic injury) which had been discovered during the autopsy. The investigator questioned the forensic expert only in relation to the chin injury and concluded that it had been inflicted by G.A. when he had punched S. Manukyan, whereas the expert had merely not ruled out that that had been the case (see paragraph 4 above). Nor was any explanation provided in respect of the presence of the traces of blood, which had been found to correspond to S. Manukyan's blood type (ibid.), about sixteen metres away from where his body had been found. Although the investigation concluded that S. Manukyan had committed suicide using his service gun, his fingerprints were not found on the weapon (ibid.). In these circumstances, it is not possible for the Court to conclude that the findings of the investigation were based on a thorough analysis of all the relevant elements (see paragraph 12 above).

15. Despite the fact that the investigation led to the conviction of S. Manukyan's superiors, it failed to shed full light on all the circumstances surrounding his death, thereby leaving a number of important questions unanswered (see paragraph 14 above). The Court therefore finds that the authorities failed to carry out an adequate and effective investigation. It is thus unnecessary to examine the other aspects of the investigation (see, *mutatis mutandis*, *Magnitskiy and Others v. Russia*, nos. 32631/09 and 53799/12, § 272, 27 August 2019, and *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 101, 7 May 2020).

16. There has accordingly been a violation of Article 2 of the Convention in its procedural limb.

B. Substantive limb

17. The Court will examine the matter in the light of the relevant general principles, as summarised in *Mosendz v. Ukraine* (no. 52013/08, §§ 90-93, 17 January 2013), *Perevedentsevy v. Russia* (no. 39583/05, §§ 91-94, 24 April 2014), *Malik Babayev v. Azerbaijan* (no. 30500/11, §§ 64-68, 1 June 2017) and most recently in *Boychenko v. Russia* (no. 8663/08, §§ 76-80, 12 October 2021, with further references).

18. Notably, the primary duty of a State is to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and

errors liable to be committed in that regard by those in charge at different levels (see *Mosendz*, cited above, § 91). Furthermore, States are required to secure high professional standards among regular soldiers, whose acts and omissions – particularly *vis-à-vis* conscripts – could, in certain circumstances, engage their responsibility, *inter alia*, under the substantive limb of Article 2 (see *Abdullah Yılmaz v. Turkey,* no. 21899/02, §§ 56-57, 17 June 2008, see also, *mutatis mutandis*, *Stoyanovi v. Bulgaria,* no. 42980/04, § 61, 9 November 2010).

19. Having regard to the significant shortcomings in the investigation identified earlier (see paragraph 14 above), the Court views its findings with caution. At the same time, and due to the authorities' own failure to conduct an adequate investigation into the matter, the material before the Court does not allow it to support the hypothesis that S. Manukyan's life was taken intentionally (contrast *Beker v. Turkey*, no. 27866/03, §§ 45-54, 24 March 2009, and *Lapshin v. Azerbaijan*, no. 13527/18, §§ 110-20, 20 May 2021; see also, *mutatis mutandis*, *Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010). Thus, any allegation that the applicant's son was murdered would be purely speculative (see, *mutatis mutandis*, *Abdullah Yılmaz*, cited above**,** § 59, and *Durdu v. Turkey*, no. 30677/10, §§ 59-61, 3 September 2013).

20. The Court will therefore examine whether the authorities knew or should have known of the existence of a real and immediate risk that S. Manukyan would commit suicide and, if so, whether they did all that could reasonably have been expected of them to avoid that risk from materialising (see *Kurt v. Austria* [GC], no. 62903/15, §§ 157-60, 15 June 2021).

21. It was established during the investigation that on 14 May 2009, that is, six months before the incident, S. Manukyan had attempted to commit suicide as a result of his ill-treatment by V.G. However, there is nothing to indicate that those in charge of the military unit, including G.A., were aware of S. Manukyan's ill-treatment or his past suicide attempt considering that V.G. and M.S. had failed to report the incident (see paragraph 3 above). In any event, V.G., the platoon commander in charge of the sentry post while S. Manukyan was on duty, as well as M.S., the commander of the tank company, were clearly aware of S. Manukyan's previous suicide attempt.

22. Despite that, and instead of taking appropriate measures to avoid the risk to S. Manukyan's life, V.G.**,** his superior**,** verbally and physically abused him on the day of the incident which, as clarified later, significantly affected his psychological condition. In particular, it was established in the forensic psychological expert's additional conclusion (see paragraph 4 above) that S. Manukyan committed suicide as a result of the extreme emotional stress initially caused by V.G.'s unlawful actions and then exacerbated by the unlawful actions of G.A.

23. It follows that the domestic authorities knew at that time of the existence of a real and immediate risk that S. Manukyan could commit suicide

but failed to take appropriate measures to prevent that risk from materialising (see, for a similar example, *Perevedentsevy*, § 100; *Boychenko*, §§ 88-96; and compare and contrast, *Malik Babayev*, § 75, all cited above), thereby failing to comply with their positive obligation to protect his life. Furthermore, contrary to their obligation to adopt practical measures to effectively protect conscripts against the dangers inherent in military life (see paragraph 18 above), those in charge of the military unit, including its commander G.A., failed to ensure that incidents of ill-treatment of conscripts were effectively reported. What is more, G.A. himself mistreated S. Manukyan which in its turn also affected his psychological condition (see paragraphs 4 and 22 above).

24. Accordingly, the Court concludes that the authorities failed to comply with their positive obligation to protect S. Manukyan's right to life while he was under their control.

25. There has therefore been a violation of Article 2 in its substantive limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,900 in respect of costs and expenses incurred before the Court.

27. The Government contested the applicant's claims.

28. In view of the nature of the violation found, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,000 covering costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

30. The Court further 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 a violation of Article 2 of the Convention in its procedural limb and in its substantive limb;

3. *Holds*

   (a) that the respondent State is to pay the applicant, 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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,000 (two thousand 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 21 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Jolien Schukking President