



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

SECOND SECTION

CASE OF ČESNULEVIČIUS v. LITHUANIA

(Application no. 13462/06)

JUDGMENT

*This version was rectified on 20 August 2012
under Rule 81 of the Rules of the Court*

STRASBOURG

10 January 2012

FINAL

10/04/2012

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of Česnulevičius v. Lithuania,

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

Françoise Tulkens, President,
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, judges,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 6 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 13462/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Petras Česnulevičius (“the applicant”), on 3 April 2006.

2. The applicant was represented by Mr K. Baranauskas, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged, in particular, that the Lithuanian authorities had failed to protect his son’s life whilst in prison. He also contended that the subsequent investigation into the circumstances of his son’s death had not been effective.

4. On 16 June 2008 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Vilnius.

1. The first incident at Pravieniškės Prison

6. The applicant's son, A. Česnulevičius ("A.Č."), was serving a prison sentence in Pravieniškės High-Security Prison No. 1 (Pravieniškių 1-oji sustiprintojo režimo pataisos darbų kolonija, hereinafter "Pravieniškės Prison"). On 4 August 2000 at about 10 p.m. A.Č. was found in the living quarters of Block 5 of the prison, showing signs of having been beaten. As noted in the transcript of a recorded conversation between A.Č. and the guard on duty, A.Č. refused to make a written statement explaining the circumstances of the incident, even though asked to do so by the guards. He also refused to be checked by a doctor, although the guards pointed out that A.Č. had injuries on his face and that he should see one. To prevent A.Č. from possibly being beaten up again, the prison guards locked him in solitary confinement (Baudos izoliatorius) until the morning. In the morning, the prison governor asked A.Č. to explain the circumstances of the incident. A.Č. claimed that he had no enemies, had not had any disputes with anyone and that some unknown prisoners could have beaten him up by accident. The prison governor ordered A.Č. to return to his living quarters in Block 3.

7. On 4 August 2000, A.G., a guard at Pravieniškės Prison, submitted a written report to the prison governor. A.G. wrote that "on 4 August at 10:10 p.m. during a patrol of the zone, in the staircase of Block 5, on the second floor, two masks made out of knitted caps were found. Holes were cut in the middle of the caps. Next to the masks a metallic bar was found, about 40 centimetres long and 2.5 centimetres thick".

8. On the same date another prison guard, A.K., informed the prison governor in writing: "on 4 August at 10:10 p.m. during a patrol of the zone, noise was heard in Block 5. When we were going towards Block 5 by the staircase, two masks made of caps and a metallic bar were found. After going up [the stairs ...] prisoner A.Č. was found beaten".

9. The Government submitted a copy of a report by the prison governor to the director of the Prisons Department dated 8 August 2000. The prison governor wrote that when he had arrived at work on 5 August 2000, he had found A.Č. in an isolation cell. The warden who had been on duty had explained that on 4 August at 10 p.m. A.Č. had been detained in Block 5, where he had got into a dispute with other prisoners. The director had then questioned A.Č., asking who had attacked him or whom he suspected of doing so. A.Č. had stated that he had been beaten by two convicts whom he could not identify. He had not had any enemies and had got along with everyone; the attack had been accidental. A.Č. had asked the governor to be moved to Block 8, where he knew another inmate. The governor had explained to A.Č. that he would take a decision on that request on Monday 7 August 2000. The governor had offered A.Č. the possibility to stay in solitary confinement or in the facility's medical unit. A.Č. had explained that he had no complaints and had categorically refused the governor's

offers. Then the governor had “explained to A.Č. what he should do should similar accidents happen again”.

10. When questioned by prosecutors on 5 October 2000, Ž.K., a nurse at Pravieniškės Prison, stated that at about 9 a.m. on 5 August 2000, when she was on duty, A.Č. had come to see her. He had had two surface wounds on the calf of his left leg. He had been wearing a tracksuit. She had bandaged the two wounds. A.Č. had told the nurse that he had fallen down and injured himself. He had also said that he had no other injuries. The nurse also testified that A.Č. had not had any injuries on his hands, face or other exposed body parts. Responding to a question from the prosecutor as to whether she had noted down A.Č.’s injuries in his medical file, the nurse replied that the wounds were surface wounds and only serious injuries were to be noted in medical files.

2. The second incident at Pravieniškės Prison

11. On the night of 5 August 2000 A.Č., having again moved to different sleeping quarters of his own accord, was asleep in Block 13. Around midnight he was beaten by other inmates who wore cloth masks.

12. When giving a statement to the prosecutors on 5 October 2000, T.L., a nurse on duty at Pravieniškės Prison on 6 August 2000, stated that on that date at around 8:30 a.m. A.Č. had come to the prison’s medical unit and had asked her to bandage his leg, on which had been several wounds of less than 1 centimetre in length. When the nurse had questioned A.Č. about the source of the wounds, A.Č. had said that he had injured himself when playing football. The nurse also testified that A.Č. had not had any injuries on his face, hands or back. She had not recorded the wounds in A.Č.’s medical file because “records are not kept for simple bandaging”. Responding to a question from the prosecutor about the probable cause of the injuries, the nurse replied that she thought A.Č. could have fallen on small stones.

3. The third incident at Pravieniškės Prison and A.Č.’s death

13. On 6 August 2000 at about 5 p.m. A.Č., while in Block 13, was once again attacked and beaten by other inmates. In a written statement he gave on the same date to the prison governor, A.Č. stated that the perpetrators had been unknown young men who had worn masks at the time of the attack. A.Č. refused to institute criminal proceedings.

14. On the same day, A.S., another guard in Pravieniškės Prison, informed the prison governor in writing that “on 6th August at 5:30 p.m. I saw that two prisoners were heading towards the medical unit [carrying] prisoner A.Č., [whose] leg [was] bleeding”.

15. When questioned on 5 October 2000 by the prosecutors, nurse T.L. also testified that on 6 August 2000 at about 5:30 p.m. A.Č. had been

brought to the medical service, this time by two other inmates. A.Č. had not wanted to say what had happened. Nonetheless, the nurse had found fresh wounds. A.Č. had been bleeding heavily from a deep stab wound on one of his knees. The nurse had attempted to stop the bleeding. Being unsuccessful, she had decided to take A.Č. to the Prisons Department's Hospital. She had also noticed that A.Č. had an injury on one of his fingers, but had seen no other injuries.

16. On 6 August 2000 A.Č. was taken to the Prisons Department's Hospital in Vilnius and operated on there. As his state of health deteriorated, the following day he was taken to the emergency department of Vilnius University Hospital, where he died half an hour after arrival. He was twenty-two years of age.

4. Expert determinations of the causes of A.Č.'s death

17. The Government submitted a court-ordered medical expert report, no. 77 dated 16 October 2000, commissioned by the Kaišiadorys District Prosecutor. The three forensic experts who authored the report stated that the medical aid provided to A.Č. at Pravieniškės Prison had been timely and "in accordance with the abilities of the nurse on duty", and that A.Č. had been referred to the Prisons Department's Hospital on time. The experts noted that at the Prisons Department's Hospital the applicant had received a timely diagnosis, but that the diagnosis had not been thorough (*nepilna*) because multiple instances of soft-tissue bleeding and bleeding under the skin had not been identified. Given that the doctors had failed to identify A.Č.'s serious condition and possible traumatic-haemorrhagic shock, A.Č. had not received the necessary intensive anti-shock treatment. The experts also noted that it was impossible to establish who had treated A.Č. at the Prisons Department's Hospital, because the doctors' signatures on the relevant records were illegible and many doctors' stamps (*antspaudai*) were missing from A.Č.'s records.

As to the cause of A.Č.'s death, the experts noted that failure to provide adequate medical treatment at the Prisons Department's Hospital had allowed the above-mentioned complications that had caused death to develop faster. However, it was not possible to state that even if all proper medical actions had been taken, the life of the applicant's son would have been saved.

18. On 10 August 2000 the forensic experts issued a report on the causes of A.Č.'s death. They established that A.Č. had died on 7 August 2000, at around 9 p.m., from multiple injuries. In particular, he had received no less than five blows to his head, two blows to his neck, one blow to his back, one blow to his stomach, ten blows to his hands and sixteen blows to his legs. According to the experts, all those beatings happened within one to three days of A.Č.'s death.

19. On 16 January 2001 the State Medical Audit Inspectorate issued a report on the speediness, accessibility and quality of the health care delivered to A.Č. at the Prisons Department's Hospital. The expert panel concluded that A.Č. had died of traumatic shock and fat embolism that had developed because of multiple body lesions. The doctor on duty at Pravieniškės Prison on 6 August 2000, M.P., had not fully evaluated A.Č.'s condition, had not diagnosed traumatic shock and had not ordered anti-shock treatment. The same mistakes had been made by the doctor, P.J., who had been the doctor on duty at the Prisons Department's Hospital. In addition, P.J. had not had a licence to perform surgery on individual patients and thus had not had the right to engage in medical practice. The panel also established that the medical records of the Prisons Department's Hospital had been managed improperly. The medical experts concluded, nonetheless, that it was not possible to categorically state that timely and fully comprehensive medical help could have avoided the applicant's death, as fat embolism may develop as a result of trauma that does not involve shock or regardless of an adequate and high standard of treatment.

5. The pre-trial investigation into A.Č.'s death

20. On 8 August 2000 the Kaišiadorys District Prosecutor's Office started a pre-trial murder investigation. As appears from the materials submitted by the parties, the Kaišiadorys District Prosecutor subsequently suspended the pre-trial investigation at least five times because the suspects could not be identified. The applicant and his lawyer appealed against the decisions ordering the suspension of the investigation.

21. On 19 October 2000 the police commissioner for Kaunas City provided the Kaišiadorys District Prosecutor with a list of ten names of inmates at Pravieniškės Prison. The police commissioner wrote that it had been established by an operational search that "the [ten individuals] took part in the beating of A.Č., causing his death".

22. On 8 November 2000 the Deputy Chief Prosecutor for the Kaišiadorys district updated the Regional Prosecutor's Office in Kaunas as to the progress of the criminal investigation into the death of the applicant's son. The deputy chief prosecutor wrote:

"The inmates detained in Blocks 5 and 13 have been interrogated with a view to establishing the possible circumstances of the event. During the [interviews] with the inmates, panic [and] fear of explaining the circumstances of the events could be felt. For example, one of the inmates said during [his interview] that "I would rather kill myself than testify". According to the inmates, they do not feel safe in the prison because they live in dormitories with unlocked doors and the freedom of movement of other inmates is not restricted. At night up to fifteen officers remain working at the prison.

The interrogation situation being so, it was expedient to isolate the [established] suspects temporarily from the living area of the prison. The prison governor has asked

me to inform him of the [names of the] suspects identified during the pre-trial investigation. I have submitted a list of suspects to him, indicating that it was expedient to isolate them. (...) The prison governor has put the suspects into closed premises.

These actions by the prison administration have given positive results – three inmates have agreed to give evidence [on the condition that] their [identities are kept] secret.

The investigation in this case [has been] complicated because the inmates are avoiding giving evidence about the circumstances of the event by all means [possible]. This is explained by the fact that the “unwritten rules” created by the inmates themselves are valid amongst them. The inmates obey these rules at any price. One of such rules is that open communication with law-enforcement officers is not allowed.

At this time, there is not enough evidence to bring charges against the suspects identified.”

23. On 8 February 2001 the Kaišiadorys District Prosecutor suspended the pre-trial investigation on the basis of Article 218 § 1 (3) of the Code of Criminal Procedure (see the Relevant domestic law part below).

24. The applicant objected to the way the investigation of the case was being conducted and complained in writing to the Kaunas Regional Prosecutor’s Office. He noted that his son had been beaten “not somewhere in the forest or on the street at night, but in a State institution – Pravieniškės Prison”. He asserted that the guards on duty should have known which block his son had been in at the time of incident, whom he had communicated with, where he had slept and so forth. It should have been easy to establish which guards had been on duty at the time of the events. The applicant stated that he did not understand whether the district prosecutor’s office was incapable of finding or unwilling to find the individuals who had murdered his son.

25. On 2 May 2001 the Kaunas Regional Prosecutor found that not all necessary investigative actions had been performed with a view to bringing the culprits to justice. The decision to suspend the investigation was quashed. The regional prosecutor noted that at that time eleven individuals had been identified as being of interest to the investigators and witnesses, whose identity had been made confidential, had named those eleven individuals as possible perpetrators of the crime. Even so, the investigators had not pursued that lead.

26. The regional prosecutor also noted that another criminal case concerning A.Č.’s death had been opened on charges of negligently performing official duties [by doctors] (Article 288 of the Penal Code). Numerous forensic expert reports had been commissioned in that case. One report had been drafted with the participation of V.L., a doctor who had himself treated A.Č. before his death. The prosecutor had determined that a

person having a personal interest in the outcome of the expert report concerning A.Č.'s death was not appropriate to act as an expert in relation to the preparation of that report, because it was hard to believe that he would remain objective when evaluating the cause of A.Č.'s death. A likelihood existed that such a person would deliberately exaggerate the importance of A.Č.'s injuries and underplay the influence of the doctors' actions on the eventual outcome, A.Č.'s death (*sqmoningai sumenkins sužalojimus ir sumenkins gydžiusių gydytojų veiksmų įtaką mirčiai*). As a result, in order to objectively establish the effect that the injuries sustained in Pravieniškės Prison, on one hand, and the doctors' actions, on the other hand, had had upon A.Č.'s death, a new forensic expert examination was necessary.

27. The regional prosecutor noted that a number of expert examinations had been performed, as part of which human hair and blood had been tested. However, the conclusions reached by those examinations had been vague and based on probability (*nekonkrečios ir tikimybinės*). The methodology used had been inappropriate, therefore new expert reports were to be commissioned.

28. The regional prosecutor observed that the suspects, who had also been injured at the relevant time, had been questioned in a superficial manner. The investigators had accepted "standard answers about [having been injured when playing] football" as sufficient. It was indispensable to interrogate each person who had been injured at the time of the events, to question them in detail about the time, place and circumstances in which their injuries had been sustained, as well as to identify who else could corroborate the "football version".

29. Lastly, the regional prosecutor noted that the pre-trial investigation had been suspended without any orders having been given to the police in respect of further actions to be performed. Moreover, the execution of earlier orders had not been supervised properly. Only after the above actions, as well as other possible searches, police interviews and related actions, were performed could a procedural decision in the case be adopted.

30. On 28 March 2002 the Kaišiadorys District Prosecutor again suspended the pre-trial investigation because the identities of the individuals who ought to be charged with A.Č.'s murder could not be established.

31. On 10 May 2002 the applicant appealed against the above decision to the Kaunas Regional Prosecutor. He argued that the investigation had been superficial. The applicant noted that his son had been beaten for a prolonged period, but the Pravieniškės Prison authorities had not taken appropriate steps in response. The applicant pointed out that on 4 August 2000 the guards had found a metal bar and two masks and had apprehended three identified inmates who had run out of the area where his son had been. Moreover, a witness whose identity had been made confidential had named the people who had beaten his son. For the applicant, there had been

sufficient evidence to charge those individuals with the murder of his son and to transfer the case file to court. By refusing to put the case before a court, the Kaišiadorys District Prosecutor's Office had simply stalled the investigation, which had meant that the individuals who had killed his son would never be punished.

32. On 13 June 2002 the Kaunas Regional Prosecutor quashed the decision to suspend the investigation and reopened it. The regional prosecutor took notice of the applicant's complaints and again established that not all investigative actions had been performed. The prosecutor noted that eleven suspects had been identified and that four confidential witnesses had implicated them. He observed, nonetheless, that a person may not be charged on the basis of anonymous witnesses' testimony, because doing so would be a breach of his or her defence rights. That being so, the regional prosecutor noted that a substantial period of time had passed since the crime had taken place. It was therefore necessary to verify whether the people who had been questioned as anonymous witnesses had already finished serving their sentences, and determine whether it would be appropriate to (i) remove the cloak of confidentiality from them, (ii) rely on their statements when bringing charges, and (iii) perform other investigative actions. The Kaunas Regional Prosecutor also observed that although a number of forensic reports had been commissioned, they had been contradictory. Another expert examination by a panel of experts was therefore necessary.

33. On 4 September 2002 the applicant wrote to the Attorney General's Office, complaining that the investigation had been stalled and that the guilty parties had not been brought to justice.

34. The Attorney General's Office referred the complaint to the Kaunas Regional Prosecutor. On 10 October 2002 the latter concluded that there was no evidence that their earlier orders had not been followed or that the investigation had been biased or superficial. It was not possible to bring charges on the basis of anonymous witnesses, because doing so would breach the accused's defence rights. Given that the evidence gathered so far was not sufficiently conclusive to assemble a case, the applicant's complaint had to be dismissed.

The cover letter of the decision specified that "in accordance with Article 234 of the Code of Criminal Procedure, the applicant had five days to appeal against [the] ruling to a higher prosecutor or the courts".

35. By a ruling of 7 October 2002, the Vilnius City Prosecutor discontinued the criminal proceedings concerning the charges of negligent performance of official duties (Article 288 of the Penal Code), having failed to find negligence in the actions of the doctors who had treated A.Č.

36. On 19 November 2002 the applicant lodged another complaint with the Attorney General's Office. He reiterated his earlier arguments about the investigation into the beatings at Pravieniškės Prison being ineffective. The applicant asked the Attorney General to take over the investigation and to

verify the lawfulness of the decision to stop the investigation, arguing that the regional prosecutor's office had merely been making a pretence of work (*tik atsirašinėja*) and had not taken any concrete steps.

37. In response to the applicant's complaints, on 3 December 2002 the Kaunas Regional Prosecutor wrote that the investigation had not been suspended. On the contrary, a new expert report was being carried out, as well as other actions to identify the individuals who had beaten his son. The prosecutor specified that the applicant's wife had already been granted the status of victim in the proceedings. He also noted that the regional prosecutor had ordered the Chief Prosecutor for the Kaišiadorys District to grant such status to the applicant as well. After the applicant had been granted victim status, he would have the rights flowing from that status.

The decision stipulated that "should the applicant disagree with the conclusions of the Kaunas Regional Prosecutor, he may appeal against [the] decision to a higher prosecutor or to the Kaunas City District Court".

38. On 16 December 2002 the Kaišiadorys District Prosecutor suspended the investigation, on the grounds that the persons who had attacked the applicant's son could not be identified. The prosecutor noted that the anonymous witnesses had been questioned on 9-13 December 2002, but had refused to allow their statements to be made public. They had also refused to testify in court.

39. On 10 February 2003 the Kaunas Regional Prosecutor upheld the above decision. The prosecutor also ordered the district prosecutor's office to conduct constant monitoring of the situation.

40. The Government submitted that in August 2005 one anonymous witness had been questioned again as to additional detail, but had provided no new information relevant to the case.

41. Together with his responses to the Government's observations on the admissibility and merits of the case, the applicant submitted a letter from the Kaunas City Police Commissioner dated 12 October 2001, stating that the Kaunas City police authorities had received information that in February 2001 another inmate in Pravieniškės Prison, C.A., had been beaten. The supervisor on duty that day had allowed C.A. to enter Block 2 of the prison. Three identified inmates of that unit had subsequently beaten C.A. near the staircase of the prison's medical unit. The warden had not informed anyone from the prison administration of the circumstances of the event. C.A. had subsequently died.

6. Administrative proceedings for damages

42. In 2004 the applicant, who believed that he was eligible for compensation for non-pecuniary damage he had sustained, instituted proceedings against the Republic of Lithuania, represented by the Ministry of Justice, in the Vilnius Regional Administrative Court. He argued that the prison authorities had been responsible for ensuring the safety of his son

while the latter was detained. The applicant disagreed with the suspension of the investigation into the murder. In his opinion, the authorities had stopped trying to identify the perpetrators of the crime. The applicant claimed that, because of the loss of their son, his wife had fallen ill and had died in October 2001. The applicant himself had been recognised as having a second-degree disability.

43. On 7 October 2004 the court found that the lawsuit had been filed against the wrong defendant and that the Ministry of Justice did not have responsibility for ensuring the safety of prisoners. The court also noted that the State officials had not failed to act as required, and dismissed the lawsuit as ill-founded.

44. The applicant lodged an appeal with the Supreme Administrative Court. The court agreed with the conclusions of the lower court that there was no evidence establishing the responsibility of State officials (whether officials of the Ministry of Justice or of Pravieniškės Prison) regarding the murder of the applicant's son. Therefore, in a ruling of 26 January 2005, the Supreme Administrative Court found in favour of the State.

45. The applicant started judicial proceedings against the Republic of Lithuania, this time represented by Pravieniškės Prison, seeking compensation for non-pecuniary damage. The applicant relied on the same grounds as during the first set of proceedings. On 27 June 2005 the Vilnius Regional Administrative Court dismissed the applicant's claims, finding that his son's murder could not be attributed to any deficiencies in the prison officials' actions. In the opinion of the court, A.Č. had been killed not as a result of any unlawful actions by the authorities, but as a result of the deliberate actions of unidentified persons. No causal link existed between the actions (or inaction) of the prison authorities and the death of the applicant's son. Therefore, the Vilnius Regional Administrative Court concluded that no grounds existed for civil liability on the part of the State and dismissed the applicant's claim for compensation for non-pecuniary damage.

46. The applicant appealed to the Supreme Administrative Court. By a ruling of 28 October 2005 the court agreed with the conclusion of the lower court that A.Č. had been killed by unidentified persons, and found no link between the actions (or inaction) of the prison authorities and any non-pecuniary damage sustained by the applicant. More specifically, the court found that Article 70, part 1, point 3 of the Prison Code, on which the applicant had expressly relied, and which provided that one of the purposes of accommodating detainees separately or in isolation was to help ensure their safety, was a legal norm of a general nature and therefore did not directly govern prison officials' activities. For these reasons, the Supreme Administrative Court dismissed the applicant's appeal.

II. RELEVANT DOMESTIC LAW

47. Article 19 of the Constitution of the Republic of Lithuania provides that the right to life shall be protected by law.

48. Article 104 of the Penal Code stipulates that an intentional murder may be punished by imprisonment for a term of from five to twelve years.

49. The Code of Criminal Procedure, as in force during the relevant period, provided that when elements of a crime are discovered, the courts, prosecutor or investigating authorities must, within the limits of their competence, take all measures provided by law to institute criminal proceedings in order to establish that a criminal act has been committed and that the guilty parties are punished (Article 3 of the Code). The Attorney General and his subordinate prosecutors must supervise the activities of pre-trial investigating authorities. A prosecutor must employ all measures available by law in order to eliminate any violations of laws (Article 24).

50. Pursuant to Article 218 § 1 (3) and Article 219 of the Code of Criminal Procedure, a pre-trial investigation must be suspended if the person against whom criminal charges should be brought has not been identified. An investigator, before suspending a pre-trial investigation, shall perform all actions that can be performed without the presence of the accused and shall take all measures to find the accused or to identify the person who committed the crime. The investigation shall remain suspended until the person to be charged can be identified.

51. As regards appeals against the decisions of a prosecutor, the Code of Criminal Procedure reads as follows:

Article 244 [valid until 1 April 2002]

Appeals against a prosecutor's actions and decisions

“Appeals against actions and decisions of a prosecutor shall be lodged with the higher prosecutor (...)”

Article 244 [valid from 2 April 2002 until 30 April 2003]

Appeals against a prosecutor's actions and decisions

“Appeals against actions and decisions of a prosecutor shall be lodged with the higher prosecutor (...)”

Appeals against actions and decisions of a higher prosecutor may be lodged with a district court (...)”

52. The Code of Correctional Labour, as in force at the material time, provided that convicts may be accommodated separately or in isolation to

help to ensure their supervision and safety (Article 18). The same provision is included in Article 70 of the Prisons Code.

53. On 4 June 2003 the Minister of Justice issued Order No. 168 confirming the regulations applicable to Pravieniškės Prison. The relevant regulations read as follows:

“11. The administration of Pravieniškės Prison shall perform the following functions:

11.1. ensuring the safety and supervision of convicted persons as prescribed by law ...”

54. The relevant provisions of the Civil Code read as follows:

Article 6.246
Unlawful actions

“1. Civil liability shall arise from the non-performance of a duty established by law or by contract (unlawful failure to act), or from the performance of actions that are prohibited by law or by contract (unlawful action), or from a violation of the general duty to behave with care. ...”

Article 6.271
Liability to compensation for damage caused by unlawful actions of institutions of public authority

“1. Damage caused by unlawful acts of institutions of public authority must be compensated by the State from the resources of the State budget, irrespective of any fault on the part of a particular public servant or other employee of a public authority institution. ...

2. For the purposes of this Article, the notion ‘institution of public authority’ shall mean any subject of public law (State or municipal institutions, officials, public servants or any other employee of these institutions, etc.), as well as private persons performing functions of a public authority.

3. For the purposes of this Article, the notion ‘action’ shall mean any action (or inaction) by an institution of public authority or its employees that directly affects the rights, liberties and interests of persons (legal acts or individual acts adopted by the institutions of State and municipal authorities, administrative acts, physical acts, etc., with the exception of court judgments, verdicts in criminal cases, decisions in civil and administrative cases and orders).

4. Civil liability of the State or a municipality subject to this Article shall arise where employees of institutions of public authority fail to act in the manner prescribed by law for those institutions and their employees.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

55. The applicant made a twofold complaint under Article 2 of the Convention. He contended firstly that the State had failed to comply with its positive obligations in order to prevent the death of his son whilst the latter had been in prison. Secondly, the applicant argued that the State had failed to conduct a thorough investigation into the circumstances of his son's death and that the culprits had remained unpunished.

Article 2 of the Convention reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. (...)”

A. Admissibility

1. The parties' submissions

(a) The applicant

56. The applicant contended that his son had died as a consequence of the prison authorities' failure to protect his life. Moreover, the pre-trial investigation into the events had not complied with the requirements of Article 2 of the Convention. The investigation had been suspended and restarted on numerous occasions. Upon seeing that the investigation was not being conducted promptly and thoroughly, the applicant and his lawyer had repeatedly visited the offices of the Kaišiadorys District Prosecutor. He had persistently complained in writing to the Kaišiadorys District Prosecutor's Office, the Kaunas Regional Prosecutor's Office and even to the Attorney General. The applicant emphasised that on his initiative the investigation had been restarted several times, because the Kaišiadorys District Prosecutor's Office had failed to take the necessary investigative actions by itself.

(b) The Government

57. The Government argued that the State had fulfilled its positive obligations under Article 2 of the Convention and that the right to life of the applicant's son had been respected. In their view, the applicant's complaint under the substantive aspect of the aforementioned provision was manifestly-ill-founded.

58. The Government further submitted that the applicant had failed to exhaust domestic remedies as regards the alleged failure by the State to comply with the procedural requirements of Article 2 of the Convention. In this connection, they put forward two arguments. Firstly, although the pre-trial investigation into the alleged murder had been suspended and restarted several times, the applicant had not appealed to a court against the prosecutors' decisions suspending the investigation, including the last suspension decision of 16 December 2002. The Government contended that appealing against prosecutors' decisions to the courts, notwithstanding the nature of those decisions, had been unambiguously possible since 2 April 2002 by an amendment to the Code of Criminal Procedure. The applicant had also been informed of the possibility of appealing against the prosecutors' decisions in the cover letters sent with the prosecutors' decisions dated 10 October and 3 December 2002. Nonetheless, the applicant had failed to avail himself of that right.

59. Secondly, the Government argued that in the administrative proceedings brought by him against the State, the applicant had raised the question of the prison authorities' failure to protect his son's right to life, which in fact corresponded to the material requirements of Article 2 of the Convention. However, to the Government's knowledge, the applicant had not addressed the domestic courts with a claim of allegedly deficient investigation into his son's death, pursuant to Articles 6.246 and 6.271 of the Civil Code.

60. Lastly, and should the Court consider the complaint of an alleged procedural violation of Article 2 of the Convention admissible as regards exhaustion of domestic remedies, the Government submitted that that complaint was manifestly ill-founded.

2. *The Court's assessment*

61. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC], no. 25803/94, §§ 74 and 75, ECHR 1999-V, and *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 35-37, 15 January 2009).

62. The Court also recalls that Article 35 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the complaints invoked and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV).

63. The Court would emphasise that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Van Oosterwijk v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also the personal circumstances of the applicant (see, *mutatis mutandis*, *Akdivar and Others*, cited above, § 69).

64. With regard to the Civil Code based remedy at the applicant's disposal and on the basis of the materials submitted by the parties the Court notes that in his claims lodged before the administrative courts the applicant brought up two issues. Firstly, he contended that the administration of Pravieniškės Prison had not guaranteed his son's safety and that as a result A.Č. had been murdered. Secondly, the applicant mentioned that at the time of the administrative proceedings the criminal investigation had been stopped because the person (or persons) who had committed the crime had not been identified. According to the applicant, "the [authorities] were no longer searching for the perpetrators of the crime". These two statements are explicitly recorded in each of the administrative court decisions, summing up the applicant's pleas. In the light of the above, the Court is not able to agree with the Government's objection (paragraph 59 above) that the applicant failed to raise the procedural aspect of Article 2 of the Convention in respect of civil remedies available.

65. As regards the Government's suggestion that the applicant had not exhausted criminal remedies, in that he had not appealed against the prosecutor's decision of 16 December 2002 to suspend the pre-trial investigation, the Court observes, first, that since the criminal investigation was opened on 8 August 2000 it was suspended at least five times. The applicant appealed against these decisions, even taking the matter up to the level of the Attorney General. On this last point the Court also notes that in his written complaint of 19 November 2002 to the Attorney General the

applicant asked the latter to take over the investigation, arguing that the regional prosecutor's office had merely been making a pretence of work. Moreover, as the Government have themselves pointed out, the prosecutors had not even assembled a case against the perpetrators of the crime by 2005 (see paragraph 40 above). Consequently, on the facts of the case the Court cannot see how an additional criminal complaint about the same issues lodged by the applicant before a court in 2002 or 2003 might have reasonably led to a different outcome. The Court also takes notice of the fact that when the prosecutor decided to stop the criminal inquiry on 16 December 2002, the investigation had already been pending for more than two years. Consequently and in the circumstances of this particular case, it is the Court's view that it would be too big a burden upon the applicant to require him to perpetually ask that the pre-trial investigation be reopened.

66. It follows that, contrary to the Government's assertions, the applicant was not required to exhaust criminal law remedies by bringing a complaint before a court under Article 244 of the Code of Criminal Procedure. In reaching this conclusion, the Court has taken into consideration its case-law on the subject (see paragraphs 61-63 above) and the specific circumstances of the present case, as well as the fact that a right as fundamental as the right to life is at stake (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324) and that the Convention is intended to guarantee rights that are not theoretical or illusory, but rights that are practical and effective (see, for example, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I). Accordingly, the Government's objection has to be rejected.

67. The Court further finds that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

68. The applicant complained that the State had failed to comply with its positive obligation to protect his son's life. The applicant noted that, while detained in the Pravieniškės Prison, his son had been badly beaten three times – on 4, 5 and 6 August 2000 – as a consequence of which he had died.

69. The applicant argued that the Pravieniškės Prison authorities had been well aware of the danger his son had been in. In this respect and with regard to the first incident of 4 April 2000, he pointed to the reports of that date made by guards A.G. and A.K. (paragraphs 7 and 8 above). The applicant emphasised that, in order to prevent A.Č. from being beaten again, the guard on duty that day had ordered that A.Č. be placed in solitary confinement and had later moved him to Block 5. As to the fact that his son had not lodged a written complaint about the beating that took place on 4 August, the applicant noted that in Pravieniškės Prison, similarly to other prisons, criminal gangs are present. It was natural that his son, knowing this order of things and being afraid of possible retaliation, had not complained to the prison administration, because he knew that he would not be safe. The prosecutor's report of 8 August 2000 (paragraph 22 above) perfectly illustrated the atmosphere in the prison at issue.

70. As to the incident of 5 August 2000, when A.Č., brought to the medical centre, had explained to the nurse that he had injured himself when playing football, the applicant argued that his son again had not disclosed the real cause of the injuries for fear of retaliation. Even so, the nurse, as a medical professional, had not been willing or had not been able to observe that playing football could not cause that kind of wound. She had failed to fulfil her obligation to inform the prison administration of the injury and that had been the cause of further violent actions. Eventually, and as a consequence of the prison authorities' failure to take any appropriate preventive measures, A.Č. had been severely beaten for the third time and had died of his injuries.

71. The applicant also noted the report of the State Medical Audit Inspectorate to the effect that the medical treatment his son had received at the Prisons Department's Hospital had been deficient. The doctor on duty had failed to properly evaluate his condition, had not diagnosed traumatic shock and had not prescribed appropriate anti-shock treatment. For the applicant, it was even more disturbing that P.J. had not even had a surgical licence and therefore had not had the right to operate.

72. The applicant further argued that the State authorities had failed to proceed with a prompt and efficient investigation of his son's death. The pre-trial investigation had been suspended on numerous occasions. On the applicant's initiative, the criminal investigation had been reopened several times because the Kaišiadorys District Prosecutor had failed to perform all the necessary investigative actions. Even though many expert examinations had been conducted, such investigative actions had been of poor quality and had brought no results.

73. The applicant admitted that many witnesses had been questioned. All the same, no positive results had been obtained, although the tools of the crime had been found and a list of suspects had been drawn up. As concerns the witnesses, their unwillingness to testify against other prisoners could be

understood. However, anonymous witnesses also had evidentiary weight. That being so, in the applicant's view it was reasonable to conclude that the pre-trial investigation had been conducted negligently, without due qualification, and had not achieved any positive results. For the time being, the pre-trial investigation was going nowhere and the case file had been stored in the authorities' archives, no more actions having being performed. The applicant submitted that, given that so much time had passed since the events at issue, there was no hope that the persons who had murdered his son would be identified and brought to justice.

(b) The Government

74. The Government acknowledged that the State's duties under Article 2 of the Convention encompass a positive obligation to take preventive measures in order to protect an individual whose life is at risk from criminal acts of another individual. Nonetheless, Pravieniškės Prison authorities and its medical staff had not been aware of the risk to A.Č.'s life and could not have known that the risk to his life was real and immediate.

75. For the Government, it was important to provide the Court with some detail of the living conditions of inmates in Pravieniškės Prison. Contrary to prisons in which the inmates are kept in closed cells, in Pravieniškės Prison inmates are accommodated in dormitories shared by a number of inmates. The inmates are allowed to move freely within the grounds of the facility. However, they are required to stay in their living quarters at night and may not change their dormitory or workplace without permission. The applicant's son had been apprised of these rules.

76. The Government noted that on 4 August 2000 A.Č.¹ had, on his own accord and without the authorities' permission, gone to different living quarters, where he had been beaten. After the incident, A.Č. had been asked to give a written statement in order for the prison administration to find out all the relevant circumstances but had flatly refused to do so. A.Č. had also refused to be examined by medical staff and had stated that he simply wanted to go back to his living quarters. Moreover, A.Č. had not made any complaints as to his health. Even so, for a night after the first incident he had been placed in solitary confinement, because the officers had been unsure about the circumstances of the incident and might have envisaged some risk to him. On the morning of the following day, A.Č. had talked to the prison governor and had said that some unknown convicts might have attacked him accidentally, since he had no enemies. A.Č. had again expressed no complaints about his health and had refused to be examined by a doctor.

77. As to the second incident, the Government argued that the Pravieniškės Prison authorities had been unaware of it until the pre-trial

¹ Rectified on 20 August 2012: the text was "the applicant".

investigation, because A.Č. had not told either the officers or the medical staff that he had been attacked. On the morning after the incident, A.Č. had gone to see the nurse in order to have her bandage his wounds and had told her that he had injured his leg when playing football. For the Government, it was imperative to note that at that time no serious wounds had been visible on A.Č.'s body. Referring to the forensic report of 10 August 2000, they argued that serious bruising had only been noticed during the autopsy or had only become visible after the death. Consequently, the nurse could not have realised the seriousness of A.Č.'s injuries, even more so because he had not told her anything about any attacks.

78. The Government further submitted that after the third attack on A.Č., he had immediately been provided with medical assistance by the prison's nurse. In addition, the nurse, having found a serious injury on A.Č.'s knee, had decided that he should immediately be taken to a hospital, despite A.Č.'s wish to return to his living quarters. It was also significant that no other visible injuries, except on the knee and hand, had been visible on exposed parts of A.Č.'s body during the examination at Pravieniškės Prison. For the Government, it could be presumed that the attacks on A.Č. had been quick and sudden; their duration had not been sufficient to allow the authorities to notice the incidents. At the hospital A.Č.² had been provided with proper medical assistance and had been operated on the next day. Even though A.Č.³ had died, this had been the result of multiple injuries and not because of medical negligence. On this last point, the Government also noted that although the applicant had never complained of possible malpractice on the part of the doctors, the Vilnius City Prosecutor's Office had carried out an investigation to that effect and had ruled out the doctors' responsibility for his son's death.

79. In the light of the above, the Government submitted that the prison's personnel could not have foreseen the immediacy of the risk to A.Č.'s life. They had responded to the attacks on A.Č. in a reasonable way and according to the circumstances. They had afforded A.Č. necessary medical assistance insofar as he had allowed it, had isolated him to secure his safety after the first attack, and had taken him to hospital, where he had received adequate treatment.

80. The Government also contended that the investigation of A.Č.'s death had complied with the State's obligations under Article 2 of the Convention. The criminal investigation had been promptly opened upon the prosecutor's initiative. The applicant and his wife had been involved in the proceedings. Although the investigation had been suspended and reopened several times, the suspensions were warranted because the perpetrators of the crime could not be identified. Nonetheless, the suspensions had only

² Rectified on 20 August 2012: the text was "the applicant".

³ Rectified on 20 August 2012: the text was "the applicant".

been temporary and for objective reasons. For example, on one occasion blood samples from two suspects had been unsuitable for expert examination and new samples had therefore had to be taken. Moreover, given that suspension of criminal proceedings was abolished with effect from 1 May 2003, the investigation has not been suspended since that date. On the contrary, the case shall remain in progress until new circumstances come to light.

81. Lastly, and in response to the applicant's argument concerning anonymous witnesses, the Government referred to the Court's case-law holding that a conviction should not be based either solely or to a decisive extent on anonymous statements (*Doorson v. the Netherlands*, 26 March 1996, § 76, *Reports of Judgments and Decisions* 1996-II). As to the circumstances of the instant case, the prosecutors had indeed carried out an investigation with respect to the individuals indicated by confidential witnesses. However, as no other convincing evidence had been found against those or other suspects, it had been impossible to base an indictment solely on the testimony of anonymous witnesses. With reference to the foregoing, the Government concluded that the pre-trial investigation had been performed with due diligence. The failure to identify those guilty of A.Č.'s murder had to be attributed to objective reasons beyond the authorities' control.

2. The Court's assessment

(a) Substantive aspect of Article 2 of the Convention

(i) General principles

82. The Court reiterates that Article 2 enjoins the State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII).

83. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. A positive obligation will arise where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the

scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II; and *Bromiley v. the United Kingdom* (dec.), no. 33747/96, 23 November 1999). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the Court is also careful, when considering positive obligations, not to interpret Article 2 in such a way as to impose an impossible or disproportionate burden on authorities (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising.

84. In the context of prisoners, the Court has had previous occasion to emphasise that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

(ii) *Application of these principles to the present case*

85. The Court notes that the Government refused to take any responsibility for A.Č.'s injuries and his subsequent death, arguing that there had been no failing or omission on the part of the Pravieniškės Prison administration. The Court considers that the question to be resolved first is whether the officers of the facility knew or ought to have known about the danger to the applicant's son's health or life (see *Keenan v. the United Kingdom*, no. 27229/95, § 93, ECHR 2001-III). Subsequently, the Court has to evaluate whether the officers in question displayed adequate diligence in protecting him, in so far as they knew or ought to have known about the threat.

86. Turning its attention to the moment of A.Č.'s first encounter with the unknown perpetrators, the Court observes that it is common ground between the parties that the Pravieniškės Prison guards were aware of A.Č.'s beating. The Court draws this conclusion from the fact that the guard on duty that night questioned A.Č. and noted that he had injuries on his face (paragraph 6 above). Moreover, the Court pays particular attention to the guards' reports of the night of the incident about two masks and a metal bar being found at the scene of the crime (paragraphs 7 and 8 above). The Court considers that, irrespective of the seriousness of the injuries A.Č. received during the first incident, that finding alone showed sufficient menace to alert the Pravieniškės Prison authorities as to the clear and present danger A.Č. was in. In this context, the fact that A.Č. refused to disclose the identities of his attackers is of no particular importance for the Court. As is noted in the prosecutor's letter of 8 November 2000, prisoners in the facility adhered to a code of silence. Consequently, it is reasonable to assume that A.Č. did not

dare to identify the inmates who had beaten him. The Court finds that A.Č.'s feelings of insecurity could reasonably be based on the fact that, as the Government have themselves admitted, Pravieniškės Prison is an open institution where the inmates may move about freely and thus could have had even easier access to A.Č. than if he had been confined to a prison cell. In this connection, the Court also notes that A.Č. was found sleeping in different blocks of the prison and thus cannot rule out that he had moved from one block to another to be safe. Whilst noting the Government's argument that the guards had put A.Č. in isolation, the Court also observes that this was done for one night only. Afterwards, the authorities must have concluded that A.Č. was safe, as they let him out. Moreover, the Court is not ready to give undue preference to the explanation of Pravieniškės Prison's governor to the effect that A.Č. refused to stay in isolation longer. The Court does not find the explanation given persuasive, as the document was written after A.Č.'s death, when the murder investigation had already been opened. Lastly, for the Court, the general situation in Pravieniškės Prison is even more strongly illustrated by the fact that another inmate was killed there a year later and the guards failed to report the incident (see paragraph 41 above).

87. The Court next turns to the circumstances surrounding the second incident. The Government contended that the fact that A.Č. was injured a second time came to light after his death. The Court cannot subscribe to this thesis. It notes that on 6 August 2000 at about 8:30 a.m. A.Č. went to see T.L., the nurse at Pravieniškės Prison, asking her to bandage wounds on his left leg. The Court cannot fail to observe that the nurse was simply satisfied with the explanation about football, the veracity of which was deemed doubtful by the prosecutor (see paragraph 28 above). Moreover, on the question of the probative value of this piece of evidence, the Court draws attention to the fact that the injuries were not recorded in the applicant's medical file and, even more importantly, that the nurse only disclosed the matter on 5 October 2000, when the institution where she worked was under investigation. For this reason, the Court has certain reservations as to the accuracy of the nurse's testimony that A.Č.'s injuries were only minor in nature. On this last point it also takes notice of the forensic report, pursuant to which A.Č. had sustained numerous blows all over his body between one and three days before his death (see paragraph 18 above).

88. The Court finally recalls that, as a result of the injuries A.Č. sustained during his third encounter with the inmates who had beaten him in Pravieniškės Prison, he died at Vilnius University Hospital. Whilst noting the prosecutor's conclusion to the effect that A.Č. died from traumatic shock he had sustained as a result of his injuries, the Court cannot fail to observe certain deficiencies in treating A.Č. It is struck, in particular, by the fact that at the Prisons Department's Hospital, A.Č. was treated by an individual who did not possess a medical licence (see paragraph 19 above).

89. The Court reiterates that responding to prison violence requires prompt action by prison staff, including ensuring that any victim is protected from further abuse and can access the necessary medical and mental health services. Such response should include the coordination of security staff, medical practitioners and facility management (see *Premišnys v. Russia*, no. 44973/04, § 87, 10 February 2011). However, in the present case, notwithstanding the existence of a serious risk to A.Č.'s well-being, Praviėniškė Prison's administration did not maintain a safe environment for him, having failed to detect, prevent or monitor, and respond promptly, diligently and effectively to the violence that he had been subjected to by other inmates. The Court therefore concludes that the authorities did not respond adequately to the danger A.Č. was in and thus did not fulfil their positive obligation to ensure that his right to life was upheld.

90. Accordingly, there has been a violation of Article 2 § 1 of the Convention in this respect.

(b) Procedural aspect of Article 2 of the Convention

(i) Applicable principles

91. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, § 105, *Reports of Judgments and Decisions* 1998-I).

92. The Court has recently found that the obligation under Article 2 to carry out an effective investigation has evolved into a "separate and autonomous duty" (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). However, it would emphasise that this obligation may differ, both in content and in terms of its underlying rationale, depending on the particular situation that has triggered it (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I, and *Banks and Others v. the United Kingdom* (dec.), no. 21387/05, 6 February 2007). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (*Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV).

93. In as much as different considerations apply in cases such as the present one in which the death has not been caused by use of force or similar direct official action, the standard against which the investigation's

effectiveness is to be assessed may be less exacting (see *Jasinskis v. Latvia*, no. 45744/08, § 73, 21 December 2010). However, even in such situations, those concerned are entitled to an independent and impartial official investigation procedure that satisfies certain minimum standards as to its effectiveness (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 102, 17 December 2009, and the jurisprudence cited therein). In this regard, the Court would point out that this is not an obligation of result, but of means (see, among other authorities, *Paul and Audrey Edwards*, cited above, § 71) and that Article 2 does not entail the right to have others prosecuted or sentenced for an offence, or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 94 and 96, ECHR 2004-XII). Nevertheless, in this context the Court also recalls that the authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or persons responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII).

(ii) *Application to the instant case*

94. Turning to the circumstances of the present case, the Court finds it of paramount importance that, as the applicant fairly described in his complaint to one of the prosecutors, A.Č. was “not [beaten] somewhere in forest or on the street at night, but in a State institution”, thus whilst being in an apparently controlled environment which, in addition, he was not free to leave. It is the Court’s view that in such circumstances, the State was thus in a better position to investigate the death.

95. On the facts of the case, the Court notes that the investigation was started promptly. Indeed, the prosecutor launched criminal proceedings on murder charges on 8 August 2000, the day after A.Č.’s death. Whilst noting that the prosecutor only took an official decision to grant the applicant the status of victim a year later, the Court observes that his wife had had such status previously, that the applicant in the meantime himself had lodged complaints with the Kaunas Regional Prosecutor and that those complaints were taken into consideration.

96. Be that as it may, the Court nonetheless finds that the investigation was plagued by deficiencies serious enough to fall foul of the Article 2 standards. It cannot but decry the lack of effectiveness and expediency of the enquiry, epitomised by the fact that the investigation was suspended and reopened on five occasions because the Kaišiadorys District Prosecutor’s Office failed to order proper expert examinations and did not perform additional actions required to assemble a case against any or some of the

eleven previously identified suspects (see paragraphs 25, 27-29 and 32 above). In their submissions to the Court, the Government themselves admitted that the blood samples of two suspects were unsuitable for expert examination and that new samples had therefore had to be obtained, thus delaying the investigation. In this connection, the Court reiterates its finding, made on a number of occasions, that an investigation should be carried out by competent, qualified and impartial experts (see *Premišny*, cited above, § 109).

97. The Government have argued that the suspects could not have been charged with murder and put on trial solely on the basis of testimony by witnesses whose identities were confidential. As the Court has held on previous occasions, the Convention does not preclude reliance, at the investigation stage, on sources such as anonymous informants. The subsequent use of their statements by a trial court to found a conviction is, however, capable of raising issues under the Convention (see *Kostovski v. the Netherlands*, 20 November 1989, § 44, Series A no. 166, and *Windisch v. Austria*, 27 September 1990, § 30, Series A no. 186).

98. That being so, the Court also recalls that Article 6 of the Convention does not explicitly require the interests of witnesses to be taken into consideration. However, their life, liberty or security of person may be at stake. Such interests of witnesses are in principle protected by other, substantive provisions of the Convention, which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled (see *Doorson*, cited above, § 70). In view of the murders of at least two inmates at Pravieniškės Prison (see paragraph 41 above), the Court understands the anonymous witnesses' unwillingness to testify against other inmates. Even so, the Court stresses that there existed various measures, including technical means, allowing the domestic authorities to conduct the questioning of the witnesses without a risk to disclose their identities (see, *mutatis mutandis*, *Birutis and Others v. Lithuania*, nos. 47698/99 and 48115/99, § 29, 28 March 2002).

99. However, in the instant case, the Court finds that anonymous witnesses do not appear to have been the only source of evidence. Although it is not the Court's role to assess the probative value of each piece of evidence, it cannot fail to note that on 4 April 2000 a metal bar and masks with holes were found at the crime scene and that, according to the applicant, the guards apprehended three identified prisoners nearby. Lastly, the Court also gives substantial weight to the Kaunas Regional Prosecutor's suggestion that the anonymous witnesses could have been questioned once they had finished serving their sentences (see paragraph 32 above). Given that more than eleven years have passed since the death of the applicant's son, it is not unreasonable to assume that at least some of those witnesses are at large by now. Nonetheless, the Government have not provided any information as to whether those witnesses, except for one of them (see

paragraph 40 above), have been questioned by the prosecutors again with a view to compelling them to testify.

100. Lastly, the Court notes that it has no information that any criminal, administrative or disciplinary proceedings were instituted against the prison wardens or officers.

101. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the circumstances of the death of the applicant's son was not effective.

102. There has accordingly been a violation of the procedural aspect of Article 2 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 11,563 Lithuanian litai (LTL, approximately 3,350 euros (EUR)) in respect of pecuniary damage, that sum mainly consisting of funeral-related expenses, and EUR 2,000,000 in respect of non-pecuniary damage.

105. The Government contested the above claims as unsubstantiated and excessive.

106. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found particularly grievous violations in the present case. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount. Moreover, on the basis of the documents in its possession, the Court considers it appropriate to award the applicant LTL 6,960 (EUR 2,015) for the pecuniary damage he has sustained.

B. Costs and expenses

107. The applicant also claimed LTL 3,492 (approximately EUR 1,010) for costs and expenses incurred before the Court.

108. The Government disputed the claim as unsubstantiated by appropriate documentation.

109. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 770 for costs and expenses incurred in relation to the proceedings before the Court.

C. Default interest

110. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the substantive aspect of Article 2 § 1 of the Convention;
3. *Holds* that there has been a violation of the procedural aspect of Article 2 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Lithuanian litas at the rate applicable at the date of settlement:
 - (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) EUR 2,015 (two thousand and fifteen euros), in respect of pecuniary damage;
 - (iii) EUR 770 (seven hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President