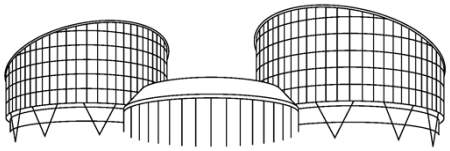

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VARDANYAN AND KHALAFYAN v. ARMENIA

(Application no. 2265/12)

JUDGMENT

Art 34 • Ill-treatment and death of applicants' relative in police custody • *Locus standi* of cousin not automatically recognised unlike that of victim's mother and siblings • Absence of information demonstrating a legitimate interest for cousin's legal standing before the Court • Acting as victim's legal heir in domestic proceedings insufficient in itself
Art 2 and Art 3 (procedural and substantive) • Ineffective investigation into ill-treatment and death, focused solely on official suicide version • Serious breaches of Art 2 and 3 procedural requirements • State's failure to discharge burden of proof by providing satisfactory explanation for death and injuries

STRASBOURG

8 November 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vardanyan and Khalafyan v. Armenia,

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

Gabriele Kucsko-Stadlmayer*, President,*
Tim Eicke*,*
Yonko Grozev,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking*,*
Ana Maria Guerra Martins, *judges*,
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 2265/12) 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") by four Armenian nationals, Ms Anahit Vardanyan, Mr Vardan Khalafyan, Mr Hmayak Khalafyan and Ms Ani Khalafyan ("the applicants"), on 14 December 2011;

the decision to give notice to the Armenian Government ("the Government") of the complaints concerning the death, the alleged ill-treatment and unlawful detention of their relative, Mr Vahan Khalafyan, as well as the alleged failure of the authorities to carry out an effective investigation, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 4 October 2022,

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

INTRODUCTION

1. The case concerns the death of Mr Vahan Khalafyan in police custody aged 24 and raises issues mainly under Articles 2 and 3 of the Convention.

THE FACTS

2. The applicants were born in 1962, 1986, 1975 and 1992 respectively and live in the town of Charentsavan. The applicants were represented by Mr A. Ghazaryan and Mr A. Zeynalyan, non-practising lawyers.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters.

4. The facts of the case may be summarised as follows.

5. The first applicant, Anahit Vardanyan, is the mother of Vahan Khalafyan. The second, the third and the fourth applicants, Vardan, Hmayak and Ani Khalafyan, are the victim's brother, cousin and sister respectively.

I. THE DEATH OF VAHAN KHALAFYAN

6. On 6 April 2010 criminal proceedings were instituted by the Charentsavan Criminal Investigations Unit of the Investigative Division of the Kotayk Regional Principal Investigative Department ("IDKRPID") of the Armenian Police in relation to an alleged theft.

7. On 13 April 2010 at around 10 a.m. Vahan Khalafyan and three other suspects were taken to the Charentsavan Police Station for questioning in connection with the theft, upon an oral order of the Head of the Criminal Investigations Unit, A.H. Vahan Khalafyan's arrest was effected by, *inter alia*, police officer M.H. and his transfer to the police station was not recorded in the relevant custody register.

8. According to the record of the criminal case subsequently instituted in respect of Vahan Khalafyan's death, at the police station Vahan Khalafyan was taken to A.H.'s office where he was ordered by A.H. to confess to the crime under the threat of violence. After Vahan Khalafyan refused to confess, A.H. inflicted violence on him by punching and kicking him in various parts of his body, in the presence of police officer M.H. At around 4.55 p.m. police officer M.H. drew up the "record of bringing a person to the police" (*արձանագրություն անձին բերման ենթարկելու մասին*) where he indicated that Vahan Khalafyan had been brought to the police station at 4.55 p.m. upon suspicion of committing a theft. At around 5 p.m. police officer A.H. again assaulted Vahan Khalafyan in the office of the Head of the Prophylactics Unit, K.M., in the presence of three other officers, M.H., G.D. and G.G. After the assault, A.H. left K.M.'s office. Being in a psychologically very tense condition, Vahan Khalafyan, who was sitting on a chair, reached towards a cabinet in front of him where various kitchen utensils, including a kitchen knife, were kept, grabbed the knife, stood up, lifted his upper clothing and stabbed himself twice in the abdomen. Officers M.H. and G.D. rushed towards him but failed to prevent the stabbing. Vahan Khalafyan fainted and fell to the floor. Other police officers rushed into the room. First aid was provided to Vahan Khalafyan, who was lying on the floor unconscious.

9. The applicants contested the above version of events and alleged that in reality Vahan Khalafyan had lost consciousness due to a brain injury sustained as a result of the ill-treatment. In order to cover up the crime, the police officers had decided to create an appearance of suicide by twice stabbing Vahan Khalafyan in the abdomen.

10. At 5.15 p.m. an ambulance was called, which transferred Vahan Khalafyan to hospital where he died at 5.50 p.m.

11. At an unspecified hour police officers M.H. and G.D. reported separately to the chief of the Charentsavan Police Station about the incident. M.H. stated that he and G.D. had been alone with Vahan Khalafyan in K.M.'s office when Vahan Khalafyan had taken a kitchen knife from the cabinet and stabbed himself in the abdomen. They had intervened and stopped him from

continuing the self-harm. M.H. indicated in his report that Vahan Khalafyan had been brought to the police station at 4.55 p.m. Police officer G.D. specified in his report that he had noticed how Vahan Khalafyan pulled out the knife from the cabinet which, after stabbing himself, he had dropped on the floor. The whole incident had lasted about one to two seconds.

12. A senior police officer took a statement from M.H. in which he provided a similar account of events. M.H. specified that he had not noticed how Vahan Khalafyan had taken the knife from the cabinet but only the moment when he had already stabbed himself, trying to cut his belly from left to right. He and G.D. had then grabbed his hands from the front and back respectively, and Vahan Khalafyan had dropped the knife. Police officer G.G. had entered the office at that moment. M.H. stated that he had not been aware of the knife in the cabinet. Nobody had opened the cabinet door or placed the knife in – or removed it from – the cabinet in his presence. He had noticed after the stabbing that the cabinet door had been ajar and, as far as he remembered, it had not been completely shut before either, which could have allowed Vahan Khalafyan to notice the knife while seated next to the cabinet. M.H. also stated that Vahan Khalafyan had been brought to the police station at 4.55 p.m. and that nobody had ill-treated him prior to the incident. Towards the end of his statement, M.H. added that he now remembered seeing how Vahan Khalafyan had removed the knife from the cabinet. However, Vahan Khalafyan had stabbed himself so quickly that it had been impossible for them to prevent it.

II. THE CRIMINAL PROCEEDINGS

A. The investigation

13. At 8.40 p.m. an investigator of the IDKRPID (hereafter, the police investigator) conducted an examination of the scene with the participation of police officers M.H. and G.D. According to them, Vahan Khalafyan had been sitting on the chair closest to the cabinet, at a distance of about 30 cm. G.D. had been sitting by the office desk, while M.H. had been sitting on one of the sofas. While seated, Vahan Khalafyan had opened the left-hand door of the cabinet, which had been ajar, taken the knife from the shelf, stood up, lifted his upper clothing with his left hand and stabbed himself in the abdomen with his right hand. They had screamed and rushed to stop him but had failed to reach him in time. After stabbing himself, Vahan Khalafyan had fallen on his abdomen, while the knife had fallen next to him. They had provided immediate assistance, called an ambulance and taken him to hospital. G.D. also stated that, while first aid was being provided to Vahan Khalafyan, he had picked up the knife by the edge of the handle and put it back on the shelf. The knife, which had a 15-cm-long blade and a 13-cm-long metal handle and

was lying on one of the shelves, was seized by the police investigator as evidence.

14. The police investigator decided to institute criminal proceedings under Article 110 § 1 of the Criminal Code ("the CC") ("driving a person to suicide") (see paragraph 55 below). The decision stated that, having studied the materials prepared in connection with Vahan Khalafyan's suicide, the police investigator found that:

> "On 13 April 2010 at 4.50 p.m. [Vahan Khalafyan] was taken to [the Charentsavan Police Station], upon suspicion of having committed a theft, within the scope of the criminal case ... investigated by [the IDKRPID]. While in the office of the Head of the Prophylactics Unit, [K.M.], at around 5.15 p.m., [he] took the kitchen knife from the cabinet and stabbed himself in the abdomen, causing physical injuries. Thereafter Vahan Khalafyan was taken by ambulance to [hospital] where he died from the sustained injuries."

15. On 14 April 2010 the third applicant was recognised as the victim's legal heir for the purpose of the criminal proceedings.

16. On 15 April 2010 the investigation into the criminal case was taken over by an investigator of the Special Investigative Service (hereafter, the SIS investigator).

17. On the same date Vahan Khalafyan's body was subjected to a forensic medical examination whose conclusions were set out in forensic medical expert opinion no. 353. The expert noted that, according to the police investigator's decision ordering the examination, Vahan Khalafyan had committed suicide. He recorded the following injuries: a perforating stab/cut wound on the front side of the abdomen with damage to the visceral fat and the arteries and veins located in the mesentery of the small intestine resulting in acute internal bleeding (injury no. 1); a perforating stab/cut wound on the front side of the abdomen without damage to internal organs (injury no. 2); two interrupted scratches on the front side of the abdomen; haemorrhages under the vertex area of the scalp; on the upper lip; on the left side of the chin and the left shin; and abrasions on the nose, the front sides of the left and right shins, the right knee pit, the internal side of the right ankle joint and on the rear side of the right elbow. According to the expert, Vahan Khalafyan's death resulted from acute internal bleeding as a consequence of injury no. 1, while there was no causal link between injury no. 2 and the death. Both injuries nos. 1 and 2 were sustained during life between several and dozens of minutes prior to death. The wound canal of injury no. 1 had a depth of 10-12 cm and a front-to-back direction with a right-to-left tilt and a slight top-to-bottom tilt in relation to the body's direct axis, while that of injury no. 2 had a depth of 3 cm and a front-to-back direction with a right-to-left and top-to-bottom tilt in relation to the body's direct axis. All the remaining injuries were similarly sustained during life, not long before death, except for the abrasion on the right elbow which had been sustained 2-3 days earlier. The scratches on the abdomen were caused by a sharp-edged object, while

the haemorrhages and the abrasions were caused by a blunt object or objects having a limited surface. The scratches, haemorrhages and abrasions did not qualify as minor injuries and there was no causal link between them and the death. It was possible that the stab/cut wounds to the abdomen had been caused by the knife in question and that they had been self-inflicted.

18. On the same date the SIS investigator ordered a forensic trace evidence examination of the knife in order to determine whether there were any fingerprints on it and a number of other related questions.

19. On 19 April 2010 the forensic trace evidence expert produced opinion no. 11411002. The expert noted that, according to the police investigator's decision ordering the examination, Vahan Khalafyan had committed suicide. In reply to the questions put, the expert concluded that there were sweat and fat particles at the bottom of the blade containing insignificant traces of papillary ridges which were incomplete, distorted and overlapping and therefore not suitable for a comparative analysis.

20. On 19 and 20 April 2010 the SIS investigator questioned the three theft suspects who had been taken into custody together with Vahan Khalafyan (see paragraph 7 above), as well as two police officers who had been on duty that day. The former submitted that their arrests had been effected early in the morning of 13 April, while the latter admitted that the arrests had not been recorded in the relevant register until later in the afternoon.

21. On 21 April 2010 the SIS investigator interviewed police officers M.H., G.D. and A.H. as witnesses, who recounted the events of that day. M.H. admitted that Vahan Khalafyan had been "invited" to the police station at around 10 a.m. for a "talk" with A.H. but alleged that later he had been allowed to leave the station and then again taken into custody at 4.55 p.m. M.H. and G.D. submitted that the stabbing happened so fast that it was impossible for them to prevent it. A.H. submitted that Vahan Khalafyan had been taken into custody at some point after 3.30 p.m. All three officers denied that anyone had ill-treated Vahan Khalafyan at the police station.

22. On the same date police officer M.H. was arrested.

23. On 23 April 2010 M.H. was charged under Articles 110 § 1 and 309 § 3 of the CC (exceeding official authority resulting in grave consequences) (see paragraph 58 below). He was accused of taking Vahan Khalafyan to the police station at around 10 a.m. on 13 April 2010 without an arrest warrant and solely upon an oral instruction of police officer A.H. He had then unlawfully kept Vahan Khalafyan in police officer K.M.'s office until around 5 p.m. and had ill-treated him, thereby driving him to suicide. On the same date police officer M.H. was detained by a court order.

24. On 26 April 2010 the SIS investigator interviewed M.H. as an accused who stated that Vahan Khalafyan had been assaulted during his questioning by A.H. which had lasted about two to three minutes. M.H. had been repelled by the violence but failed to intervene because A.H. was his superior. He then

had left the police station and returned around 4 p.m. Shortly thereafter, while in K.M.'s office, he had been ordered by A.H. to draw up the record of bringing Vahan Khalafyan to the police, even though in reality that had happened around 10 a.m. Two other officers, G.D. and G.G., had been present in K.M.'s office. A.H. continued beating Vahan Khalafyan in their presence, administering punches in different parts of his body, which lasted about three to four minutes, shortly after which A.H. had left the office. M.H. then described the stabbing incident, which had happened in his, G.D.'s and G.G.'s presence, and alleged that no one had ill-treated Vahan Khalafyan apart from A.H.

25. On the same date a number of consecutive confrontations and interviews were conducted with the participation of police officers M.H., A.H., G.D. and G.G.

During a confrontation between M.H. and G.D. the latter stated that he had only noticed how A.H. had slapped Vahan Khalafyan a few times and might have not noticed the rest of the violence because he had been watching television.

G.G. was interviewed as a witness and stated that no one had ill-treated Vahan Khalafyan in his presence and that he had not witnessed the stabbing incident because he had been in his office at that moment. Later, during a confrontation with M.H., G.G. admitted that he had witnessed how A.H. had punched and kicked Vahan Khalafyan several times in K.M.'s office, trying to force him to confess.

During a confrontation between A.H. and M.H. the latter accused A.H. of having ill-treated Vahan Khalafyan, including kicking and punching him.

Police officer A.H. was also confronted with police officers G.D. and G.G., both of whom stated that they had seen A.H. slap Vahan Khalafyan once before leaving police officer K.M.'s office prior to the incident.

Police officer A.H. denied having ill-treated Vahan Khalafyan and accused M.H., G.D. and G.G. of lying.

26. On the same date police officer A.H. was arrested.

27. On 29 April 2010 A.H. was charged under Article 309 § 3 of the CC (see paragraph 58 below). He was accused of having ill-treated Vahan Khalafyan at the police station, thereby exceeding his authority, which had accidentally resulted in grave consequences. A.H. was questioned but refused to testify. On the same date he was detained by a court order.

28. Between 29 April and 18 May 2010 the SIS investigator interviewed a number of witnesses, including other police officers of the Charentsavan Police Station, the second and the third applicant, the members of the ambulance team, and several others. Police officers G.D. and G.G. were additionally interviewed as witnesses: G.D. stated that A.H. had slapped Vahan Khalafyan from left and right but he could not remember how many times, whereas G.G. admitted that he had been present in K.M.'s office during the stabbing incident.

29. In April and May 2010 several other forensic examinations were conducted, including a forensic post-mortem psychological and psychiatric expert examination and an additional forensic medical examination. The former concluded that prior to his death Vahan Khalafyan had been in a state of considerable psychological stress which had a causal link with the actions of police officer A.H. During lifetime Vahan Khalafyan had not suffered from any chronic psychiatric illness. Nor were there any signs of temporary insanity in his behaviour. According to the results of the additional medical examination, there were faeces in the upper rear part of Vahan Khalafyan's trousers and the armpit area of his T-shirt. All the expert opinions in question contained a reference to the investigator's decisions ordering the expert examinations, according to which Vahan Khalafyan had committed suicide.

30. On 10 May 2010 the conclusions of the official inquiry conducted within the Armenian Police were produced. It was recommended that a disciplinary penalty be imposed on police officers G.D. and G.G. for not disclosing the fact that they had witnessed Vahan Khalafyan's ill-treatment by A.H. in police officer K.M.'s office. It was further recommended that police officers A.H. and M.H. be suspended from service and the question of their disciplinary penalty be decided after the completion of the criminal case.

31. On 21 May 2010 the charge against police officer M.H. was replaced with a charge under Article 308 § 1 of the CC ("abuse of power") (see paragraph 57 below) on the ground that he had witnessed Vahan Khalafyan's ill-treatment by police officer A.H., his immediate supervisor, but used his official position against the interests of the service, choosing not to challenge A.H. for selfish ends, in order to maintain a good working relationship.

32. On the same date M.H. was released from detention upon an undertaking not to leave his place of residence.

33. On 24 May 2010 the Chief of the Armenian Police issued an order based on the recommendations made in the conclusions of the official inquiry (see paragraph 30 above), suspending police officers A.H. and M.H. and, as a disciplinary penalty, demoting police officers G.D. and G.G.

34. On 2 June 2010 police officers G.D. and G.G. were charged under Article 308 § 1 of the CC on the same grounds as M.H. (see paragraph 31 above). They partially admitted their guilt, accepting that they had failed to report Vahan Khalafyan's ill-treatment by A.H., but argued that they had not been in a position to prevent it because the slaps had happened so quickly.

35. On 7 June 2010 the charge against police officer A.H. was supplemented with details of the blunt impact injuries suffered by Vahan Khalafyan as a result of his alleged ill-treatment, as described in the conclusions of forensic medical expert opinion no. 353 (see paragraph 17 above).

36. On the same date the SIS investigator decided not to prosecute a number of police officers of the Charentsavan Police Station, including those who had participated in taking Vahan Khalafyan and other suspects into

custody and those who had made entries in the relevant custody register. This decision stated that the suspects had been taken to the police station in the morning of 13 April 2010 but, upon police officer A.H.'s instructions, no entries were made in the relevant register at the time and such entries were made only after 3.30 p.m. It concluded that there was no *corpus delicti* in the actions of the police officers since they had acted under the instruction and supervision of police officer A.H., who was currently standing trial, and had believed that their actions were lawful.

37. On 18 June 2010 the investigation was concluded. According to the bill of indictment, Vahan Khalafyan had been taken into custody on 13 April 2010 at around 10 a.m. upon police officer A.H.'s oral instructions but his deprivation of liberty had remained unrecorded until 4.55 p.m. After Vahan Khalafyan had refused to confess to the crime, police officer A.H. had tried to force him to do so by inflicting violence on him, including by punching and kicking Vahan Khalafyan in various parts of his body. This had happened first in A.H.'s office and later, around 5 p.m., in K.M.'s office. Police officers M.H., G.D. and G.G. had witnessed the violence but failed to intervene and prevent it. As a result of the ill-treatment, Vahan Khalafyan had received a number of minor injuries. Being in a highly stressed psychological condition because of the ill-treatment, Vahan Khalafyan had taken a kitchen knife from K.M.'s office's cabinet, stabbed himself twice in the abdomen, inflicting life-threatening wounds, and later died in hospital.

B. The trial

38. On 21 June 2010 the case was transferred to the Kotayk Regional Court for trial. Police officers A.H., M.H., G.D. and G.G. testified in court as the accused in the proceedings.

39. Police officer A.H. denied having ill-treated Vahan Khalafyan and submitted that he had been absent when the incident had happened. After hearing noises, he had rushed to police officer K.M.'s office where he saw Vahan Khalafyan on the floor bleeding. Police officer M.H. had been standing over him with the knife in his hand and said that Vahan Khalafyan had stabbed himself. After A.H. had returned from the hospital, he found out from police officer M.H. that the latter and police officers G.D. and G.G. had realised that Vahan Khalafyan, who had taken the knife, wanted to stab himself and had tried to grab the knife from his hand, resulting in a scuffle, during which the knife had entered his abdomen. A.H. had then advised M.H. not to tell anyone about this. Before appearing for questioning on 21 April 2010 he and M.H. had agreed to give similar statements. However, later M.H. had started falsely accusing him, because of a bad working relationship. The charges against him were therefore fabricated and he was being used as a scapegoat. Police officer A.H. also accused M.H. of having ill-treated Vahan

Khalafyan, namely hitting his head against the wall while accompanying him to the toilet.

40. Police officer M.H. admitted his guilt and confirmed that A.H. had ill-treated Vahan Khalafyan, administering blows to his legs, abdomen and head. He recounted the stabbing incident, adding that, when A.H. had been beating Vahan Khalafyan in K.M.'s office, Vahan Khalafyan had accidentally touched the cabinet, causing the door to open slightly.

41. Police officers G.D. and G.G. claimed that A.H. had slapped Vahan Khalafyan only once before leaving the office. G.D. stated that his pre-trial statements, according to which he had seen several slaps, had been inaccurate (see paragraphs 25 and 28 above), adding that he might have not noticed some other punches or slaps because he had been watching television. G.G. stated that he had noticed only one slap because his view had been blocked by A.H. He had not mentioned the slap in his pre-trial statement (see paragraph 25 above) because he had not considered that to be ill-treatment. G.G. also added that he had not witnessed the stabbing and had only seen Vahan Khalafyan drop the knife.

42. The second applicant testified before the court that he had never noticed any self-harm wounds on his brother in the past or heard anything of that kind from him.

43. The third applicant, as Vahan Khalafyan's legal heir, argued before the Regional Court that Vahan Khalafyan had been beaten by police officers in K.M.'s office, as a result of which he had sustained brain damage and had lost consciousness, which had manifested itself through various symptoms, including vomiting. In order to conceal the crime, the police officers, presumably M.H., had then fatally stabbed Vahan Khalafyan in the abdomen to make it look like suicide, after which they had wiped the fingerprints off the knife and cleaned Vahan Khalafyan's vomit off his face and clothes. The third applicant requested that the charges against the police officers be modified.

44. The Regional Court also heard the medical expert (see paragraph 17 above), trace evidence expert (see paragraph 19 above) and one of the psychologists (see paragraph 29 above).

45. The medical expert ruled out Vahan Khalafyan's choking on his own vomit, because – even if vomit could have been cleaned from his face and the mouth area – his bronchial tubes would have been filled with vomit, whereas they were clean. The two injuries to his abdomen, 12 cm and 3 cm deep respectively, suggested that there had been an attempt at self-harm. In cases where depth of injuries was equal, it was more difficult to determine their order, but injuries having different depths were characteristic of self-harm. In his opinion, the first stab had been the shorter one since, when attempting suicide, a person would first stab himself superficially, but then he would take a greater risk and inflict a more confident stab. Self-harm was usually inflicted in the frontal areas of the body, which were more visible and

accessible. It was possible for a person to stab himself more than once and there had been cases where people had stabbed themselves more than 20 times. Compared to such cases Vahan Khalafyan's case involved a minimal amount of self-harm. Therefore, taking into account the direction of the wounds and their features, it became clear that they were characteristic of suicide.

46. The trace evidence expert confirmed his earlier findings (see paragraph 19 above), adding that it was possible not to have any fingerprints on certain types of materials or parts. In this case, the patterns on one side of the knife handle, as well as the rivets, interrupted the overall flat surface of the knife handle and such parts were therefore unsuitable for analysis. Consequently, no fingerprints had been found on the handle. Furthermore, the handle had a nonhomogeneous surface and it was possible that no fingerprints would remain. The expert further explained that it was possible for fat prints to be removed. First of all, they could evaporate after a certain amount of time. Secondly, they could be wiped off using any object. However, if an object with an absorbent surface such as, for example, paper were to be used, it would only distort the prints but not completely remove them. Fat prints could be wiped off also with cloth, the side of the palm and other objects.

47. The psychology expert stated that people react differently to situations of stress as the one experienced by Vahan Khalafyan: some may react constructively, some with resistance and some may resort to self-harm, although the latter behaviour was not very common in the expert's field of research.

48. On 18 September 2010 the third applicant requested the Regional Court to assign an investigative experiment such as a re-enactment of the circumstances of the incident in order to determine whether it was realistic for them to have taken place as described by the police officers (see paragraph 13 above). The Regional Court rejected the request as being not in compliance with the relevant rules of criminal procedure.

49. On 29 November 2010 the Kotayk Regional Court delivered its judgment.

Police officer A.H. was found guilty under Article 309 § 3 of the CC of exceeding his authority, accompanied with violence and resulting in grave consequences, and was sentenced to eight years' imprisonment. The court found it to be established that he had ill-treated Vahan Khalafyan first in his office and later in K.M.'s office, leading to Vahan Khalafyan's suicide (see paragraph 37 above). The court rejected A.H.'s submissions (see paragraph 39 above) and found that his guilt was proven by the statements of police officers M.H., G.D. and G.G. and other evidence in the case. His allegations that he was being framed because of a bad working relationship with police officer M.H. or that Vahan Khalafyan had been stabbed as a result of a scuffle were contradictory and unconvincing. It was fully substantiated

that he had ill-treated Vahan Khalafyan between 4.30 p.m. and 5.00 p.m., with the only discrepancy being between the statement of police officer M.H., according to which the ill-treatment had lasted for some time, and those of police officers G.D. and G.G., according to which they had witnessed only one or two slaps.

Police officer M.H. was found guilty under Article 308 § 1 of the CC and received a two-year suspended sentence. The court held that he had witnessed Vahan Khalafyan's ill-treatment but failed to intervene to prevent it.

Police officers G.D. and G.G. were acquitted under Article 308 § 1 of the CC. The court held that they had also witnessed some of the ill-treatment but it had happened so briefly and quickly (one or two slaps) that it was unreasonable to expect them to prevent it.

The court lastly rejected the third applicant's allegations (see paragraph 43 above), finding that they contradicted the evidence in the case, especially the medical expert's statement made in court concerning the absence of any vomit in Vahan Khalafyan's bronchial tubes.

50. On 28 December 2010 the third applicant lodged an appeal in which he argued, *inter alia*, that Vahan Khalafyan had died as a result of the ill-treatment inflicted and not the alleged suicide, which had been faked by the police officers to cover up the crime. However, only the suicide version of events had been examined during the investigation. The Regional Court had failed to recognise explicitly a violation of Vahan Khalafyan's right to life, freedom from torture and right to liberty and security. The investigating authority and the Regional Court had failed to carry out an objective examination and to establish the truth. Those who had killed Vahan Khalafyan had not been identified and had not received adequate and proportionate punishments.

51. On unspecified dates the accused also lodged appeals.

52. On 15 June 2011 the Criminal Court of Appeal, having examined the case through an expedited procedure, upheld the judgment of the Regional Court. It also decided to apply an amnesty, releasing police officer M.H. from the imposed penalty and reducing the remaining part of police officer A.H.'s sentence by one third. As regards the third applicant's request to conduct an investigative experiment, not only would such re-enactment of the incident contradict the relevant rules of criminal procedure by endangering life or limb of its participants, but would fail even to come close to the real circumstances in which Vahan Khalafyan had committed self-harm, especially in terms of his psychological state.

53. On 14 July 2011 the third applicant lodged an appeal on points of law.

54. On 18 August 2011 the Court of Cassation declared the appeal on points of law inadmissible for lack of merit.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE (2003)

1. Offences against life and limb

55. Article 110 § 1 of the Criminal Code ("driving a person to suicide") provides that unintentionally or recklessly driving a person to suicide or an attempt at suicide through threats, cruel treatment or repeated violations of his or her dignity are punishable by up to three years' imprisonment.

56. Article 119 ("torture"), as in force at the material time, provided a penalty of up to three years' imprisonment for torture, that is any action deliberately causing strong pain or physical or mental suffering to a person (unless resulting in grave or medium damage to health, in which case the acts were to be examined under other relevant provisions of the CC). In case of a number of aggravating circumstances, the penalty increased to a period of three to seven years.

2. Offences against State service

57. Article 308 § 1 ("abuse of power") provides that use by a public official of his or her official position against the interests of the service or the failure to carry out his or her official duties for selfish, personal or group interests, if causing significant damage to the rights and lawful interests of individuals or legal entities, or the lawful interests of society or the State, are punishable by a fine of between two and three hundred times the minimal wage, or a forfeiture of the right to hold certain posts or to carry out certain activities for a period not exceeding five years, or detention for a period of two to three months, or up to four years' imprisonment.

58. Article 309 § 3 ("exceeding official authority") provides that intentional acts committed by a public official which obviously fell outside the scope of his or her authority and caused significant damage to the rights and lawful interests of individuals or legal entities, or the lawful interests of society or the State, if accidentally resulting in grave consequences, are punishable by six to ten years' imprisonment, with forfeiture of the right to hold certain posts or carry out certain activities for a period not exceeding three years.

3. The amendments of 2015

59. On 9 June 2015 amendments were introduced to the CC. According to the relevant explanatory report, Article 119 failed to provide an adequate response to the offence of torture. The offence proscribed by that provision was prosecutable only upon the victim's complaint. Moreover, that provision applied only to private individuals and even excluded from its scope any acts causing grave or medium damage to health. As a result, acts of torture and

other forms of ill-treatment committed by public officials were prosecuted in practice under other provisions of the CC, including Articles 308 and 309, which, however, because of a number of elements, similarly failed to provide an adequate legal response to such acts. There was therefore need for a new provision proscribing the offence of torture.

60. A new Article 309.1 was added in the category of "Offences against public service", entitled "Torture", prescribing a penalty for causing strong physical or mental suffering if committed by a public official or upon his incitement, instruction or knowledge. Article 119 was amended by changing its title from "Torture" to "Causing Strong Physical Pain or Strong Mental Suffering" and excluding from its scope any act falling within the ambit of the new Article 309.1 of the CC.

II. THE CODE OF CRIMINAL PROCEDURE (1999)

61. Article 80 § 1 of the Code of Criminal Procedure provides that one of the victim's next of kin, who has expressed desire to implement the rights and obligations of a deceased or incapacitated victim in the criminal proceedings, shall be recognised as the victim's legal heir.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

62. The applicants complained that the death of Vahan Khalafyan in police custody and the failure of the authorities to carry out an effective investigation into the circumstances of his death had amounted to a violation of Articles 2 and 3 of the Convention, which, in so far as relevant, read as follows:

Article 2

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

Article 3

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

A. Admissibility

1. The parties' submissions

63. The Government submitted, firstly, that the applicants could not claim to be victims of a violation of Articles 2 and 3 of the Convention because the investigation had established the circumstances of Vahan Khalafyan's death

and ill-treatment and those responsible had been identified and punished. Police officer A.H. had been found guilty under Article 309 § 3 of the CC of exceeding his official authority and causing damage to Vahan Khalafyan's rights (that is to say his ill-treatment), which resulted in grave consequences (that is to say his death). Police officer M.H. had been also found guilty under Article 308 § 1 of the CC of failing to carry out his official duties for reasons of personal interest (see paragraph 49 above).

64. Secondly, according to the Government, the first and the fourth applicants, namely the deceased's mother and sister, lacked victim status in respect of their complaints under Article 3 of the Convention also because neither of them had been a party to the domestic proceedings and could not therefore demonstrate that they were the deceased's legal heirs.

65. The applicants disagreed with the Government that all those responsible for Vahan Khalafyan's ill-treatment and death had been identified and punished. They argued that the investigation had not been thorough and effective and a number of vital questions had remained unanswered. Only one version, namely that of suicide, had been considered by the investigating authority and all the investigative measures taken had been aimed at confirming specifically that hypothesis. Only four of the perpetrators had faced trial, two of whom had been acquitted and only one imprisoned but even he had been granted amnesty. Moreover, he had served his sentence in a semi-closed regime, which implied spending only the nights in prison. None of the perpetrators had been punished specifically for committing acts of "torture" because Armenia had failed to fulfil its obligation undertaken when joining the Council of Europe to introduce in its domestic law criminal sanctions for acts of torture. Had the domestic criminal law envisaged torture as a separate crime, then those punished for such acts would not have been eligible for amnesty. Lastly, a number of police officers responsible for the violation of Vahan Khalafyan's rights had not been prosecuted at all (see paragraph 36 above).

66. As regards specifically the Government's second objection, the applicants submitted, firstly, that domestic law precluded more than one person from participating in the criminal proceedings as the victim's legal heir (see paragraph 61 above). In any event, even if the first and the fourth applicants had not acted as Vahan Khalafyan's legal heirs in the domestic proceedings, they were his mother and sister and should not bear the burden of proving that they suffered and grieved because of the loss of their son and brother.

2. The Court's assessment

67. The Court considers that the Government's first objection is closely linked to the substance of the applicants' complaints under Articles 2 and 3 of the Convention and must be joined to the merits.

68. As regards the Government's second objection (see paragraph 64 above), according to the Court's case-law, close family members, including a parent or a sibling, of a person whose death is alleged to engage the responsibility of the respondent State can themselves claim to be indirect victims of an alleged violation of Article 2 of the Convention, the question of whether they were legal heirs of the deceased not being relevant (see, among other authorities, *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts); *Van Colle v. the United Kingdom*, no. 7678/09, § 86, 13 November 2012; and *Ayvazyan v. Armenia*, no. 56717/08, § 60, 1 June 2017). In cases like the present one where the alleged ill-treatment is closely linked to the victim's death, close family members can also legitimately claim to be victims of a violation of both substantive and procedural limbs of Article 3 of the Convention (see *Karpylenko v. Ukraine*, no. 15509/12, § 105, 11 February 2016, with further citations). It follows that the first, the second and the fourth applicants who were the victim's mother, brother and sister have standing to lodge the complaints under Articles 2 and 3 of the Convention, regardless of whether they participated in the domestic proceedings as the victim's legal heirs. The Government's second objection must therefore be dismissed.

69. On the other hand, while the Government did not explicitly contest the third applicant's victim status based on his relationship with the deceased, this aspect of compatibility *ratione personae* calls for consideration *ex officio* by the Court (see, for example, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009).

70. The Court notes that the third applicant was the victim's cousin, whose victim status, unlike that of close family members, is not automatically recognised by the Court (see *Fabris and Parziale v. Italy*, no. 41603/13, § 38, 19 March 2020). While it is true that the Court has accepted applications introduced by cousins raising complaints concerning the deaths of their next of kin (see, for example, *Khaylo v. Ukraine*, no. 39964/02, § 98, 13 November 2008; *Van Melle v. the Netherlands* (dec.), no. 19221/08, 29 September 2009; *Arapkhanovy v. Russia*, no. 2215/05, §§ 7 and 107, 3 October 2013; and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 12 and 186-89, 30 March 2016), it has also held that a fourth-degree tie of kinship is not in itself sufficient for an applicant to be recognised as a victim within the meaning of Article 34 of the Convention (see *Belkıza Kaya and Others v. Turkey*, nos. 33420/96 and 36206/97, § 46, 22 November 2005, and *Fabris and Parziale*, cited above, § 38).

71. In the present case, the third applicant acted as the victim's legal heir in the domestic proceedings (see paragraph 15 above). No other grounds – apart from the kinship – have been advanced in support of his standing before the Court. However, the conditions governing individual applications are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 of the Convention and, whilst those purposes may sometimes be

analogous, they need not always be so (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 139, ECHR 2000-VIII). The Court considers that the fact that the third applicant acted as the victim's legal heir in the domestic proceedings is in itself not sufficient to recognise his *locus standi* before the Court. Thus, in the absence of information demonstrating that the third applicant had a legitimate interest as a relative, as well as taking into account the fact that close family members of the deceased, such as his mother and two siblings, are parties to the proceedings before the Court, the Court considers that the third applicant cannot claim to be a victim of an alleged violation of the Convention and this part of the application must be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention (compare *Belkıza Kaya and Others*, cited above, §§ 46-48, and *Fabris and Parziale*, cited above, §§ 39-41).

72. As far as the remaining three applicants are concerned, to whom the Court will continue referring as "the applicants" for the sake of convenience, the Court notes that their complaints under Articles 2 and 3 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

73. The applicants contested the suicide version and argued that the Government had failed to provide a plausible, sufficient and convincing explanation. There was ample evidence, including numerous symptoms manifested by Vahan Khalafyan during the incident, suggesting that he had died from serious brain damage suffered as a result of his ill-treatment by the police officers. In order to conceal the crime, the police officers had imitated his suicide. The applicants argued that it would have been impossible for Vahan Khalafyan to perform all the alleged actions within one to two seconds, as alleged by the police officers. The nature and position of the stab wounds also raised doubts that they could have been inflicted within such short time. No fingerprints had been found on the knife handle, even though the victim had allegedly held the knife and one of the police officers had also lifted it to put it back in the cabinet, which suggested that they had been wiped off. Furthermore, if the victim had untucked his upper clothing before stabbing himself, he could not have had faeces in the armpit area of his T-shirt (see paragraph 29 above), as the link between his lower and upper clothing would have been interrupted. This suggested that his belly had been exposed later when he had already been lying in a horizontal position. In any event, the authorities bore the responsibility for Vahan Khalafyan's death regardless of

the circumstances and the cause of the death and of whether it had occurred as a result of suicide or ill-treatment.

74. The applicants further argued that the authorities had failed to conduct a fair and effective investigation into the cause of death. Only the suicide version had been investigated and all the investigative measures taken had been aimed at confirming that hypothesis, whereas the applicants' allegations that the victim had died as a direct result of police brutality had not been considered. The crime scene had not been preserved and the knife, which was the main evidence, had been tampered with. No fingerprints had been found on the handle of the knife and the only explanation was that they had been wiped off. Their request to conduct a re-enactment of the incident, which would have allowed to determine whether it was possible for Vahan Khalafyan to take all the actions as alleged by the police officers within such a short period of time, had been dismissed without good reasons. The investigation failed to answer the question as to how it was possible for faeces to be found under his armpits, if he had allegedly exposed his belly. This suggested that there had been an uninterrupted link between the trousers and his T-shirt and that his belly had been exposed later, after he had been laid on the floor. A number of conflicting testimonies were not clarified, while the jacket which the victim had been wearing disappeared and had not been even included as an exhibit. Not all the circumstances of the ill-treatment had been investigated. Their rights had been unjustifiably restricted in the appeal proceedings because the appeal court had applied an expedited procedure and examined the case according to the cassation rules rather than holding a full trial. The domestic courts had failed to recognise explicitly a violation of the victim's right to life and to impose fair, adequate and proportionate sentences. Only police officer A.H. was sentenced to a prison term, but even he served his sentence in a semi-closed regime, meaning spending only nights in the penitentiary facility, and benefited from an amnesty by having his sentence reduced by a third.

75. The applicants lastly argued that there had been a systemic problem at the material time since Armenian law did not provide criminal sanctions for acts of torture. Article 119 of the CC, which proscribed "torture" (see paragraph 56 above), was applicable only to non-State actors and acts of torture committed by State agents were normally prosecuted under Article 309 of the CC, which was included in the Chapter "Crimes Against State Service" (see paragraph 58 above). This Article, however, did not contain a definition of torture and did not provide sufficient basis for assigning an appropriate punishment for such acts. Thus, none of Vahan Khalafyan's torturers were punished for acts of "torture". Furthermore, if there had been sanctions for torture at the material time, such sanctions would have been ineligible for amnesty. These gaps had been acknowledged by the authorities and legislative amendments had been put forward (see paragraphs 59 and 60 above).

(b) The Government

76. The Government submitted that the authorities had provided a plausible, satisfactory and convincing explanation of the events leading to Vahan Khalafyan's death, as a result of which those who were guilty had been punished. The explanation provided was plausible since it was corroborated with material evidence which substantiated that Vahan Khalafyan's injuries had been self-inflicted. A number of materials, including the psychiatric expert's opinion (see paragraph 29 above), demonstrated that Vahan Khalafyan had been in a very tense psychological state before the incident. Besides, there had been evidence suggesting that his wounds were typical for self-inflicted injuries (see paragraph 45 above). The Government admitted that there was a direct causal link between police officer A.H.'s unlawful actions and Vahan Khalafyan's suicide, but argued that the police officers did not and could not have known about Vahan Khalafyan's psychological state in order to bear responsibility for the loss of his life. They could not have known that, as a result of the pressure and the minor injuries inflicted on him, he could have stabbed himself. Thus, taking into account the unpredictability of human behaviour, impossible and disproportionate burden would be imposed on the authorities if they were to bear the responsibility for Vahan Khalafyan's self-harm in the absence of any signs or information regarding his psychological state.

77. The Government further argued that the investigation had been thorough and effective and all those responsible had been identified and punished. Immediately after the incident a criminal case was instituted and a number of measures were taken, including an examination of the crime scene, the assignment of a forensic medical examination, and taking of statements from police officers M.H. and G.D. Samples of fingernails and hair of Vahan Khalafyan had been taken and several forensic examinations had been immediately assigned, including forensic trace evidence and biological examinations. Two days after the incident the case had been taken over by the SIS which undertook all the relevant and necessary measures to discover the circumstances of the case. A vast amount of relevant evidence was collected concerning the incident, such as a number of expert opinions, testimonies, interviews and confrontations, in compliance with the Court's case-law. As regards the knife, some traces had been found at the base of the blade but they had been unsuitable for comparative analysis. If any fingerprints had been wiped off the knife, as claimed by the applicants, then no traces would have been found on the knife at all. As to the applicants' argument that only the suicide version had been investigated, the Government noted that the charge under Article 110 ("driving a person to suicide") had been replaced during the investigation with a charge under Article 309 § 3 ("exceeding official authority") which envisaged a much harsher punishment. Furthermore, no evidence had been obtained in the course of the investigation

to prompt the authorities to believe that there had been another development of events other than the one that had been disclosed.

2. The Court's assessment

78. The Court will examine together the complaints submitted under Articles 2 and 3 of the Convention, in the light of the converging principles deriving from both those provisions and taking into account that those complaints arise from the same set of facts.

79. The Court has previously emphasised – in relation to persons taken into custody – that such persons are in a vulnerable position and that the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies. In assessing the evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, §§ 99 and 100, ECHR 2000-VII, and *Bouyid v. Belgium* [GC], no. 23380/09, § 83, ECHR 2015).

80. As regards, in particular, the requirement to carry out an official effective investigation, the Court reiterates that, for an investigation to be effective, the persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of hierarchical or institutional connection but also a practical independence (see, among other authorities, *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, § 320, ECHR 2014 (extracts)).

81. In addition, the investigation must be capable of leading to the identification and – if appropriate – punishment of those responsible. Although this is not an obligation of result, but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (ibid., §§ 321-22, and *Armani Da Silva*, cited above, § 233).

82. Furthermore, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their

investigation (ibid., § 325). Failing to follow an obvious line of inquiry undermines the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009, and *Armani Da Silva*, cited above, § 234).

83. Lastly, when the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation under Articles 2 and 3 of the Convention (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 95, ECHR 2004-XII, and *Sabalić v. Croatia*, no. 50231/13, § 97, 14 January 2021). This includes the sanctions imposed at the end of those proceedings (see *Myumyun v. Bulgaria*, no. 67258/13, § 67, 3 November 2015). While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences or grave attacks on physical and mental integrity to go unpunished, or for serious offences to be punished by excessively light punishments. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Articles 2 and 3 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life or the prohibition of ill-treatment are not undermined (see *Öneryıldız*, cited above, § 96, and *Sabalić*, cited above, § 97).

84. In the present case, the Government relied on the outcome of the official investigation in their explanation for Vahan Khalafyan's death and injuries suffered in police custody, whereas the applicants contested the official version of suicide. The Court therefore considers that, in order to establish whether the State has satisfactorily discharged its obligation to account for Vahan Khalafyan's death and injuries, it must first have regard to the investigation carried out by the authorities and the conclusions reached by them (compare *Gulyan v. Armenia*, no. 11244/12, § 84, 20 September 2018).

(a) Procedural limb

85. The Court observes, with regard to the official investigation conducted into Vahan Khalafyan's death and the subsequent trial, that the version of his suicide was accepted by the authorities hastily and without any justification on the very first day of the investigation (see paragraph 14 above). What is more, that account of events was based entirely on the statements of the police officers, M.H. and G.D. (see paragraphs 11-13 above), who were involved in the incident and could not be considered impartial witnesses. It is notable that the decision to investigate suicide as the cause of death was taken at a stage when the investigation was conducted by

the IDKRPID, namely the police authority which was investigating the crime allegedly committed by Vahan Khalafyan (see paragraph 6 above) and had a hierarchical and institutional link with the officers of the Charentsavan Police Station, thereby lacking the requisite independence.

86. The Court notes that there was no change of course even after the investigation was taken over by an independent authority, namely the SIS (see paragraph 16 above), which continued to conduct the investigation on the same premise, never seriously questioning the account of events provided by the police officers or making attempts to verify any other possible scenarios (compare *Virabyan v. Armenia*, no. 40094/05, § 153, 2 October 2012, and *Gulyan*, cited above, § 86), despite growing signs that they were not trustworthy and reliable witnesses. The Court refers in this connection to the obviously false statements made by the officers during the investigation, including concealing the fact of Vahan Khalafyan's ill-treatment and misleading the authorities regarding the time of his arrest, as well as the numerous contradictions between their statements and the statements made by each of them at various stages of the proceedings (see paragraphs 11-13, 21, 24, 25, 28 and 39-41 above). No importance was attached by the authorities to the fact of false and misleading testimony. Nor were any real attempts made to clarify the said contradictions.

87. The Court attaches particular importance to the fact that, despite their direct involvement in the incident, the police officers in question were not immediately isolated and questioned in order to prevent any possible collusion which, in the Court's opinion, amounted to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II). In fact, apart from the statement taken from police officer M.H. apparently outside the scope of the official investigation by a senior police officer (see paragraph 12 above), the investigating authorities did not interview police officers M.H., G.D. and A.H. until eight days after the incident (see paragraph 21 above).

88. The Court further notes that the one-sidedness of the investigation was also reflected in the manner in which the forensic examinations were conducted, which casts doubt on the objectivity and adequacy of the relevant expert opinions. Thus, the experts were invariably presented with the version of suicide as an established fact and, while considerable amount of attention was given to the suicide theory, they were never asked or encouraged to consider or comment on any other possible scenarios. Thus, while the medical expert did not rule out the possibility of a suicide (see paragraph 17 above) and later in his testimony even suggested that the stabbing wounds were characteristic of such (see paragraph 45 above), the investigating authorities and the courts failed to inquire whether it was possible for the alleged suicide to have been staged or for the wounds in question to have been inflicted in different circumstances. They further failed to investigate as to how it was

possible for the handle of the knife, which Vahan Khalafyan had allegedly used to stab himself and which, moreover, had apparently been in regular use as a kitchen knife prior to the incident, not to have any fingerprints on it and whether it was possible for them to have been wiped off (see paragraph 19 above). While the trace evidence expert was apparently asked to comment on that possibility during the trial (see paragraph 46 above), it does not appear that any importance was given to his submissions in that respect. Nor can it be said that a satisfactory explanation was provided for the absence of any fingerprints. The failure by the authorities to look into this matter thoroughly appears particularly worrying given that there were signs that that evidence might have been tampered with by the police officers in view of their interference with the integrity of the crime scene and their handling of the knife following the incident (see paragraph 13 above).

89. As regards the refusal to conduct a re-enactment of the incident, it is not for the Court to speculate whether the outcome of such an investigative measure was capable of facilitating the establishment of the truth. It is imperative, however, that in cases concerning allegations of a violation of Articles 2 and 3 of the Convention, especially where such a sensitive issue as the ill-treatment and death of a suspect in police custody is concerned, the authorities take all the possible and necessary measures which may effectively facilitate that aim. The Court notes that the Regional Court failed to give any reasons whatsoever for its refusal to order the requested investigative experiment (see paragraph 48 above), while the reasons for such a refusal provided by the Court of Appeal, in the Court's opinion, do not appear sufficiently convincing (see paragraph 52 above).

90. The Court further observes that the investigation into the circumstances of Vahan Khalafyan's ill-treatment was conducted in a similar manner. The authorities' findings were similarly based entirely on the statements of the same police officers (see paragraphs 24, 25 and 28 above), without giving any consideration to the lack of trustworthiness of those witnesses, and were similarly hastily accepted as the only version, without exploring any other possible scenarios, including the possibility of there being more than one perpetrator of ill-treatment. The circumstances of the ill-treatment inflicted on Vahan Khalafyan were presented in a very abstract manner, lacked detail and gave the impression of being limited to two brief episodes: one early in the morning in A.H.'s office and another around 5 p.m. in K.M.'s office. The Court notes, however, that Vahan Khalafyan had in fact stayed at the police station for around eight hours before the stabbing incident took place. During that entire period he was in a very vulnerable condition; his arrest not being based on a valid arrest warrant and instead being justified by the need to "have a talk" with him, his deprivation of liberty not being recorded and him being deprived of any rights enjoyed by a suspect. It cannot be said that the authorities made sufficient and genuine efforts to establish all the circumstances of the treatment he was subjected to during such rather long

period of time and while being in such a precarious situation, as well as to clarify the numerous contradictions in the police officers' accounts of events.

91. Lastly, the Court cannot overlook the fact that, even if one of the police officers was eventually found guilty of inflicting violence on Vahan Khalafyan, an amnesty was applied to him, resulting in a reduced sentence (see paragraph 52 above). However, the Court has already held that amnesties and pardons should not be tolerated in cases concerning torture or ill-treatment inflicted by State agents (see *Yeter v. Turkey*, no. 33750/03, § 70, 13 January 2009, and *Mocanu and Others*, cited above, § 326). This principle was similarly not respected in the present case.

92. The foregoing is sufficient for the Court to conclude that the authorities have failed to carry out an effective investigation into the circumstances of Vahan Khalafyan's death and ill-treatment. Having reached this conclusion, the Court does not find it necessary to determine also as to whether, at the material time, there was a systemic problem in the Armenian legal system as regards the availability of adequate remedies in cases concerning acts of torture (see paragraph 75 above).

93. There has accordingly been a violation of the procedural limb of Articles 2 and 3 of the Convention.

94. Having reached this conclusion, the Court considers it necessary to address the Government's first objection (see paragraph 63 above). It reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of "victim" status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among other authorities, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 180, ECHR 2006-V). The redress afforded must be appropriate and sufficient. This will depend on all the circumstances of the case, with particular regard to the nature of the Convention violation at stake (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). In cases of wilful ill-treatment resulting in death, to provide sufficient redress the authorities must, first and foremost, conduct a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 55-56, 20 December 2007, and *Gäfgen*, cited above, § 116).

95. In the present case, the Court notes that the criminal case regarding Vahan Khalafyan's death and ill-treatment went to trial and two police officers were eventually found guilty, one of them specifically for having ill-treated Vahan Khalafyan (see paragraph 49 above). However, as already established above, the investigation in that criminal case was not thorough and effective and was conducted with serious breaches of the procedural requirements of Articles 2 and 3 of the Convention. Consequently, it cannot be said that the State provided adequate and sufficient redress for the alleged breaches of those provisions. The Court therefore considers that the

applicants can still claim to be victims of an alleged violation of both substantive and procedural aspects of Articles 2 and 3 of the Convention and rejects the Government's first objection.

(b) Substantive limb

96. The Court finds that the investigation conducted at the national level was so manifestly inadequate and left so many important questions unanswered that it was not capable of establishing the true circumstances surrounding the death of the applicants' relative. The Court is therefore unable to accept the conclusions reached at the end of that investigation as reliable, especially that they were not supported by any objective evidence (compare *Gulyan*, cited above, § 91, and the cases cited therein). While the applicants' argument that Vahan Khalafyan had died from brain damage appears to be in direct conflict with the conclusions of the forensic medical expert as to the cause of his death (see paragraph 17 above), it is not the Court's task to establish the cause of the victim's death. As regards the substantive limb of Article 2 of the Convention, the Court finds that the explanation provided by the Government for his death and injuries suffered in police custody was not satisfactory, sufficient and convincing. They have therefore failed in their duty to account for Vahan Khalafyan's treatment in custody and thereby to discharge the burden of proof which rested on the authorities.

97. There has accordingly been a violation of the substantive aspect of Articles 2 and 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 5 § 1 AND 13 OF THE CONVENTION

98. The applicants alleged also a violation of Articles 5 § 1 and 13 of the Convention with regard to the circumstances of Vahan Khalafyan's arrest, his death and the subsequent investigation.

99. The Government contested those allegations.

100. Having regard to the facts of the case, the submissions of the parties and its findings under Articles 2 and 3 of the Convention (see paragraphs 93 and 97 above), the Court considers that it has examined the main legal question raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of these complaints (see, *mutatis mutandis, Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

102. The applicants claimed a total of 1,267,000 Armenian drams (AMD) in respect of pecuniary damage, which included the costs of the funeral, the grave and the petrol spent on attending the court hearings. They also claimed 30,000 euros (EUR) each in respect of non-pecuniary damage.

103. The Government submitted that the applicant's claims were not supported with documentary proof. Their non-pecuniary claims were also excessive.

104. The Court notes that the applicants have failed to substantiate their pecuniary claims with any evidence; it therefore rejects these claims. However, it awards the applicants jointly EUR 50,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

105. The applicants also claimed AMD 200,000 and AMD 695,000 for the costs of their two legal representatives in the domestic proceedings. They submitted a contract signed between the third applicant and the lawyer in respect of the latter sum.

106. The Government submitted that the applicants' claim of AMD 200,000 was not supported with documentary proof. As regards the remaining amount, the contract in question contained only a promise to pay that sum. Furthermore, according to the contract, that payment should have already been made, whereas the applicants have failed to submit any proof of that.

107. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the sum claimed in respect of their first lawyer, namely AMD 200,000, was not substantiated with any evidence. As regards the sum of AMD 695,000, the Court notes that the contract containing the obligation to pay that sum was concluded by the third applicant who was found to lack victim status and whose complaints were declared inadmissible (see paragraph 71 above). The Court therefore rejects the applicants' claims for costs and expenses.

FOR THESE REASONS, THE COURT

1. *Joins*, unanimously, to the merits the Government's objection concerning the applicants' victim status and *dismisses* it;

2. *Declares*, unanimously, the complaints of the first, second and fourth applicants under Articles 2 and 3 of the Convention concerning Vahan Khalafyan's death admissible and the remainder inadmissible;

3. *Holds*, unanimously, that there has been a violation of both the substantive and procedural limbs of Articles 2 and 3 of the Convention;

4. *Holds*, by six votes to one, that there is no need to rule separately on the admissibility and merits of the complaints under Articles 5 § 1 and 13 of the Convention;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the first, second and fourth applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President