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La CEDU sull'accesso a informazioni coperte da segreto di Stato
(CEDU, sez. V, sent. 4 dicembre 2025, ric. n. 5497/17)

Con la sentenza in commento la Corte Edu si è pronunciata sul ricorso presentato da un'ONG armena, impegnata nella protezione dei diritti umani all'interno delle forze armate, che aveva richiesto al Governo, senza successo, dati e informazioni in merito ai decessi tra i militari in tempo di pace. Anche i ricorsi successivamente proposti dall'organizzazzione dinnanzi alle autorità giurisdizionali nazionali erano stati respinti.
Secondo la Corte, la scelta delle autorità nazionali di negare all'ONG l'accesso alle informazioni richieste costituiva un'ingerenza nella libertà di espressione di cui all'art. 10 CEDU, una limitazione "prevista dalla legge" e diretta a perseguire uno scopo legittimo, quello di proteggere la sicurezza nazionale, ma che non poteva dirsi "necessaria in una società democratica".
A detta della Corte, infatti, anche quando è in gioco la sicurezza nazionale, le misure che incidono sui diritti fondamentali, come la libertà di ricevere e diffondere informazioni, devono essere motivate da ragioni pertinenti e sufficienti.
La totale assenza di spiegazioni da parte del Governo e poi dei giudici interni in merito alla scelta di mantenere segreta la totalità delle informazioni richieste dall'ONG ha quindi rappresentato una violazione dell'articolo 10 della Convenzione.

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

FIFTH SECTION

CASE OF XXX v. ARMENIA
(Application no. 5497/17)

JUDGMENT
STRASBOURG
4 December 2025

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 XXX v. Armenia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Kateřina Šimáčková, *President*,
María Elósegui,
Georgios A. Serghides,
Gilberto Felici,
Andreas Zünd,
Diana Sârcu, *judges*,
Anna Margaryan, ad hoc *judge*,
and Victor Soloveytchik, *Section Registrar*,
Having regard to:
the application (no. 5497/17) 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 an Armenian non-governmental organisation, OMISSIS (*«Խաղաղության երկխոսություն» հասարակական կազմակերպություն*; translates as "Peace Dialogue" - "the applicant NGO"), on 27 December 2016;
the decision to give notice to the Armenian Government ("the Government") of the complaint concerning Article 10 of the Convention and to declare the remainder of the application inadmissible;
the withdrawal of Mr Vahe Grigoryan, the judge elected in respect of Armenia, from sitting in the case (Rule 28 of the Rules of Court) and the appointment of Ms Anna Margaryan to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court);
the parties' observations;
Having deliberated in private on 12 November 2025,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the domestic authorities' refusal to provide the applicant NGO with information concerning fatalities in the Armenian armed forces between 1994 and 2014. The applicant NGO relied on Article 10 of the Convention in so far as the right to receive and impart information of public interest is concerned.

THE FACTS

2. The applicant NGO was represented by Mr M. Shushanyan and Mr S. Grigoryan, lawyers practising in Yerevan.
3. The Government were represented by their Agent, 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. According to its statute, the applicant NGO was founded in 2009 with the aim of, among other things: supporting the peaceful resolution of conflicts in the South Caucasus; advancing the role of civil society in that respect and ensuring the participation of women, young people and victims of conflict in that process; contributing to a dialogue between persons from various regions involved in conflict and assisting those who have suffered from conflict by representing their interests.

6. Since 2012 the applicant NGO has been involved in projects aimed at human rights protection within the armed forces, such as providing legal assistance to the families of soldiers who have died in peacetime, raising public awareness about the human rights situation in the armed forces and keeping a record of fatalities and crimes in the army.
7. Since 2013 the applicant NGO has been running a project entitled "Safe soldier for a safe Armenia", within the framework of which it has created an online database (entitled "Safe Soldiers for a Safe Armenia") which contains information concerning fatalities and crimes in the armed forces and which is searchable by the date/place of an incident/crime and the cause of death.
8. By a letter of 3 April 2013 the applicant NGO informed the Ministry of Defence that, within the framework of the project "Safe Soldier for a Safe Armenia" it intended to monitor the level of fatalities in the armed forces and to create a publicly accessible online database containing information concerning such incidents. In that connection, the applicant NGO requested the Ministry of Defence to provide it with information concerning the number of fatalities in the armed forces between 2010 and 2011 – including the names of the deceased, the dates and places of the incidents, the number of each military unit concerned (and the names and military ranks of the respective commanders of those units), the causes of the deaths and a brief description of each incident. The applicant NGO stated that it sought to clarify the discrepancies between the official data published by the Ministry of Defence concerning fatalities during the period in question and the data concerning the same period that had been collected by the applicant NGO from other sources.
9. In reply, on 6 December 2013 the Ministry of Defence (i) clarified certain inaccuracies in the data collected by the applicant NGO, and (ii) provided additional information concerning fatalities in the armed forces during the period in question by providing the names, dates of birth and causes of death of military servicemen who had died in 2010 and 2011 and who did not feature in the applicant NGO's lists.
10. By a letter of 21 January 2014 the applicant NGO sent a request to the Ministry of Defence asking for the same kind of information in respect of the period 2007-2009 that it had requested in its letter of 3 April 2013 (see paragraph 8 above).
11. By a letter of 14 February 2014 the Ministry of Defence refused the applicant NGO's request, referring to Article 23 of the Constitution (right to privacy - see paragraph 23 below), Article 201 of the former Code of Criminal Procedure (secrecy of investigative information - see paragraph 25 below), section 8(1) of the Freedom of Information Act (see paragraph 29 below), section 9 of the State and Official Secret Act (see paragraph 35 below) and Government Decree no. 173 of 13 March 1998 (see paragraph 37 below).
12. In October 2014 the Administrative Court rejected a claim lodged by the applicant NGO seeking to oblige the Ministry of Defence to provide the sought information as having been lodged outside the statutory time-limits for lodging an administrative claim. After an unsuccessful appeal, the applicant NGO did not appeal further.
13. By a letter of 7 November 2014 the applicant NGO sent a request to the Ministry of Defence in respect of the period 1994-2014 that was similar to the ones of 3 April 2013 and 21 January 2014 (see paragraphs 8 and 10 above). The applicant NGO stated that as part of the above-mentioned project it was collecting and publishing information about fatalities that had occurred since the ceasefire of

1994 (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 24, ECHR 2015). According to the applicant NGO, at that point (7 November 2014) the relevant publicly-accessible database contained details (which were based on information gathered from human rights organisations and victims' families) regarding more than 600 fatalities that had been suffered by military servicemen during peacetime. However, in order to ensure that only complete and non-biased information was made available to the users of the online database, it was necessary to secure official data about the fatalities in question. In the event that the Ministry of Defence did not have complete information about fatalities during any given year within the time frame in question, the applicant NGO requested that the Ministry provide information about those fatalities of which it did possess the information in question.

14. Having received no response to that request, on 17 January 2015 the applicant NGO lodged a claim with the Administrative Court, seeking that the Ministry of Defence be obliged to provide the requested information ("administrative proceedings no. 1"). As justification for its claim, the applicant NGO referred to the same purposes as those cited in its request to the Ministry of Defence. The applicant NGO then supplemented its claim, arguing additionally that the failure of the Ministry of Defence to respond to its request had not been justified in view of the fact that the Ministry of Defence had already provided the same information for the years 2010 and 2011 (see paragraph 9 above).

15. On 12 August 2015 the Ministry of Defence lodged its objections to the applicant NGO's claim. The Ministry made references to Article 43 of the Constitution (see paragraph 23 below), section 6 of the Freedom of Information Act (see paragraphs 27 and 28 below), sections 2, 8(3)(c) and (d), and 12 of the State and Official Secrets Act (see, respectively, paragraphs 32, 33 and 36 below) and Government Decree no. 173 dated 13 March 1998 (see paragraph 37 below). The Ministry then went on to state that, on the basis of all those domestic-law provisions – in particular, section 12(7) of the State and Official Secrets Act (see paragraph 36 *in fine* below) – by his Order no. 9-N of 9 July 2015 ("the Order") the Minister of Defence had approved "[t]he extended list of information to be treated as classified within the structure of the Ministry of Defence", of which Annex I (in its paragraph 42 – see paragraph 39 below) listed as classified the information sought by the applicant NGO. Lastly, the Ministry argued that the Administrative Court could not oblige it to provide the applicant NGO with the requested information, since by virtue of Article 124 § 3 of the Code of Administrative Procedure (as in force at the material time - see paragraph 24 below) that court should assess the legitimacy of the requested action on the basis of the legal provisions in force at the time of the adoption of its decision.

16. On 30 September 2015 the applicant NGO lodged a claim with the Administrative Court ("administrative proceedings no. 2") whereby it sought the invalidation of paragraphs 42 and 43 of Annex I to the Order (see paragraph 39 below). The applicant NGO stated, *inter alia*, that for more than four years (as at the moment of its lodging the claim) it had been working with the parents of military servicemen who had died in relatively peaceful times by assisting them in respect of the representation of their interests and trying to help them find out why and how their sons had died while protecting their homeland. The database in question (see paragraph 7 above) had been created with the purpose of compiling information to be sought from the parents of deceased military servicemen. However, the Ministry of Defence refused to provide the applicant NGO with official

information concerning incidents and accidents in the armed forces (see paragraph 13 above); in doing so, it cited the Order (see paragraphs 38 and 39 below), which had been issued after the applicant NGO had lodged its administrative claim seeking to oblige the Ministry of Defence to provide the information in question (see paragraphs 14 and 15 above). The applicant NGO argued that the Ministry's refusal to provide it with the requested information had deprived it of the possibility of fulfilling its function, as part of the civil society, to combat the root causes of harmful phenomena such as corruption, non-statutory relations, lack of human rights protection mechanisms and the sense of impunity in the armed forces (which had led to high numbers of fatalities among young servicemen – the result of murders, suicides, incitement to suicide and various other offences).

Administrative proceedings no. 1 (see paragraph 14 above) were suspended pending the outcome of this claim.

17. In its submissions within administrative proceedings no. 2, the Ministry of Defence additionally cited the Military Doctrine of the Republic of Armenia promulgated by the President of Armenia on 25 December 2007 (which set out priorities and principles with regard to national security). Referring to the Military Doctrine and to the then military-political situation at the State borders (including tensions at the "line of contact"), the Ministry of Defence emphasised the necessity to keep classified information concerning incidents and accidents (and the reasons thereof) in the armed forces.

18. By a decision of 11 March 2016 the Administrative Court dismissed the applicant NGO's claim (see paragraph 16 above) stating, in particular, the following:

"... having regard to the domain (military) to which pertains the information mentioned in paragraphs 42 and 43 [of Annex I to the Order] and the nature of that information, the court finds that in the given military-political context the disclosure of that information may, in the objective reality [*օբյեկտիվ իրականության մեջ*], pose a threat to the national security of the Republic of Armenia. Hence, classifying such information is legitimate, and so are [the relevant] State body's actions aimed at including the given information in the extended list of information to be treated as classified.

..."

19. The applicant NGO lodged an appeal.

20. By a decision of 8 July 2016 the Administrative Court of Appeal upheld the Administrative Court's decision of 11 March 2016 (see paragraph 18 above). The Court of Appeal stated in its reasoning that it upheld the first-instance decision in the light of "the reasoning reflected in [the Court of Appeal's] decision". It stated, in particular, that information regarding incidents and accidents in the armed forces (which was to be treated as classified, pursuant to the provisions disputed by the applicant NGO) "was definitely included in the criteria for the assessment of the combat capability of the armed forces" and that documents relating to the combat capability of the armed forces were set out in section 9 of the State and Official Secrets Act as information subject to classification (see paragraph 35 below).

21. On 7 September 2016 the Court of Cassation refused to grant the applicant NGO leave to appeal.

22. In December 2016 the Administrative Court resumed administrative proceedings no. 1 (see paragraph 16 *in fine* above); by its judgment of 18 April 2017 it dismissed the applicant NGO's claim (see paragraph 14 above). In doing so, the Administrative Court stated that to allow the applicant's

NGO's claim, it would first have had to ascertain that the sought action was legitimate; moreover, under Article 124 § 3 of the Code of Administrative Procedure (see paragraph 24 below), it was bound to apply the law as it stood at the time that it delivered a decision. Referring to section 8(1) of the Freedom of Information Act (see paragraph 29 below), section 9(1) of the State and Official Secrets Act (see paragraph 35 below), the Order (see paragraphs 38 and 39 below) and the decision of 11 March 2016 (see paragraph 18 above), the court then concluded that it could not order the Ministry of Defence to provide the information sought by the applicant NGO, since that information was to be treated as classified, pursuant to paragraphs 42 and 43 of Annex I to the Order (see paragraph 39 below). The applicant NGO did not appeal against that judgment.

RELEVANT LEGAL FRAMEWORK

I. domestic law

A. The Constitution of 1995 (following amendments introduced on 27 November 2005)

23. The relevant provisions of the Constitution, as in force at the material time, read as follows.

Article 23

"Everyone shall have the right to have their private and family life respected.

No information concerning a person may be collected, kept, used or disseminated without his or her consent, unless so provided by law.

..."

Article 27

"Everyone shall have the right to freedom of speech, including freedom to seek, receive and impart information and ideas through any means, [both within or outside] State borders.

..."

Article 43

"The fundamental rights and freedoms of a person and citizen enshrined in Articles 23 [and] 27 ... may be restricted only by law where it is necessary in a democratic society for the protection of national security, public order, the prevention of crime, the protection of health and morality, constitutional rights and freedoms and honour, and the good reputation of others.

..."

B. Code of Administrative Procedure

24. Under Article 124 § 3 of the Code of Administrative Procedure (in force since 7 January 2014), the legitimacy of a requested administrative act – as well as that of the requested action (or the decision to refrain from engaging in such an action) – is determined in the light of the body of evidence obtained as at the date of the adoption of the relevant judicial decision and on the basis of the law as in force at the time of the taking of the relevant judicial decision.

C. Code of Criminal Procedure

25. Article 201 § 1 of the former Code of Criminal Procedure (in force until 1 July 2022) provided that information [secured by] an investigation could be made public only with the permission of the authority conducting the investigation.

D. Freedom of Information Act

26. The relevant provisions of the Freedom of Information Act of 23 September 2003 (which entered into force from 15 November 2003), as in force at the material time, were as follows.

27. Section 6(1) provides that every person has the right to acquaint himself with the information that he or she seeks and/or to lodge an application (in accordance with the relevant procedure) with the holder of the sought information, requesting that he be provided with it.
28. Section 6(3) provides that freedom of information may be restricted in the cases provided for in the Constitution and law.
29. Under section 8(1), the information holder may refuse to provide the requested information if, *inter alia*: it contains a State, official, banking or commercial secret (section 8(1)(1)); to do so would constitute a breach of a person's private and family life – including private correspondence, telephone conversations, postal, telegraphic and other forms of communication (section 8(1)(2)); or contains investigative data not subject to disclosure (section 8(1)(3)).
30. Under section 8(2), if part of the requested information contains data that is not subject to disclosure, then the information shall be provided only to the extent that is permissible.

E. State and Official Secrets Act

31. The relevant provisions of the State and Official Secrets Act of 3 December 1996 (no longer in force), as in force at the material time, were as follows.
32. Section 2 defined a State secret as information pertaining to the areas of (i) the military, (ii) foreign affairs, (iii) economic, scientific and technological matters, (iv) intelligence and counterintelligence, and (v) the operational and intelligence-related functioning of the Republic of Armenia, the disclosure of which might give rise to grave consequences for the security of the Republic of Armenia.
33. Section 8(3) set out the powers of the government with regard to the classification of information as a State and official secret; it vested the government with the power to draw up and approve the list of officials who had the authority to decide which information would be classified (section 8(3)(c)) and to draw up and approve the list of information to be classified as a State secret (section 8(3)(d)).
34. Under section 8(4)(f), State executive, regional and local government bodies exercised "other powers" as regards the classification of information as State and official secrets (and the protection thereof).
35. Section 9 listed the types of information that could be classified as a State and official Secret.
Section 9(1) – which concerned information relating to the military – listed, *inter alia*, the following information:
- the content of documents regarding the strategic and operational plans of the armed forces; the preparation and conduct of operations of the armed forces; strategy, operations and the mobilisation of troops; combat capability; and the creation and use of military-reserve personnel (section 9(1)(a));
- information on the deployment, actual names, organisational structure, armed capability and number of the armed units and military units of the Republic of Armenia and those of its allies on the territory of the Republic of Armenia (section 9(1)(d)).
36. Section 12(6) and (7) provided, *inter alia*, that information could be classified as a State and official secret by those State bodies whose officials had the authority to classify information as such. Those State bodies whose heads had the authority to classify information as a State and official secret drew up extended lists of information to be treated as classified. The extended lists (and any

amendments thereto) were approved by the heads of the relevant State bodies. Those lists were then deemed to be classified and were not subject to publication.

F. Government Decree no. 173 of 13 March 1998 (*Հայաստանի Հանրապետության կառավարության 1998թ. մարտի 13-ի թիվ 173 որոշումը Հայաստանի Հանրապետության պետական գաղտնիքի շարքը դասվող տեղեկությունների ցանկը հաստատելու մասին*)

37. Under Decree no. 173 of 13 March 1998 the Government approved the list of information to be classified as a State secret, pursuant to sections 8 and 12 of the State and Official Secrets Act (see paragraphs 33, 34 and 36 above). Section I of the approved list annexed to that Decree concerned information relating to the military, which included, *inter alia*, (i) information concerning the potential increase, combat structure, number and combat training of the armed forces, together with information concerning the military-political and operational situation (section 1, subsection 3 and (ii) information disclosing the deployment, actual names, organisational structure, armed capability and number of the armed forces (section 1, subsection 8). The Ministry was designated as one of the State entities that had authority to handle the information in question.

G. Order of the Minister of Defence No. 9-N of 9 July 2015 (*Հայաստանի Հանրապետության պաշտպանության նախարարի 2015թ. հուլիսի 9-ի թիվ 9-Ն հրամանը Հայաստանի Հանրապետության պաշտպանության նախարարության համակարգի գաղտնազրման ենթակա տեղեկությունների ընդլայնված գերատեսչական ցանկը հաստատելու մասին*)

38. By Order no. 9-N issued on 9 July 2015 the Minister of Defence approved "The extended list of information to be treated as classified within the structure of the Ministry of Defence" (Annex I).

39. Chapter 17 of the list contained in Annex I – which is entitled "Information concerning the functioning of the Military Police, offences and incidents" – lists the following information as classified:

- summary data disclosing incidents and accidents in the armed forces (together with the causes thereof) according to the level of secrecy – to be determined by the military-political and operational situation (paragraph 42); and
- information disclosing material pertaining to internal investigations in respect of offences discovered as a result of incidents and accidents in the armed forces, according to the level of secrecy (paragraph 43).

II. domestic practice

Decision of the Constitutional Court of 6 March 2012 on the conformity of sections 8(4)(f), 12(6) and (7) of the State and Official Secrets Act with the Constitution

40. In a decision of 6 March 2012 the Constitutional Court ruled on an application lodged by Helsinki Citizens' Assembly Vanadzor Office (another NGO), which in 2010 had unsuccessfully sought to obtain information on the number, names and addresses of military servicemen who had died in 2009 while carrying out their military service.

The Constitutional Court found sections 8(4)(f) and 12(6) of the State and Official Secrets Act (see paragraphs 34 and 36 above) to be compatible with the Constitution. As regards section 12(7) of the same Act, the Constitutional Court found that the part of that section that read "[extended lists of information to be treated as classified] were then deemed to be classified and were not subject to publication" (see paragraph 36 *in fine* above) was incompatible with Articles 27 and 43 of the

Constitution (see paragraph 23 above) in respect of matters that did not concern specific information that met the criteria for being declared classified.

In particular, the Constitutional Court held that the extended lists of information to be classified as a State secret – which had been issued in compliance with the domestic-law requirements – had not *per se* led to an (illegitimate) restriction of the right to receive information. The restrictions on that right were laid down by law, which authorised the relevant executive bodies to implement them; that is to say it had not been those bodies that had laid down those restrictions. At the same time, the Constitutional Court stated that the classification of the extended lists themselves ran counter to the Constitution, given that the restrictions applied to information to be treated as classified, rather than to the lists themselves, which merely set out – under the respective titles of each category of information – the spheres in respect of which certain information was to be treated as classified (those areas having been specified by the State and Official Secrets Act and by the relevant Government decrees, and being publicly accessible).

THE LAW

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

41. The applicant NGO complained that the refusal to allow it access to the information that it had sought from the Ministry of Defence had been in breach of its rights as provided by Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. *Compatibility* ratione materiae

(a) The parties' submissions

(i) The Government

42. The Government argued that the complaint was incompatible *ratione materiae* with Article 10 of the Convention. They submitted that the applicant NGO had not explained how the sought information concerning fatalities in the armed forces – including the names of the deceased, the dates and places of each incident, the number of each military unit concerned (and the names and military ranks of the respective commanders of those units), the causes of the deaths and a brief description of the incidents – would have helped it in its aim of contributing to the protection of human rights in the armed forces. Neither had it clearly specified the purpose of imparting to the public the information in question, which had included private information about the deceased and sensitive information concerning the military. The detailed data sought by the applicant NGO was not the

kind of information that the public had the right to receive. Moreover, the applicant NGO's online database (see paragraph 7 above) already contained statistics on fatalities in the armed forces dating back to the early 2000s, which showed that it did not need the classified information sought from the Ministry of Defence in order to be able to fulfil its goals and to contribute to the discussion of an issue of obvious public interest.

(ii) The applicant NGO

43. The applicant NGO submitted that there was a high public demand and interest in non-combat deaths, which caused great public concern. Its goals included, *inter alia*, (i) human-rights protection in the armed forces, (ii) the recording and analysis of non-combat deaths, and of offences taking place in the army, and (iii) making recommendations to the competent authorities in order to prevent such occurrences. The purpose of its request of 7 November 2014 (see paragraph 13 above) had been to secure complete official information concerning incidents that had resulted in deaths among servicemen since the ceasefire of 1994 until 2014. The information in the applicant NGO's possession had come from the media, victims' relatives, other NGOs and, regarding the years 2010 and 2011, from the Ministry of Defence (see paragraph 9 above). However, only the Ministry of Defence could have provided it with complete information that would have allowed the applicant NGO to form a full picture and to analyse the causes of the incidents in question in order to fulfil its goals.

(b) The Court's assessment

44. The Court reiterates that Article 10 does not confer on any individual a right of access to information held by a public authority or oblige the Government to impart such information to that individual. However, such a right or obligation may arise where access to the information in question is instrumental for the individual's exercise of his or her right to freedom of expression (in particular, "the freedom to receive and impart information") and where its denial constitutes an interference with that right (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 156, 8 November 2016).

45. The criteria for determining whether access to information is instrumental for the exercise of the right to freedom of expression are (a) the purpose of the information request; (b) the nature of the information sought; (c) the role of the seeker of the information in receiving it and imparting it to the public; and (d) whether the information is ready and available (ibid., §§ 157-70). Those criteria are in principle cumulative (see, as recent authorities, *Sieć Obywatelska Watchdog Polska v. Poland*, no. 10103/20, § 49 *in fine*, 21 March 2024, and *Girginova v. Bulgaria*, no. 4326/18, § 59, 4 March 2025, with further references).

(i) Purpose of the information request

46. As is evident from the applicant NGO's request and submissions to the Administrative Court (see paragraphs 13, 14 and 16 above), the purpose of its information request was to obtain complete and comprehensive official statistics about the fatalities in the armed forces that would have allowed the applicant NGO to form a full picture and analyse the causes of the incidents in question in order fulfil its goals (see paragraph 43 above). Although the Government appeared to consider that the applicant NGO "did not need" the requested information (see paragraph 42 above), the evidence in the case demonstrates that the applicant NGO possessed only partial information concerning fatalities in the armed forces, and that that information would have benefited from verification by

the Ministry of Defence (see paragraphs 13 and 43 above). It can therefore be reasonably concluded that withholding the information in question from the applicant NGO hindered or impaired its ability to contribute to a public debate, drawing on accurate and reliable information (see, *mutatis mutandis*, *Magyar Helsinki Bizottság*, cited above, § 175, and *Sieć Obywatelska Watchdog Polska*, cited above, § 50). The Court is therefore satisfied that the information was "necessary" for the realisation of the applicant NGO's right to freedom of expression (see, *mutatis mutandis*, *Zöldi v. Hungary*, no. 49049/18, § 35, 4 April 2024).

(ii) Nature of the information sought

47. Turning to the nature of the information sought, the Court reiterates that information to which access is sought must meet a public-interest test in order to prompt a need for disclosure under the Convention (see *Magyar Helsinki Bizottság*, cited above, § 161). The Court has emphasised that the public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 103, ECHR 2015 (extracts), with further references).

48. The Court notes that the issue of non-combat deaths in the armed forces is undoubtedly of considerable public interest - a reality that was also acknowledged by the Government (see paragraph 42 *in fine* above). The Court, which has examined a number of cases on the matter (see, among other examples, *Mirzoyan v. Armenia*, no. 57129/10, 23 May 2019; *Nana Muradyan v. Armenia*, no. 69517/11, 5 April 2022; *Ashot Malkhasyan v. Armenia*, no. 35814/14, 11 October 2022; *Hovhannisyan and Nazaryan v. Armenia*, nos. 2169/12 and 29887/14, 8 November 2022; *Dimaksyan v. Armenia*, no. 29906/14, 17 October 2023; and *Varyan v. Armenia*, no. 48998/14, 4 June 2024), has no reason to question that at least a significant part of the information sought by the applicant NGO concerned a matter of public interest.

(iii) The role of the seeker of the information

49. At no point was it called into question that the applicant NGO exercised the function of a public watchdog when seeking access to the information in question. This role was therefore undeniably compatible with the scope of the right to solicit access to State-held information (see *Magyar Helsinki Bizottság*, cited above, §§ 166 and 167, and, *mutatis mutandis*, *Zöldi*, cited above, § 37).

(iv) Whether the information was ready and available

50. Lastly, the Court notes that the applicant NGO requested data from the Ministry of Defence on non-combat deaths that had occurred in the armed forces between 1994 and 2014 (see paragraph 13 above). Although the period covered by that request was quite extensive – 20 years – the Court notes that at no point did the authorities argue that it would have been particularly burdensome for them to gather the requested information, and will therefore have to assume that the information in question was in principle ready and available (see, *mutatis mutandis*, *Yuriy Chumak v. Ukraine*, no. 23897/10, § 32, 18 March 2021, also compare and contrast *Weber v. Germany* (dec.), no. 70287/11, 6 January 2015). Neither has it been disputed between the parties that the requested information was ready and available.

(v) Conclusion

51. In sum, the Court is satisfied that the applicant NGO wished to exercise its right to impart information on a matter of public interest and sought access to information to that end under Article 10 of the Convention (see, *mutatis mutandis*, *Šeks v. Croatia*, no. 39325/20, § 43, 3 February 2022, and *Sieć Obywatelska Watchdog Polska*, cited above, § 65). Article 10 thus being applicable, the Government's objection that the applicant NGO's complaint is incompatible *ratione materiae* must be dismissed.

2. Other grounds for inadmissibility

52. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant NGO

53. The applicant NGO argued that its right to impart information had been restricted in an unforeseeable manner on the basis of the Order (see paragraphs 15 and 38-39 above), which had been in breach of the requirements of domestic law – including the Constitution and the State and Official Secrets Act (see paragraphs 23 and 31-36 above). The Order – which had not existed at the time when the applicant NGO had lodged its request – had arbitrarily expanded the scope of information that, under the State and Official Secrets Act, could be classified as a State secret (see paragraph 35 above).

54. The requested information (concerning incidents in non-combat conditions) would have enabled the applicant NGO to identify those incidents' underlying causes and to develop recommendations aimed at improving the human rights situation in the armed forces; it had not (contrary to the finding of the Administrative Court of Appeal - see paragraph 20 above) concerned the number of military personnel, armed capability and deployment locations of the armed forces, and thus could not be considered to have constituted information disclosing the combat capability of the armed forces.

55. The applicant NGO submitted that the Ministry of Defence had refused its request in full, stating that the sought information had been classified as a State secret even though in 2020 the Prosecutor General's Office had – at the applicant NGO's request – provided information concerning fatalities in the armed forces. The applicant NGO had submitted the response to its request for information that it had received in June 2020 from the Prosecutor General's Office, which had contained a list of fatal incidents and accidents that had occurred in the armed forces between January and May 2020. The list had included the names of the deceased servicemen, the causes of the deaths, and the dates and places of the incidents and accidents (whether in the territory of the Republic of Armenia or the "Republic of Nagorno-Karabakh").

56. In sum, the applicant NGO argued that the restriction of its right to impart information of public interest had not been prescribed by law, had not pursued the legitimate aim of protecting national security and had not been necessary.

(b) The Government

57. The Government submitted that the legislation regulating the procedure to be followed in respect of the classification of information had been in force at the time when the applicant NGO

had sent all three of its requests for information to the Ministry of Defence (see paragraphs 8, 10 and 13 above). The issuance of the Order (at a relatively late stage) stemmed from already existing legislation – specifically the State and Official Secrets Act and Government Decree no. 173 (see paragraphs 31-36 and 37 above), as well as Government Decree no. 665 of 29 October 1998 (approving the procedure for drawing up lists containing information to be treated as classified).

58. The Government argued that the Ministry of Defence and the administrative courts had given specific reasons for considering that the information requested by the applicant NGO had not been subject to disclosure because it had contained a State secret. Incidents and accidents in the army were directly linked to the combat capability of the armed forces (information protected by the State and Official Secrets Act and Government Decree no. 173 – see paragraphs 35 and 37 above), while paragraph 42 of Chapter 17 of Annex I to the Order (see paragraph 39 above) clearly indicated that that information was to be treated as classified in view of the military and political situation.

59. The Government maintained that the information sought by the applicant NGO had concerned not only incidents and accidents in the armed forces but also very sensitive information, such as the number of each respective military unit (and the names of the commanders of those units); however, the applicant NGO had not indicated the specific reason for its wanting to learn of those details. It was the Government's position that the entirety of the information sought by the applicant NGO had related to national-security issues.

60. Lastly, the Government submitted that the applicant NGO had had full recourse to adversarial proceedings before the administrative courts in order that it could challenge the validity of the relevant provisions of the Order (see paragraph 39 above). The reasons adduced by the Ministry of Defence and the domestic courts for refusing the applicant NGO access to the information in question had been relevant but also, given the circumstances, sufficient. The Administrative Court had been bound by the requirement set out by Article 124 § 3 of the Code of Administrative Procedure (see paragraphs 22 and 24 above) that it apply the relevant domestic law as in force at the time of its rendering its decision – namely, the pertinent provisions of the Order (which had not allowed the disclosure of the information in question), the State and Official Secrets Act, and Government Decree no. 173.

2. The Court's assessment

(a) Existence of interference

61. In view of its earlier finding that the applicant NGO's information request was compatible *ratione materiae* with Article 10 of the Convention (see paragraph 51 above), the Court considers that by denying the applicant NGO access to the requested information, the domestic authorities interfered with its rights under Article 10 § 1 of the Convention (see *Girginova*, cited above, § 86, with further references).

(b) Justification for the interference

62. To be compatible with Article 10 of the Convention, such interference must, as stated in its second paragraph, be "prescribed by law", pursue one or more of the legitimate aims set out in that paragraph, and be "necessary in a democratic society" to attain that aim or those aims.

(i) "Prescribed by law"

63. The principles relevant to an assessment of whether an interference with freedom of expression was "prescribed by law" have been summarised in *Satakunnan Markkinapörssi Oy and Satamedia Oy*

v. Finland ([GC], no. 931/13, §§ 142-45, 27 June 2017). Moreover, the Court reiterates that its power to review compliance with domestic law is limited and it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018, and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020).

64. The Court notes that in the present case, in refusing to oblige the Ministry of Defence to provide the applicant NGO with the requested information (see paragraphs 13 and 14 above), the Administrative Court referred to section 8(1) of the Freedom of Information Act, section 9(1) of the State and Official Secrets Act and paragraphs 42 and 43 of Annex I to the Order (see paragraph 22 above). As regards the Order, in particular, the Court notes that it was an act of general application whereby the Minister of Defence had approved the list of classified information pertaining to the military (see paragraph 38 above) and thus formed part of the relevant legal framework (see *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III, and *Robathin v. Austria*, no. 30457/06, § 40, 3 July 2012).

65. Accordingly, there existed a legal basis in domestic law for the impugned interference.

66. As regards the quality of the law in question, the Court notes that the accessibility and foreseeability of the Freedom of Information Act or the State and Official Secrets Act were at no point called into question by the applicant NGO (see paragraphs 53-55 above). In so far as the applicant NGO appeared to suggest that the very adoption of the Order and - in the applicant NGO's view - its "unforeseeable" application by the domestic courts formed part of the impugned interference (see paragraph 53 above), the Court considers that this issue rather falls to be examined in terms of the necessity and the proportionality of the impugned interference (see paragraphs 69-83 below).

67. In view of the foregoing, the Court finds that the interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

(ii) Legitimate aim

68. Concerning the question of whether the interference had a legitimate aim, the Court notes the Government's argument that the interference had served the legitimate aim of protecting national security (see paragraph 59 above), and it sees no reason to hold otherwise. The Court therefore accepts that the interference was "in the interests of national security" within the meaning of Article 10 § 2 of the Convention.

(iii) "Necessary in a democratic society"

69. The general principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" have been summarised in *Magyar Helsinki Bizottság* (cited above, § 187).

70. Unlike the majority of previous cases examined by the Court that involved access to personal information relating to the applicant or third persons (see, for example, *Centre for Democracy and the Rule of Law*, cited above, § 113, and *Zöldi*, cited above, § 48), the present case concerns information which, as maintained by the Government (see paragraphs 58 *in fine* and 59 above), is classified as a State secret in the interests of national security (compare *Šeks*, cited above, § 63).

71. National security being an evolving and context-dependent concept, the States must be afforded a wide margin of appreciation in assessing what poses a national security risk in their countries at a particular time (ibid.). At the same time, the concepts of "national security" and "public safety" should be applied with restraint, interpreted restrictively and brought into play only where it has been shown to be necessary in order to suppress the release of the information in question for the purposes of protecting national security and public safety (ibid.; see also *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V).

72. The Court has recognised that it is not well-equipped to challenge the national authorities' judgment concerning the existence of national-security considerations. However, even when national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body that is competent to review the reasons for the decision. If there were no possibility of challenging effectively the executive's assertion that national security was at stake, the State authorities would be able to encroach arbitrarily on rights protected by the Convention (see *Saure v. Germany*, no. 8819/16, § 53, 8 November 2022).

73. The Court has also emphasised that the fairness of proceedings and the procedural guarantees afforded to the applicant are factors to be taken into account when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10. The absence of an effective judicial review may support a finding of a violation of Article 10 (see *Baka v. Hungary* [GC], no. 20261/12, § 161, 23 June 2016). In cases such as the present one, which involves national-security concerns resulting in decisions restricting human rights, the Court will therefore scrutinise the national decision-making in order to ensure that it incorporated adequate safeguards to protect the interests of the person concerned (see *Saure*, cited above, § 54).

74. Turning to the present case, the Court notes that the applicant NGO lodged in total three requests with the Ministry of Defence for information (names of the deceased, the dates and places of the incidents, the number of each military unit concerned (and the names and military ranks of the respective commanders), the causes of the deaths and a brief description of the incidents) concerning fatalities in the armed forces. In respect of the first request the Ministry of Defence granted the applicant NGO's request in part by providing the names, dates of birth and causes of death of military servicemen who had died in 2010 and 2011 (see paragraph 9 above). In respect of the second request the Ministry of Defence refused to provide any information (see paragraph 11 above) while it did not respond to the applicant NGO's third request (see paragraph 14 above), which is at issue in the present case.

75. The Court further notes that, on appeal, the Administrative Court dismissed the applicant NGO's administrative claim in its entirety with merely a brief reference to the classified nature of the requested information (see paragraph 22 above). It failed, however, to explain the reasons for not allowing the applicant NGO access to at least part of the requested information and/or to properly assess the applicant NGO's arguments justifying the necessity of seeking the information in question – including its argument that the Ministry of Defence had provided it with (some) information concerning the fatalities in the armed forces that had occurred in 2010 and 2011 (see paragraph 14 *in fine* above).

76. The Court has previously criticised national authorities for their failure to conduct a thorough proportionality analysis in refusing to allow access to classified documents (see *Yuriy Chumak*, cited above, § 47). It notes that in the instant case the Government argued that the applicant NGO's information request had also concerned "very sensitive information, such as the number of each respective military unit (and the names of the commanders of those units)" (see paragraph 59 above); this appears to suggest that at least part of the information sought by the applicant NGO was considered to constitute information pertaining to the military that was more sensitive compared to the other part(s) thereof. Having regard to the wide margin of appreciation afforded to the States in assessing what poses a national security risk in their countries at a particular time (see the relevant case-law principles cited in paragraph 71 above), it is not for the Court to question that assessment. That being said, the Court observes that the applicant NGO had requested information also on the names, dates of birth and causes of death of military servicemen - information which the Ministry of Defence had previously provided to it (see paragraphs 9 and 74 above) and which had also been provided to it by the Prosecutor General's Office after the proceedings at issue in the present case (see paragraph 55 above). In the Court's view, analogous to an event of birth, which has been considered to fall within the public sphere (see *Couderc and Hachette Filipacchi Associés*, cited above, § 107), an event of death - and for the purposes of the present case one that has occurred within the exclusive control of the authorities of a State - is a matter which comes within the public sphere.

77. That being the case, and in view of the significant public interest in the matter (see paragraph 48 above), it was all the more important for the domestic courts to carefully analyse the applicant NGO's information request in terms of different types of information that was being sought and to provide reasons for denying it access to any part of the information that it had been seeking. Yet, as stated above, the Administrative Court did not engage in any proportionality analysis (see paragraph 75 above; compare and contrast *Šeks*, cited above, § 70). Instead, the domestic courts focused their examination on (i) whether the applicant NGO's request concerned classified information, (ii) whether it had been justified for the Minister of Defence to issue the Order (see paragraphs 15 and 38 above) – which expressly listed "incidents and accidents in the armed forces, together with the causes thereof" as information to be treated as classified (see paragraph 39 above) - and (iii) whether he had had the relevant authority under the relevant provisions of domestic law to do so (see paragraphs 18, 20 and 22 above; see also the Constitutional Court's decision of 6 March 2012 in that respect cited in paragraph 40 above).

78. In so far as the applicant NGO argued that the Order had unjustifiably interfered with its right to impart information of public importance (given that its application to dismiss the applicant NGO's administrative claim had been unforeseeable – see paragraphs 53 and 66 above), the Court notes that, while the very adoption of the Order could possibly be indicative of a certain lack of clarity on the part of the applicable legal provisions which the authorities found necessary to rectify, the Order by no means constituted the only legal basis for the Administrative Court's decision not to oblige the Ministry of Defence to provide the requested information. As stated in paragraph 64 above, the Administrative Court based its decision also on section 8(1) of the Freedom of Information Act and section 9(1) of the State and Official Secrets Act (see paragraphs 29 and 35 above).

79. As the Court has held on numerous occasions, it is not its task to take the place of the domestic courts and it is primarily for the national authorities, notably the courts, to interpret and apply

domestic law (see, among many authorities, *Rekvényi v. Hungary* [GC], no. 25390/94, § 35, ECHR 1999-III). Nor is it for the Court to express a view on the appropriateness of the methods chosen by the legislature and regulatory authorities of a respondent State to set out legal rules in a given field. Its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 67, ECHR 2004-I).

80. The Court notes that within the framework of administrative proceedings no. 2 the Administrative Court of Appeal examined the applicant NGO's arguments (see paragraphs 16 and 53 above) in detail and concluded that information regarding incidents and accidents in the armed forces was to be considered as information relating to the combat capability of the armed forces – such information being set out in section 9 of the State and Official Secrets Act as information subject to classification (see paragraphs 20 and 35 above). The Court sees no reason to call into question that interpretation.

81. At the same time, the Court notes that the central issue in the present case is whether the reasons adduced by the national authorities - specifically, the domestic courts (given the Ministry of Defence's inaction in relation to the applicant NGO's third information request) - to justify the impugned interference were "relevant and sufficient" (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013 (extracts), and *Delfi AS v. Estonia* [GC], no. 64569/09, § 131, ECHR 2015).

82. The Court is cognisant that within the context of national security – a sphere that traditionally forms part of the inner core of State sovereignty – the competent authorities may not be expected to give the same amount of details in their reasoning as, for instance, in ordinary civil or administrative cases. Providing detailed reasons for refusing declassification of top-secret documents may easily run counter to the very purpose for which that information was classified in the first place (see, *mutatis mutandis*, *Regner v. the Czech Republic* [GC], no. 35289/11, § 158, 19 September 2017). Nevertheless, in view of the complete absence of any explanation on the part of the Administrative Court for its choice to allow to be kept secret the entirety of the information sought by the applicant NGO, the domestic courts cannot be said to have applied standards which were in conformity with the procedural principles embodied in Article 10 of the Convention and to have fulfilled their obligation to adduce "relevant and sufficient" reasons that could justify the interference at issue (see *Yuriy Chumak*, cited above, § 47; also compare and contrast, *Šeks*, cited above, § 71).

83. There has accordingly been a violation of Article 10 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant NGO made no claim in respect of pecuniary and non-pecuniary damage. Consequently, the Court is not called upon to make any award under this head.

B. Costs and expenses

86. The applicant NGO claimed 2,287 euros (EUR) for the costs and expenses incurred before the Court. In support of this claim, the applicant NGO submitted a contingency fee agreement concluded with Mr M. Shushanyan, its representative before the Court (see paragraph 2 above), whereby it was bound to pay him 1,000,000 Armenian Drams for the preparation of the reply to the submissions of the Government in the event of the Court finding in its favour.

87. The Government contested those claims.

88. The Court has previously recognised the validity of contingency fee agreements for the purposes of making an award for legal costs (see, for example, *Mnatsakanyan v. Armenia*, no. 2463/12, §§ 101 and 102, 6 December 2022, with further references). The Court therefore finds that the legal costs before the Court have been actually and necessarily incurred in order to obtain redress for the violation found. It further finds that they are reasonable as to quantum.

89. Regard being had to the documents in its possession and the above criteria, the Court considers that the amount claimed by the applicant NGO is reasonable and supported by relevant documentary evidence and should therefore be granted. Accordingly, the Court awards the applicant NGO EUR 2,287 for legal costs relating to its representation in the proceedings before the Court, plus any tax that may be chargeable to the applicant NGO.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*

(a) that the respondent State is to pay the applicant NGO, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 2,287 (two thousand two hundred and eighty-seven euros), plus any tax that may be chargeable to the applicant NGO, in respect of costs and expenses, 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.

Done in English, and notified in writing on 4 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar

Kateřina Šimáčková President