



Azerbaijan authorities responsible for the death and torture of an Armenian man in a military police department cell

The case of [Saribekyan and Balyan v. Azerbaijan](#) (application no. 35746/11) concerned the death of the applicants' son, an Armenian citizen, while in military police detention in Azerbaijan.

In today's **Chamber judgment**¹ the European Court of Human Rights held that there had been,

by five votes to two, a violation of Article 2 (right to life) of the European Convention on Human Rights owing to the applicants' son's death in detention in Azerbaijan, and,

by six votes to one, a violation of Article 2 owing to the lack of an effective investigation into the son's death, and,

by six votes to one, a violation of Article 3 (prohibition of torture and ill-treatment) because the applicant's son had been tortured before his death, and,

unanimously, no violation of the rights of the applicants under Article 3.

The Court found in particular that the applicants had made a prima facie case that their son, Manvel Saribekyan, had died as a result of the violent actions of others, notably personnel at the Military Police Department in Baku, where he was being held. It could not accept the Azerbaijani authorities' version of events that he had hanged himself.

Furthermore, Azerbaijan had not provided any evidence to question Armenian forensic findings on injuries suffered by Mr Saribekyan before his death, including signs of beating and a head trauma, ill-treatment which had to be classified as torture.

Principal facts

The applicants, Mamikon Saribekyan and Siranush Balyan, are Armenian nationals.

Their son, Manvel Saribekyan, born in 1990, was arrested in Azerbaijan in September 2010. His family state that he inadvertently crossed the border in the fog in a forest while looking for wood and stray cattle, however, the Azerbaijani authorities accused him of being part of a plan to blow up a school in a nearby Azerbaijani village.

He was taken to the Military Police Department of the Ministry of Defence in Baku and placed in a cell, where he was found dead in October 2010, with the Azerbaijani authorities subsequently finding that he had hanged himself. A forensic report was issued.

The body was returned to Armenia in November 2010 and the authorities there opened a criminal investigation. A forensic report found injuries on his neck, head and body.

The Armenian Prosecutor General asked for legal assistance from Azerbaijan but as no reply was received the Armenian pre-trial investigation was suspended in December 2011. An investigation in

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Azerbaijan found in January 2011 that Mr Saribekyan had committed suicide, that he had been held in proper conditions and that he had not been assaulted while in custody.

Complaints, procedure and composition of the Court

The applicants complained under Article 2 (right to life), Article 3 (prohibition of torture and of inhuman or degrading treatment), Article 13 (right to an effective remedy), and Article 14 (prohibition of discrimination) in conjunction with Articles 2 and 3 that their son had been tortured and killed in detention; that the Azerbaijani authorities had not carried out an effective investigation; that they had had no effective legal remedy; and that the alleged violations had occurred because of discrimination based on ethnic origin.

The application was lodged with the European Court of Human Rights on 10 June 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
Ganna **Yudkivska** (Ukraine),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

The Court first rejected two objections by the Government of Azerbaijan. It argued that Mr Saribekyan had been captured as a member of the Armenian armed forces and so his case had to be dealt with under international humanitarian law not by the Court. In addition, it argued that the applicants had not met the requirement of exhausting domestic remedies.

On the first point, the Court noted that international humanitarian law and international human rights laws were not mutually exclusive. Furthermore, international humanitarian law usually applied in a situation of armed conflict, which was not the case here.

Rejecting the second objection, the Court noted that there were no diplomatic relations between the two countries and that the Azerbaijani Government had not provided any examples of people in the applicants’ situation being able to obtain redress in its jurisdiction.

[Article 2](#)

Mr Saribekyan’s death

The Court emphasised that this provision was one of the most fundamental of the Convention and that it applied careful scrutiny to cases involving someone being deprived of their life.

It noted that the Azerbaijan and Armenian authorities had come to different conclusions about how Mr Saribekyan had died, with the former finding that he had hanged himself with a bed sheet in his cell and the latter that he had had other injuries, including signs of beating.

The Court observed that the Armenian investigation had been accompanied by photographs and drawings, whereas the Azerbaijan Government had not submitted any supporting evidence for its authorities’ findings. Furthermore, the photographs in the Armenian forensic report had shown head injuries that should have been examined in the corresponding procedure in Azerbaijan.

While the Court adopted a standard of proof of “beyond reasonable doubt” in cases of death or injury at the hands of the State, strong presumptions of fact could arise where injuries or death occurred during detention as the authorities were the only one who could know what had happened. A Government then had to provide a convincing and satisfactory explanation.

However, the limited Azerbaijani investigation into Mr Saribekyan’s case and the lack of documentation to support the findings gave cause for concern.

The applicants had made a prima facie case that their son had been taken into custody in good health and had died as the result of actions by personnel at the Military Police Department in Baku. Given the evidence made available to the Court, including the Armenian investigation’s descriptions and photographs of Mr Saribekyan’s injuries, and the information on the arrangement of the cell, the account according to which he had hung himself could not be accepted.

The Government of Azerbaijan had not convincingly accounted for how Mr Saribekyan had died and the respondent’s State’s responsibility was engaged. There had thus been a violation of Article 2.

The Azerbaijani investigation

The Azerbaijan authorities had assumed from the outset that Mr Saribekyan had committed suicide, limiting the scope of the investigation and hampering its efficacy.

Moreover, there should have been a careful investigation into whether ethnic hatred had contributed to his death: he had been arrested as an Armenian citizen allegedly engaged in spying and plotting a terrorist act, something the personnel at the Military Police Department must have been aware of. The events had also occurred amid a general context of inter-State tensions.

Nor had the Azerbaijani authorities contacted the family or any Armenian authority during the domestic proceedings, the Court noting that a lack of diplomatic relations did not mean countries had no duty to cooperate in a criminal investigation in the context of Article 2. Furthermore, the applicants and the Armenian authorities had only become aware of the Azerbaijani documents on the domestic investigation in submissions to the Court.

The Court concluded that there had been a further violation of the Convention owing to the investigation in Azerbaijan.

Article 3

The Court took account of the Armenian forensic examination, which apart from strangulation injuries, had recorded kidney, chest, lumbar, thigh and rectal haemorrhages as well as a head injury, all caused by a blunt object. Neither the Azerbaijani Government’s submissions nor the documents in the case file gave reason to question those findings.

The Court thus found that Mr Saribekyan had been subjected to ill-treatment in the form of severe physical violence during the final days of his life while being detained in the Military Police Department in Baku.

The Court found that the suffering he had endured had amounted to torture and that he had suffered a violation of his rights under Article 3.

It found no violation of the two applicants’ rights under this provision, although it had no doubt that the arrest, detention and death of their son, as well as the uncertainty about his fate, had caused them profound suffering.

Other Articles

The Court saw no need for separate examinations of the applicants’ complaints under Article 13 and Article 14.

Just satisfaction (Article 41)

The Court held by six votes to one that Azerbaijan was to pay the applicants 60,000 euros (EUR) jointly in respect of non-pecuniary damage and EUR 2,200 in respect of costs and expenses.

Separate opinion

Judge Hüseyinov expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.