

To: RA Court of Criminal Appeals

Appellants:

Representatives of victim's successor Andranik Poghosyan
under criminal case № ՇԴ/0072/01/15

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Copy:

To: H. Movsisyan, Judge,
General Jurisdiction Court of First Instance of Shirak Marz (Region), RA

APPEAL

(against judgment of the General Jurisdiction Court of First Instance of Shirak Marz (Region),
RA, dated August 23, 2016)

On the grounds of breach of substantive and procedural law

The General Jurisdiction Court of First Instance of Shirak Marz (Region), RA, presided by judge H. Movsisyan, having examined in a public court hearing the criminal case on charges against Valery Permyakov for committing the crimes under Article 104(2)(1, 5 and 8) of the RA Criminal Code, Article 175(2)(3 and 4) of the RA Criminal Code and Article 34-329(1) of the RA Criminal Code, found him guilty of committing the crimes under Article 104(2)(1, 5 and 8) of the RA Criminal Code, Article 175(2)(3 and 4) of the RA Criminal Code and Article 34-329(1) of the RA Criminal Code and sentenced him to life imprisonment.

1. Factual background of the case and essence of charges

1.1. On May 21, 2014, V. Permyakov was drafted into the armed forces of Russian Federation and started his military service at military unit № 21250 located near Peschanka village, Zabaykalsky region. 4 days after getting to the military unit, V. Permyakov left the unit without permission of the commanders to meet his friends, who came to see him, and a few hours later returned drunk to the place of his service. Due to such behavior, Permyakov was referred to the psychiatric unit of the military hospital № 321 in Chita city for in-patient examination after

which the persons responsible for the examination concluded that V. Permyakov did not meet the requirements laid down for servicemen in Russian Federation, and he was diagnosed with a transient personality disorder in its unstable form; it was mentioned that he needed psychiatric counseling to determine the degree of his fitness for military service.

1.2. The discharge epicrisis issued by the psychiatric unit of military hospital № 321 of Chita city covered psychologist's recommendations on dynamic medical surveillance, ruling out the service in armed duty details and examination by a psychiatrist after a month.

1.3. Valery Permyakov left the military unit № 21250 without permission for some 8 or 10 times to see his friends and family.

1.4. On November 28, 2014, V. Permyakov was referred to military service to unit № 04436 of the Russian military base № 102 in c. Gyumri, RA. Assault rifle AKS-74 № 1283689 with bayonet № 689 was registered in his name.

1.5. According to the official version, on January 12, 2015, Valery Permyakov, conscript serviceman at 1st tank company of tank battalion at military unit № 04436 of the Russian military base № 102 in Gyumri city, RA, while on his guard service in the area called 'Malaya Krepost' with the AKS-74 assault rifle registered in his name with 60 cartridges of 5.45 mm and a bayonet № 689, deserted the guard post at about 2 am and wandered in the city of Gyumri in search of clothes and money.

1.6. At about 6 am, reaching the address below: 188, Myasnikyan Street, Gyumri city, he entered the yard through the open gate door with an intent to seize another person's property through armed assault, came near the house, illegally entered the said house by removing by the bayonet the glass on the entrance door and by opening the door with the key on the lock from the inner side, where he killed on the spot by 28 shots by direct aim from his AKS-74 assault rifle the residents of the said house: Aida Avetisyan, Hasmik Avetisyan, Seryozha Avetisyan, Armen Avetisyan, Araksya Poghosyan and young Hasmik Avetisyan, after which with an intent to kill young Seryozha Avetisyan with a particular cruelty, he inflicted 5 stabs with the rifle-mounted bayonet on the vital organs of 6-month-old Seryozha Avetisyan, lying helplessly in his mother's lap; 7 days later, young Seryozha Avetisyan died in hospital because of the stabs.

1.7. To complete his intent to seize another person's property through armed assault, Varlery Permyakov seized from the said house a sports cap, trousers, a jacket, a pair of boots, §NOKIA 302!, §NOKIA 6300!, §NOKIA 7260! cell phones of a total value of 64,300 AMD and 6000 AMD in cash and left the scene.

1.8. Then, with intent to illegally cross the state border of RA, Valery Permyakov left the boundary of Gyumri city administrative area and reached the guarded RA state border sector served by Bayandur frontier post of the border guard detachment № 2012 of Border Guard Department of Russian Federal Security Service in RA. On the same day, at about 12 am, he attempted, without the documents required for border crossing, to cross illegally the sector of area 1 of Bayandur 12th frontier post of the guarded RA state border, but was unable to carry through the crime due to the circumstances beyond his control as on January 13, 2015, at 12:12 am, he was caught by Bayandur frontier post servicemen.

1.9. On October 21, 2015, the agency responsible for preliminary investigation informed a victim's successor and his representatives that the preliminary investigation was completed and they might get familiar with the materials of the criminal case.

1.10. Upon familiarization with the case materials, motions were submitted on performance of investigative actions and establishing a number of non-established facts. However, the investigating agency decided to dismiss the said motions.

1.11. On July 13, 2015, the Investigative Committee of Russian Federation removed from the criminal case № 14/00/0001-15 under its examination the part of the case initiated under Article 105 (Murder) of the Russian Federation Criminal Code and submitted to the RA Investigative Committee the criminal case № 14/00/0018-15 on initiating criminal prosecution against Valery Permyakov for committing murder of 2 and more persons on the territory of RA, namely RA citizens A.S. Avetisyan, S.K. Avetisyan, H.R. Avetisyan, A.S. Avetisyan, A.A. Poghosyan, as well as young H.A. Avetisyan and S.A. Avetisyan.

1.12. On July 18, 2015, G. Aghababyan, Investigator at the RA Investigative Committee, decided to admit criminal case № 14/00/0018-15 mentioned in the paragraph above and combine it with the criminal case № 18100115 mentioned in Para. 10 of the Complaint.

1.13. The Investigative Committee of Russian Federation did not submit to the RA Investigative Committee the criminal case materials concerning V. Permyakov's armed desertion from the military unit. Along with the indictment, such materials were submitted to the Russian Federation 5th Garrison Military Court; after the examination of the materials, on August 12, 2015, V. Permyakov was sentenced to 10 years' imprisonment. The successors to victims under the case in this Paragraph were not involved in the examination of the criminal case, whereas there is a causal link between the desertion and the murder of the Avetisyans family.

1.14. On October 16, 2015, the RA Investigative Committee sent a letter to the commanders of the military unit № 04436 of the Russian military base № 102 in RA requesting to carry out a

command investigation into the circumstances below: the fact that V. Permyakov deserted his place of service became known at night of January 12, 2015, at about 3:20 am, and the RA Police was informed of it no sooner than almost 3 hours later due to which not all the necessary measures to detect V. Permyakov were taken. V. Permyakov deserted from the place of his service on January 12, 2015, at about 2 am, at about 6 am he reached the apartment owned by the Avetisyans where the murder was committed; the commanders of the Russian military base № 102 informed the RA law enforcement officers of the desertion at about 6 pm, at the time when the murder had already been committed. The victim's successor learnt about the fact above by getting familiar with the case materials after the preliminary investigation was completed, and so far has received no information on the findings of the command investigation.

1.15. On November 19, 2015, the RA Investigative Committee drew up an indictment on charges against Valery Permyakov under Article 104 (Murder) Part 2 (1, 5, 8) of the RA Criminal Code, Article 175 (Banditry) Part 2 (3, 4) of the RA Criminal Code and Article 34-329 (Illegal crossing of the state border failed due to circumstances beyond perpetrator's control) Part 1 of the RA Criminal Code and sent it to the General Jurisdiction Court of Shirak Marz (region).

27. On November 25, 2015, H. Movsisyan, Judge at the General Jurisdiction Court of Shirak Marz (region), admitted the case on the charges mentioned in the paragraph above. On December 9, 2016, the Court ruled to start trial proceedings and hold an outgoing court hearing at the military unit № 04436 of the Russian military base № 102. As of May 1, 2016, 12 court hearings were held.

1.16. On August 23, 2016, the General Jurisdiction Court of First Instance of Shirak Marz (Region), RA, found Valery Permyakov guilty of committing the crimes under Article 104(2)(1, 5 and 8) of the RA Criminal Code, Article 175(2)(3 and 4) of the RA Criminal Code and Article 34-329(1) of the RA Criminal Code and sentenced him to life imprisonment.

2. Legal reasoning and claim of the appeal

The Court violated Article 27 of the RA Criminal Procedure Code, according to which the investigating agency, investigator and prosecutor shall be obliged to initiate criminal proceedings under their jurisdiction in each case of detecting any elements of crime and to take all the measures envisaged by law to identify the offenders as well and the crime and its circumstances.

2.1. It was indisputably the positive obligation of Russian Federation and Republic of Armenia to prevent the risk to the lives of the 7 members of the Avetisyans family (see European Court *Tanribilir v. Turkey*, No. 21422/93, § 70, 16 November 2000, *Keenan v. the UK*, No. 27229/95, §§ 88-89, *Servet Gunduz v. Turkey*, No. 4611/05, 11 January 2011, § 63).

This obligation also inevitably applies to the state's duty to ensure the legislative and administrative measures to effectively prevent the risk to the lives of conscript servicemen (see *Ramon Alvarez v. Spain* (dec.), No. 51192/99, July 3, 2001, *Oneryıldız v. Turkey* [GC], No. 48939/99, § 89).

To apply such regulations and administration, effective measures should be taken to protect conscripts from the complications, omissions, mistakes and dangers of the military service that might threaten their lives and the lives of the others (see *Servet Gunduz v. Turkey*, No. 4611/05, 11 January 2011, § 65):

2.2. Before referring V. Permyakov to service at the Russian military base in the RA city of Gyumri, Russian Federation was well aware that V. Permyakov performed his duties in bad faith and had some mental health problems.

Russian Federation and Republic of Armenia violated their obligation to prevent the risk to the lives of A. Poghosyan and her family members as starting from the moment of drafting V. Permyakov into the Russian armed forces, the representatives of Russian Federation were aware of his diseases and their nature and mentioned it in their explanations, and the lack of control on the part of RA over the Russian military base from the very start led to the absence of any mechanism to prevent risks to life in the Republic of Armenia. In particular, V. Permyakov suffered “transient personality disorder disease in its unstable form”; at the same time, the psychiatrists ruled out his armed service, and the military unit where he did his service possessed relevant information on this and took no effective approach towards V. Permyakov but on the contrary, he was entrusted with combat arms and no proper control was imposed over his service.

The representatives of the Russian military base informed the RA law enforcement officers of V. Permyakov's desertion no sooner than over 4 hours later, which in its turn made it impossible to prevent the murder of A. Poghosyan's 7-member family and to detect sooner V. Permyakov who had deserted the military unit with combat arms. Moreover, according to the case materials, V. Permyakov deserted the place of his service on January 12, 2015 at about 2 am and reached the Avetisyans' house at about 6 am, and then the 7 members of the family were murdered.

The fact is that the murder of the 7 members of the Avetisyans family was caused by the fact that for already known reasons V. Permyakov might not be drafted into armed forces at all and do military service under the combatant service duties at the Russian military unit № 102 in RA and particularly carry arms and serve in guard details carrying combat arms.

In the light of these facts, we can argue that neither Russian Federation, nor RA fulfilled their positive obligations to prevent an obvious risk to the lives of A. Poghosyan and her family members.

2.3. The investigation was incomplete

2.3.1. RA failed to ensure a complete investigation into the death of A. Poghosyan and her family members since no exhaustive explanations were provided on the issues on how the 7 members of the Avetisyans family, including 2 young children, might have been murdered without any motive; the fact that no neighbors or any other person heard the sounds of shots from AKS assault rifle; the fact that no one saw V. Permyakov walking in the city for about 3 km armed and in military clothing and absence of any records on video- recording devices of the shops or other institutions operating in relevant parts of Gyumri city; or failure to establish the origin of an unidentified person's blood detected on V. Permyakov's underwear; and failure to establish the reasons why V. Permyakov checked the bank accounts some hours before committing the atrocity and the subsequent transfers to such accounts.

2.3.2. Also, no official was held liable for the facts below: V. Permyakov's illegal conscription, his armed service, illegal referral for service to the Russian military base № 102 in RA and a delay of almost 3 hours in informing the RA law enforcement officers by the Russian representatives of his armed desertion. In other words, the investigation into this case by the state was obviously ineffective (See appendices 3, 16 and 17).

2.3.3 A number of questions, particularly the questions below not examined during the preliminary investigation and trial examination, remained unanswered:

A. Upon getting familiar with the criminal case materials transferred by the Investigative Committee of Russian Federation to the RA Investigative Committee, it became clear that 'Odnoklassniki' social network used by V. Permyakov was decoded; accordingly, on January 12, 2015, at 1:21 pm, 'Odnoklassniki' user Yulenska Andreyevna asked Permyakov: "Valera, what's up? Why does mom say that you wanna run away?" In regard of this question, the investigation failed to find out who Yulenska Andreyevna was and what she meant by such a question.

B. On January 11, 2015, at 11:20:35 am, the message below was sent from V. Permyakov's account on the same social network to Lyudmila Pogibelskaya's (Permyakova) page: "Hi there, check your account balance, call the bank, it's free 88007003800... card number: 5543860040668360 login name: 12900666." In response to this message, the reply below was received on January 11, 2015, at 12:57:29 pm: "Ok, I'll check and write to you... "; then on January 11, 2015, at 1:04:31 pm, another message was received: "26 rubles 17 kopecks." Under

this case, there is no motive for the murder by V. Permyakov of 7 members of the Avetisyans family. If established, the circumstance of transfers to V. Permyakov's bank card number 5543860040668360 might have also revealed the potential motive for the murder or the person who might have ordered it.

C. On January 15, 2015, 'Odnoklassniki' website user 'Alexey Nikolayevich' wrote to V. Permyakov: "Thank you ("spasiba")!", then on January 17, 2015, at 5:58:16 pm Victor Tsiganov wrote to V. Permyakov: "Great, Valerya!" On January 14, 2015, 'V. Kontakte' website user 'Kyankum sran' wrote to Permyakov: "Well done, I'll answer you, you're a great brain, if you can come out later, I'll be happy"; then on January 15, 2015, Andrey Golubev, another user of the said website, wrote on 'V. Kontakte': "All the best to you, polite man!" and on January 12, 2015, 'Andrey Harutyunyan' wrote on the same network above: "...Bro, run away! You're wanted."

Throughout the investigation into the criminal case, the letters of similar contents were not examined to find out who the users were, the reasons they wrote such messages to V. Permyakov and their possible involvement in the murder of the Avetisyans family members.

D. The examination of 'V. Kontakte' website reveals that the most recent visit to V. Permyakov's page is dated January 26, 2015, at 5:16 pm, whereas V. Permyakov was arrested back on January 13, 2015 and detention was selected as a preventive measure against him.

The agency responsible for the investigation did not examine the fact above to find out who used Permyakov's account in 'V Kontakte' social network.

E. The fact that on January 12, 2015 V. Permyakov deserted the place of his military service with the arms registered in his name and entered residential area was not investigated; also, the investigation did not identify the persons whose inaction or deliberate actions caused V. Permyakov's armed desertion. The investigation did not identify even the persons responsible for control over V. Permyakov's service.

F. The commanders of the Russian military base № 102 informed the RA police with a delay of about 4 hours of V. Permyakov's armed desertion on the night of January 12, 2015, at about 2 am. As a result, the required measures to detect V. Permyakov were not taken in time. In terms of the fact above, it was not considered to hold liable the persons obliged to inform the RA law enforcement officers of V. Permyakov's desertion.

2.4. The investigation carried out by the Republic of Armenia did not result in identification of the perpetrators; furthermore, everything possible was done to obstruct the investigation.

A. The Investigative Committee of Russian Federation submitted to the RA Investigative Committee the criminal case materials under its examination concerning the investigation into the murder of the Avetisyans family members and submitted no materials obtained under the criminal proceedings initiated on V. Permyakov's armed desertion, which is directly linked with the murder of the family members of the victim's successor.

B. Only V. Permyakov was charged with the crime; the "preliminary investigation" justified this by the fact that Permyakov's rifle, military uniform and 2 cigarettes were found in the scene of crime and he confessed his guilt. The investigation did not consider the version whether the atrocity might have been committed by any unidentified person(s) who might have stolen Permyakov's arms and clothes or the version whether Permyakov **acted not alone** when murdering the 7 members of the Avetisyans family.

C. On the army winter underwear shirt seized from V. Permyakov, 1-4 small spots of slightly saturated human blood were detected; a genetic profile was generated from spots № 1 and № 4; this genetic profile belongs to the same person, which ruled out the possibility that they might belong to Permyakov. The compliance of the profiles above with the Avetisyans family members was ruled out as well. On the green military sweater seized from Permyakov, a human hair was detected; its belonging to Permyakov or any of the Avetisyans family members was ruled out.

The facts above provide grounds to assume that Permyakov was in his underwear for some time and an unidentified person's blood and hair might appear on his underwear and sweater as a result of fighting.

Furthermore, traces of human blood were found on the military summer shorts seized from Permyakov. The group of the blood was not determined due to its small quantity in the spot and the necessity of further molecular and genetic examination.

D. According to the case materials, after committing the crime Permyakov hid himself in a cabin on the Armenian-Turkish border from where he called a taxi driver and ordered shaurma and cola and where he stayed for about 12-20 hours. The investigation found no item, thing or cigarette that would prove that Permyakov stayed at the cabin above.

E. The testimonies provided by Permyakov under the criminal case № 18100115 contradict each other.

There are contradictions in the testimonies on both desertion from his military service and reaching Avetisyans' apartment, and murdering the Avetisyans family members and reaching the Armenian-Turkish border from the Avetisyans' apartment and the moment of arrest. We believe

that the contradictions in V. Permyakov's testimonies aimed to prove his guilt at any cost rather than to reveal the real state of affairs. Starting from January 13, 2015, Permyakov has been on the territory of the Russian military base № 102, where the detention conditions cannot meet the standards of penitentiary facilities and therefore, this constitutes an obvious violation of Articles 3 and 5 of the European Convention. Furthermore, during Permyakov's stay at the military base № 102, he is controlled, among others, by the persons whose potential "criminal" actions are known to Permyakov as well and the contradictions in his testimonies that were later brought into conformity with the expert opinions result from the fact that Permyakov stays at the military base № 102.

2.5. The phrase "established by law" in Article 6(1), European Convention on Human Rights, applies not only to the legal bases of numerous operating courts, but also the court's jurisdiction in each case.

The indictment on this case was sent to the General Jurisdiction Court of Shirak Marz (Region), the trial examination of the case was carried out through **outgoing court hearings** at field post military unit № 04436.

The **Court's justification** for its decision to hold outgoing hearings at field post military unit № 04436 **lay solely in the fact that V. Permyakov** was serving his punishment at the garrison **detention facilities** of the field post military unit № 04436 and **holding the outgoing court hearing there served the interests of the efficiency of justice and created a guarantee for effective exercise of the person's right to a fair trial.**"

The first instance court that examined the case was not a court established by law in the sense of Article 6 of the Convention, as in this case there was no even prima facie violation of the right to a fair trial enshrined in Article 6 of the European Convention for Human Rights.

2.6. The contested judicial act contains evidence obtained in violation of the law, i.e. on July 18, 2015, the agency responsible for preliminary investigation decreed to merge the materials of the case № 14/00/0018-15 of the Investigative Committee of Russian Federation with the materials of the criminal proceedings initiated by the RA Investigation Committee on this case and justified it by invoking Article 28(1) and Article 55(2) of the RA Criminal Procedure Code.

According to Article 63(1) of the RA Constitution, everyone shall have the right to a fair and public hearing of his case within a reasonable period by an independent and impartial court. According to Para 3 of the said Article, the use of evidence that is obtained in violation of fundamental rights or undermines the right to a fair trial shall be prohibited.

“Hence, during the procedural actions aimed at collecting and verifying evidence, the protection of the persons’ rights and legitimate interests must be ensured. Otherwise, the factual data obtained as a result of the procedural actions, regardless of its significance for the case, loses its legal force and probative value and may be neither merged with the evidence on a particular criminal case nor be used as a basis for the charge” (see Cassation Court’s Ruling № ԵՔԴԴ/0295/01/08 of September 16, 2009 on Armen Sargsyan’s case, Para. 15).

The RA Criminal Procedure Code does not provide for any procedure for assessing and attaching as evidence the materials of the preliminary investigation carried out by the investigative bodies of another state and Article 28(1) and Article 55(2) of the RA Criminal Procedure Code invoked in the investigator’s decree of July 18, 2015 do not serve as the basis for such an action.

According to Article 28(1) of the RA Criminal Procedure Code, the cases of several persons charged with committing the same or several crimes, or cases on several crimes committed by the same person may be merged in single proceedings by the investigator, prosecutor or court.

According to Article 55(2) of the said Code, the investigator shall be authorized to prepare materials and initiate criminal proceedings on crimes and in compliance with the subordination rules established by this Code, process the case or send it for examination to another investigator, initiate criminal proceedings during the investigation into the case under prosecution, if another crime committed by another person is detected. The investigator shall also be entitled to reject initiation of criminal proceedings in accordance with the provisions of this Code (...).

The legal interpretation of the regulations above suggests that the cases under which several persons are charged with the same or several crimes or the cases under which several crimes are committed by the same person may be merged in single proceedings. In this case, the RA Investigative Committee initiated criminal proceedings on the murder of the Avetisyan family members by V. Permyakov and the case was investigated by Aghababyan, Investigator at the RA Investigative Committee.

No other criminal case on any other crime committed by V. Permyakov was investigated or examined by the RA Investigative Committee or any other RA investigative agency.

Also, there is no other legal act in support of any investigation by the RA investigative agencies into the fact that V. Permyakov might have committed various crimes.

The Investigative Committee of the Russian Federation also initiated criminal proceedings on the murder of the Avetisyan family by V. Permyakov. The Investigative Committee of the Russian Federation did not have any right to do so, according to Article 4 of the Treaty on Jurisdiction and Mutual Legal Assistance on Issues of Russian Military Base located in RA signed between Russian Federation and RA on August 29, 1997. Thus, the investigative committees of 2 different countries initiated criminal proceedings on the same crime, on the same fact and against the same person.

According to the RA Criminal Procedure Code, different investigative agencies may not initiate criminal prosecution against the same person for the same offense.

In this case, the materials of the preliminary investigation carried out by the Investigative Committee of Russian Federation were incorporated without any legal grounds into the criminal case № 18100118 on the same fact under the proceedings of the RA Investigative Committee and were admitted by the Court as evidence and then mentioned in the judicial act.

2.7. The conducted investigation did not result in identification of the perpetrators and the state did not carry out effective and comprehensive investigation

A. No investigative experiment was conducted in apartment 188, Myasnikyan Street, Gyumri city, RA to establish the interpositions of the arms, the dead persons and the accused during the crime (murder) and to verify and specify V. Permyakov's actions.

B. No investigative experiment was conducted in apartment 188, Myasnikyan Street, Gyumri city, RA to establish how far away the shots from AKS-74 assault rifle might be heard and how strong they might be.

C. The apartment owned by the Avetisyans family is located at the address below: 188, Myasnikyan Street, Gyumri city; the house directly adjacent to it is house № 190, the house in front is house № 203; apartments at the address 223 and 227 L. Madoyan Street are located in the rear of the Avetisyans' apartment. The residents of the apartments referred to under this case were not questioned whereas they might possess information that might be of essential significance for the outcome of the criminal case, and the court rejected the motion on such questioning.

D. Under the investigation carried out by the state, no other hypothesis was investigated except for the one presented by V. Permyakov on "murder on the pretext of drinking water and robbery".

Numerous questions and hypotheses remained unanswered and untested for the victim. One of such hypotheses suggests that a resident of house 178 on Myasnikyan Street was once employed at the military base № 102 and it became known that the said person lent money at high interests to some officers of the military base. A possible hypothesis is that the perpetrators may have confused house 178 with house 188, but this hypothesis was not examined.

Based on the above and guided by the provisions of Articles 376-394 of the RA Criminal Procedure Code,

we hereby request:

To reverse the judgment of the General Jurisdiction Court of Shirak Marz (Region) of August 23, 2016 and send the case to the relevant lower court for re-examination.

Encl.: Evidence on sending this appeal to the court that issued the judicial act

Appellants:

victim's legal representatives:

Artur Sakunts;

Arayik Zalyan

September 19, 2016