



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

SECOND SECTION

CASE OF LEVON v. LITHUANIA

(Application no. 27121/23)

JUDGMENT

Art 2 (procedural) • Effective investigation • Domestic authorities' sufficiently thorough and impartial examination into the applicant's father's death in hospital, allegedly as a result of medical negligence • Accessible and adversarial civil proceedings providing the applicant with a reasonable opportunity to present his case • Parallel pre-trial investigation, including the expert assessment, serving to complement the civil proceedings and contributing to clarifying the relevant facts

Prepared by the Registry. Does not bind the Court.

STRASBOURG

8 July 2025

FINAL

08/10/2025

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

In the case of Levon v. Lithuania,

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Tim Eicke,

Jovan Ilievski,

Gediminas Sagatys,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 27121/23) 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 Anton Levon (“the applicant”), on 20 June 2023;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaint concerning the effectiveness of the domestic proceedings relating to the death of the applicant’s father and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 17 June 2025,

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

INTRODUCTION

1. The case concerns the effectiveness of the domestic proceedings relating to the death of the applicant’s father in hospital.

THE FACTS

2. The applicant was born in 1973 and lives in Vilnius. He was represented by Mr R. Mikulskas, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Mr R. Dzikovič, and co-Agent, Ms L. Urbaitė.

I. DEATH OF THE APPLICANT’S FATHER

4. On the morning of 25 December 2020 the applicant’s father, A., who was 78 years old, started to feel unwell – he was unable to sit up, had difficulty breathing and looked pale. At around 8.50 p.m. the applicant called an ambulance. The ambulance arrived in around twenty-five minutes and took A. to the Šalčininkai municipal hospital (hereinafter “the hospital”).

5. On the following day, at around 9.30 p.m., the applicant's father died at the hospital. According to the death certificate, the direct cause of death was a pulmonary oedema, whereas the main disease or injury which had caused the death was an unspecified chronic cardiovascular disease (*tiesioginė mirties priežastis – plaučių edema; pagrindinė liga (trauma), sukėlusį mirtį – lėtinę išeminę širdies ligą, nepatikslingą*).

6. The hospital considered that there were no indications that a post-mortem examination might be necessary. The applicant confirmed in writing that he was against such an examination. It was therefore not performed.

II. INTERNAL INQUIRIES

7. In March 2021 the applicant lodged a complaint with the Šalčininkai Primary Healthcare Centre (the institution in charge of the ambulance, hereinafter “the Šalčininkai PHC”) and with the hospital. He submitted that his father's most recent health check-up had been in January 2020 and that no particular issues had been detected then; he had not had any chronic diseases or serious health problems and had led a healthy lifestyle. However, he had suddenly started to feel unwell on the morning of 25 December 2020. The applicant alleged that the ambulance had not provided his father with the necessary urgent medical assistance, had not chosen the right hospital to take his father to and had not provided accurate information about his father's condition to the doctors at the hospital. He also alleged that his father had not been examined by a doctor at the hospital and that no measures had been taken to facilitate his breathing or to determine the cause of his ailment.

8. Following the applicant's complaint, the Šalčininkai PHC and the hospital each carried out an internal inquiry.

9. During both those inquiries it was found that in the preceding years the applicant's father had consulted a cardiologist and had been diagnosed with paroxysmal atrial fibrillation (*paroksizminis prieširdžių virpėjimas*) and several other heart rhythm problems.

10. In the course of the inquiry conducted by the Šalčininkai PHC, the emergency medical technician who served in the ambulance submitted a written statement describing the assistance which she had provided to the applicant's father. After arriving at A.'s home she had measured his blood pressure, blood sugar, blood oxygen saturation, heartbeat and temperature, had assessed his level of pain and had given him painkillers. A.'s condition had appeared unstable – he had been experiencing difficulty breathing and was complaining of pain in the heart area, and had lost consciousness – and he had therefore been immediately taken to the hospital; the Šalčininkai municipal hospital had been the nearest one with emergency and intensive care services. A. had been provided with oxygen while in the ambulance and his condition had improved. After arriving at the hospital, he had been taken

to the reception in a wheelchair and all the relevant documents had been given to the hospital staff.

On the basis of that statement, the inquiry of the Šalčininkai PHC concluded that the medical assistance provided to the applicant's father in the ambulance had been adequate and that it had complied with the relevant regulations.

11. The inquiry conducted by the hospital found that, after arriving there, A. had been examined by the on-duty doctor and hospitalised in the internal diseases unit; according to the hospital's internal rules, all new patients were placed in that unit while awaiting the results of a Covid-19 test. He had been regularly monitored by on-duty doctors, as attested by five records to that effect in his medical file. The inquiry also included a list of medication which had been administered to him and the examinations which had been performed (an electrocardiogram, blood tests, urine tests and a Covid-19 test). His condition had been stable until it suddenly deteriorated at around 9 p.m. on 26 December 2021.

The hospital informed the applicant that, according to the conclusions of the inquiry, the medical assistance provided to his father had been adequate; his death had been caused by a disorder of the cardiovascular system, but a more precise answer as to the cause of the death could not be given because his family had objected to a post-mortem examination (see paragraph 6 above).

III. CIVIL PROCEEDINGS

A. Proceedings before the Commission for the Determination of Damage Caused to Patients' Health

12. In June 2021 the applicant lodged a complaint with the Commission for the Determination of Damage Caused to Patients' Health (*Pacientų sveikatai padarytos žalos nustatymo komisija*; hereinafter "the Commission" – see paragraph 86 below). In the complaint form the applicant indicated that his father had not had any serious health issues prior to his death and that the ambulance and the hospital had not provided his father with medical assistance. He claimed 5,000 euros (EUR) in compensation in respect of non-pecuniary damage.

13. The Commission was composed of six members: three doctors, a nurse, a health-sciences professional and a lawyer. It had before it the applicant's previous complaints to the Šalčininkai PHC and the hospital (see paragraph 7 above) and the medical records provided by the Šalčininkai PHC and the hospital, including the documents referred to in paragraphs 9-11 above. The Commission also obtained written statements from two doctors who had attended to the applicant's father at the hospital:

(i) The internal-medicine doctor submitted that when A. had arrived at the hospital he had been complaining of shortness of breath, vertigo and loss of consciousness. He had been diagnosed with acute pulmonary heart disease and anaemia. His overall condition had been average. The doctor had ordered blood tests, chest and liver scans and a consultation with an intensive care specialist, who had been busy at that time. A. had been placed under the supervision of an on-duty doctor.

(ii) The doctor who had been on duty on 26 December 2020 submitted that on the morning of that day A. had complained of shortness of breath, feeling weak and vertigo. At around 12 a.m. he had stated that he was feeling slightly better and that the shortness of breath had decreased; the doctor had measured his blood pressure, heartbeat, blood oxygen saturation, increased the provision of oxygen and administered the medication which the patient had been taking for his paroxysmal atrial fibrillation. At 2.20 p.m. there had been no significant changes to his condition. At 6.10 p.m. he had complained of feeling weak when trying to get up, but his breathing had improved. His blood pressure, heartbeat and blood oxygen saturation had been measured on both those occasions. At around 9 p.m. his condition had suddenly deteriorated – he was not breathing and his heartbeat could not be detected. The doctor had attempted to resuscitate him by applying external cardiac massage and mechanical ventilation, but the resuscitation had not been effective and at 9.30 p.m. he had been declared dead.

14. In September 2021 the Commission informed the applicant and the respondents that it had decided to obtain an expert assessment of the relevant medical records. The examination of the applicant’s complaint would be resumed after the delivery of the assessment. The parties would then be informed of the questions which had been put to the expert and his or her conclusions.

15. The Commission forwarded A.’s medical records to a different hospital and asked it to provide an analysis of those records and answer questions regarding the adequacy of the medical assistance. The analysis of medical records was conducted in November 2021 by an internal-medicine doctor practicing in that hospital and read, in its relevant part:

“...

The copies of the documents are of a very poor quality [and] it is difficult to read and understand the doctors’ hand-written records.

According to the available medical records, [the hospital] interviewed patient [A.] on 25-26 December 2020, examined his medical history and overall condition, performed blood tests, established a diagnosis, and scheduled a consultation with an intensive care specialist, which did not take place because the specialist was busy. [A. was] hospitalised in the internal diseases unit, in quarantine, because a Covid-19 infection could not be ruled out. He was prescribed treatment: infusion, intravenous diuretics, antibacterial treatment, oral anticoagulants, oxygen therapy, [and] supervision by a doctor.

The patient had low blood pressure, an increasing need for additional oxygen [and suffered from] episodes of loss of consciousness; I believe that a consultation with an intensive care specialist would have been appropriate (*būty buvusi tikslinga*) regarding a more active monitoring of the patient's condition and his treatment in the intensive care unit.

...

The emergency medical technician of the Šalčininkai PHC ... accurately assessed the patient's health ...

...

Having assessed all the circumstances, it may be said that the patient's son, [the applicant], delayed contacting the medical services. The absence of timely provision of medical help could have had an impact on the deterioration of the patient's health.

...

The death of the patient was caused by the worsening of [multiple] chronic diseases. The doctors of [the hospital], having regard to the patient's condition and the hospital's competences, did everything in order to protect the patient's life and health.

...

The death of the patient was caused by diseases: advanced heart failure, paroxysmal atrial fibrillation, an unspecified bacterial infection, the worsening of a chronic kidney disease, [and] moderate anaemia of chronic disease.

...

... No professional errors or inaction in the provision of medical services have been established.”

16. The applicant submitted to the Commission his comments on the above analysis. In his view, even though his father should have been hospitalised in an intensive care unit, he had not received intensive care and had not been examined by an intensive care specialist because the latter had been busy. The applicant also contended that the ambulance ought to have taken his father to a different hospital because the Šalčininkai municipal hospital did not have a cardiologist or an intensive care specialist. Furthermore, the aforementioned analysis had not addressed the actions of the doctor who had been on duty on 26 December 2020 – the applicant alleged that the doctor had not provided any assistance to his father when he had lost consciousness, which had led to his death. The applicant had spoken to his father on the phone at around 5 p.m. on that day and his father had told him that a doctor had not seen him; the applicant had called the hospital at around 7 p.m. and had been informed that the doctor had been busy. He also contested the finding that he himself had delayed contacting medical services – he submitted that he had called the ambulance immediately after his father had fainted. Accordingly, he argued that the hospital had not provided his father with prompt and adequate medical assistance and that all the ailments which had led to his death had occurred only because of the actions and omissions of the hospital staff.

17. In a decision issued on 7 December 2021, the Commission unanimously concluded that the staff of the ambulance and the hospital had acted in accordance with the law and that there had been no causal link between the healthcare services provided to the applicant's father and his death. Accordingly, the applicant was not entitled to compensation.

B. Proceedings before the Vilnius Regional Court

1. The applicant's claim

18. In January 2022 the applicant signed a legal services agreement authorising a lawyer to prepare a claim for compensation for damage caused by medical negligence, lodge requests and submit documents to the Vilnius Regional Court.

19. In February 2022 the applicant lodged a claim with the Vilnius Regional Court, seeking compensation from the State and the Šalčininkai municipality for the damage caused by allegedly inadequate medical treatment provided to his father. He reiterated the arguments which he had raised in his complaint to the Šalčininkai PHC and the hospital (see paragraph 7 above) and disputed the decisions by those institutions concerning that complaint (see paragraphs 10 and 11 above).

20. The applicant submitted that the Šalčininkai PHC had not provided sufficient reasons to justify the decision by the ambulance staff to take his father to the Šalčininkai municipal hospital. He contended that a patient with serious health issues should have been taken to a hospital with better medical equipment and a wider range of professional staff, whereas the hospital in issue did not have a cardiologist or certain other specialists.

21. He further submitted that the hospital had not taken any active steps to address his father's symptoms, namely shortness of breath, feeling of weakness and vertigo. Active attempts to resuscitate him had started only after his condition had dramatically worsened, but they had been belated and therefore ineffective. Moreover, the treatment plan prepared by the hospital for his father had not contained any urgent measures aimed at eliminating the life-threatening ailments; it was therefore evident that that plan had been ineffective as well. The applicant contended that, as his father had complained of shortness of breath, oxygen therapy ought to have been applied immediately.

22. In addition, he contested the conclusion of the Commission (see paragraph 17 above). In particular, the Commission had not properly assessed the fact that his father had not been examined by an intensive care specialist. Moreover, it had not taken due regard of the fact that, after being hospitalised, his father had merely been placed under supervision, without the provision of oxygen or other urgent medical assistance. Nor had it properly assessed the choice of the hospital by the ambulance staff. The applicant contended that

the Commission had been biased and had possibly sought to protect the doctors involved.

23. He submitted that the conclusions of medical establishments and the opinions of experts were not binding on the court and that the court had to objectively assess the circumstances of his father's death. He asked the court to establish that the medical assistance had been inadequate, quash the Commission's decision and award him compensation of EUR 15,000 in respect of non-pecuniary damage.

24. In his claim the applicant indicated that he "[might] have a lawyer" (*galia turėti advokatą*) and enclosed a copy of the legal services agreement (see paragraph 18 above), but he signed the claim himself.

2. Hearings before the Vilnius Regional Court

25. On 1 June 2022 the Vilnius Regional Court held a preparatory hearing at which the parties were present. They were asked whether they had any requests and whether they wished to submit any additional material to be included in the case file; the applicant did not make any requests or submit any material.

26. On the same day, the court decided to start the examination of the merits of the case. As submitted by the Government and not disputed by the applicant, in his replies to the questions posed by the judge and by one of the respondents, the applicant mentioned that his claim had been prepared with the assistance of a lawyer.

27. The next hearing was held on 23 June 2022. In both hearings, the parties were given an opportunity to make requests. The applicant made several requests for data relating to his telephone calls to the hospital to be included in the case file, but the court dismissed them.

3. Decision of the Vilnius Regional Court

28. On 30 June 2022 the Vilnius Regional Court dismissed the applicant's claim.

29. The court observed that the Law on the Rights of Patients and Compensation for Damage to their Health (*Pacientų teisių ir žalos sveikatai atlyginimo įstatymas*; hereinafter "the Patients' Act") enshrined the right of patients to receive healthcare services of good quality (see paragraph 83 below). In order for civil liability for inadequate healthcare services or denial of such services to arise, the following elements had to be established: (i) unlawful actions or omissions; (ii) damage; (iii) a causal link between the unlawful actions or omissions and the damage; and (iv) the fault of the person who caused the damage – the fault was presumed, although that presumption could be rebutted.

30. According to the Supreme Court's case-law, cases relating to damage caused by inadequate treatment concerned professional civil liability. Doctors

and healthcare facilities had an obligation towards their patients to make the greatest possible effort – that is to say, to ensure the highest possible degree of attentiveness, care, caution and professionalism. The unlawfulness of a doctor's actions and his or her fault could be established on the basis of a violation of the duty to act with care and diligence, which was a lower bar than in other cases concerning civil liability.

31. At the same time, the Supreme Court had acknowledged that a doctor's liability had objective limits determined by the biological processes taking place in a human body and the level of development of medical science and practice. Despite continuous scientific progress, it was an unavoidable fact of life that some diseases could not be cured and that a doctor could only do what was possible in the light of the state of the medical science and the patient's condition. Civil liability was based on the principle that nobody could be required to achieve that which was impossible (*impossibilium nulla obligatio est*). Accordingly, where a doctor had fulfilled his or her duties with care, attention and professionalism but damage to the patient's health had occurred nonetheless, such damage had to be considered accidental and the doctor could not be held liable for it.

32. Moreover, according to the Supreme Court, determining whether specific actions or omissions of doctors met the standard of honest, reasonable and attentive professional activity required specialist knowledge. Therefore, only specialists in the relevant field could assess whether the actions taken in the particular situation had been appropriate, having regard to the existing diagnostic and treatment possibilities.

33. At that juncture, the Vilnius Regional Court observed that in civil proceedings each party bore the burden of proving those circumstances on which it based its requests and arguments. Thus, a patient who alleged that a healthcare facility had acted unlawfully had to show that the duty to provide professional and attentive medical assistance had been violated, that damage had arisen and that there had been a causal link between the doctor's negligence and the damage in question.

34. According to the Supreme Court's case-law, the actions of a doctor had to be assessed against the standard of a reasonable and attentive professional. Each case had to be assessed on an individual basis because the same action could be considered lawful and contributing to the saving of a patient's life in some cases, while in other cases it could be deemed unlawful and harmful to the patient. Furthermore, the obligation to make the greatest possible effort did not mean that a doctor had to perform all available examinations and apply all existing methods of treatment; rather what needed to be assessed was whether the doctor had acted as an honest, attentive, cautious, careful and professional specialist in his or her field, relying on the relevant medical and other scientific knowledge, rules of doctors' professional ethics, established medical practice and relevant legal

regulations. The courts had to assess doctors' actions from the perspective of the obligation of means, not of result.

35. The Vilnius Regional Court then turned to the circumstances of the case before it. Regarding the medical services provided to the applicant's father in the ambulance, the court examined the documents provided by the Šalčininkai PHC (see paragraph 10 above) and concluded that the staff of the ambulance had acted in accordance with the law and with a high level of professionalism, attentiveness and care; there were thus no grounds to find that their actions had caused any damage to the patient's health.

36. With regard to the treatment provided at the hospital, the court firstly took note of the analysis of medical records ordered by the Commission, which had found that the doctors at the hospital had done everything in order to protect the life and health of the applicant's father and that his death had been caused by his pre-existing diseases (see paragraph 15 above). The court also examined the documents which indicated the medical procedures that had been carried out with respect to the applicant's father (see paragraphs 11 and 13 above). It observed that, although the applicant had asserted that his father had not had any health issues, according to the available information A. had been diagnosed with various cardiovascular diseases – in February 2019 he had been diagnosed with a hypertensive heart disease without heart failure (*hipertenzinė širdies liga be širdies nepakankamumo*) and in January 2020 – with paroxysmal atrial fibrillation. According to his death certificate, the main disease which had caused the death had been a chronic cardiovascular disease (see paragraph 5 above).

37. The court observed that, according to relevant legal instruments, damage which would have occurred even upon provision of adequate medical treatment had to be considered unavoidable (see paragraphs 89 and 91 below). Moreover, the law provided for compensation only where there was a causal link between the damage and the unlawful actions of the healthcare institution. No compensation could be awarded where the damage had occurred as a result of the patient's state of health which had already existed before the treatment in question had been provided and which could not have been improved by the currently available means of treatment.

38. In the light of all the available evidence, the court concluded that the death of the applicant's father had resulted from two factors: his pre-existing diseases and the delay in seeking medical help. Accordingly, it had not been proved that the ambulance crew or the hospital staff had acted unlawfully or that there had been a causal link between A.'s death and the healthcare services provided to him.

C. Proceedings before the Court of Appeal

1. *The applicant's appeal*

39. The applicant lodged an appeal against the decision of the Vilnius Regional Court. The appeal was signed by a lawyer (a different lawyer than the one with whom the applicant had signed the legal services agreement mentioned in paragraph 18 above).

40. The applicant submitted that the analysis of medical records on which the court had relied (see paragraph 15 above) had been based in part on illegible documents and that it contained contradictions – for example, the author of the analysis had considered that a consultation by an intensive care specialist would have been appropriate, but then nonetheless concluded that the hospital had done everything to preserve the patient's health and life (see paragraph 15 above). Moreover, the direct cause of his father's death had been a pulmonary oedema, and the main disease which had caused the death – a chronic cardiovascular disease (see paragraph 5 above), yet the analysis had been prepared by an internal-medicine doctor, whose competence did not include cardiovascular diseases. The applicant therefore contended that the analysis had been superficial and lacking in detail and that it could not be treated as an expert assessment within the meaning of the Code of Civil Procedure (see paragraph 77 below).

41. According to the Supreme Court's case-law, assessing whether doctors' actions or omissions met the standard of honest, reasonable and attentive professional activity was a question which required specialist knowledge. However, the Vilnius Regional Court had not obtained an expert assessment, testimonies of relevant specialists or other reliable evidence; the available medical records were contradictory or even appeared to have been forged. Under the Code of Civil Procedure, in cases where the available evidence was insufficient, the court had the right to suggest to the parties that they submit additional evidence (see paragraph 75 below). However, the Vilnius Regional Court had not suggested to the applicant that he ask for an expert assessment to be ordered and had not explained to him his right to do so. The applicant submitted that, during the proceedings before the first-instance court, he had not been represented by a lawyer and that he did not have sufficient legal knowledge to represent himself properly. In view of the importance of the values which were at stake – protection of human life and health and the public interest in receiving good quality healthcare services – the court should have undertaken a more active role; it should have ordered an expert assessment of its own motion or should have explained to the applicant his right to be properly represented (see paragraph 81 below).

42. The applicant contended that the available evidence contained contradictions which the Vilnius Regional Court had failed to address. For example, it had been indicated that his father's condition upon hospitalisation had been average (see paragraph 13(i) above), yet he had died the following

day, which showed that his health had deteriorated rapidly and that the doctors had failed to notice it. Moreover, according to the medical records, no medical examinations had been performed on the day of the hospitalisation (25 December 2020). His father had not been properly monitored by doctors – the applicant had spoken to his father on the phone on 26 December 2020 and the latter had told the applicant that nobody had attended to him during the day. The applicant’s father had been placed in the internal diseases unit and not in the intensive care unit, even though his rapid death showed that he had required constant supervision. Had he been placed in the intensive care unit he would have received continuous supervision and immediate resuscitation as soon as it had become necessary. Furthermore, the doctor who had prepared the analysis of medical records had noted that a consultation with an intensive care specialist would have been appropriate but that it had not taken place because the specialist had been busy (see paragraph 15 above). What is more, some of the medical records provided by the hospital appeared to have been forged because they indicated that certain medical procedures, such as the taking of his father’s temperature, had been performed on 27 December 2020, that is already after his death. Accordingly, the applicant contended that the Vilnius Regional Court had failed to duly assess the available evidence and that its decision was not properly substantiated.

43. The applicant also submitted that the Vilnius Regional Court had not addressed his argument that his father ought to have been taken to a different hospital because the Šalčininkai municipal hospital did not have a cardiologist (see paragraph 20 above).

44. The applicant contended that the case could not be properly examined without an expert assessment and asked the Court of Appeal to order such an assessment (see paragraph 77 below). He submitted a number of questions that the expert should answer regarding the choice of the hospital, the adequacy of the healthcare services provided at the hospital, the accuracy of the official cause of his father’s death (see paragraph 5 above) and discrepancies in the medical records (see paragraph 42 above).

2. Additional material submitted by the applicant to the Court of Appeal

45. In August 2022 the applicant’s lawyer lodged a request with the Court of Appeal for new material to be included in the case file – namely, notices from the prosecutor’s office of the Vilnius Region and from the Šalčininkai police, whereby the applicant had been informed that a pre-trial investigation had been opened following his complaints (see paragraph 61 below). He submitted that those documents were important for the proper examination of the case and that adding them to the file would not prolong the proceedings. The lawyer did not ask that the civil proceedings be stayed pending the pre-trial investigation.

3. *Decision of the Court of Appeal*

46. On 24 January 2023 the Court of Appeal dismissed the appeal lodged by the applicant and upheld the decision of the Vilnius Regional Court.

47. The Court of Appeal firstly addressed the applicant's request to order an expert assessment (see paragraph 44 above). It noted that, according to the Supreme Court's case-law, a decision to order an expert assessment could not be based on speculation but rather had to be based on the court's belief that such an assessment was necessary in order to examine the case fairly and properly. The Code of Civil Procedure provided that no type of evidence had pre-determined weight in the eyes of the court; while that rule was subject to some exceptions, an expert assessment did not fall among them. Accordingly, when the question of ordering an expert assessment arose in a given case, the court had to make a decision in accordance with the rules laid down in the Code of Civil Procedure (see paragraph 77 below), the general principles of law, the parties' arguments and supporting material, as well as the impact that it was likely to have on the fair examination of the case. Where a request for an expert assessment was based on doubts or guesses rather than on a well-founded belief that specialist knowledge was necessary to elucidate certain issues arising in the case, such a request had to be refused.

48. The Court of Appeal further observed that the purpose of the proceedings before the appellate court was to review whether the lower court's decision had been lawful and well founded. Appellate courts did not examine cases afresh; appeals could not be based on new circumstances or contain new claims or new evidence. In the case before it, the applicant's request for an expert assessment had been lodged too late – he had made that request only in his appeal, although nothing had prevented him from doing so during the proceedings before the first-instance court. Although the applicant had submitted that the Vilnius Regional Court had not suggested that he should ask for such an assessment to be ordered (see paragraph 41 above), the Court of Appeal emphasised that the court had not had an obligation to do so. The civil proceedings were adversarial, with each party bearing the burden of proving the circumstances on which they sought to rely. The court's role was to assess the available evidence according to its inner conviction. In this case, the Vilnius Regional Court had assessed all the evidence and had not considered that specialist knowledge had been necessary in order to properly examine the case. Therefore, it had not been obliged to suggest to the applicant that he request an expert assessment.

49. The Court of Appeal considered that the available written evidence was sufficient to examine the questions arising in the case and that the applicant had not proved that specialist knowledge was necessary to elucidate any of those questions. It therefore refused his request to order an expert assessment.

50. The Court of Appeal next observed that, according to the Patients' Act and the relevant case-law, damage caused to a patient's health had to be

compensated regardless of the fault of any specific individual (see paragraph 88 below). However, that did not mean that compensation had to be paid in all cases where a patient sustained some negative consequences; instead, it was necessary to establish a causal link between the unlawful actions of a healthcare institution and the damage caused to the patient. Once the Commission had found that the applicant was not entitled to compensation for damage (see paragraph 17 above), it was for him to show that the healthcare institutions could have avoided the damage by acting in line with the relevant medical standards – that is, to prove that the healthcare institutions had acted unlawfully and that there was a causal link between their unlawful actions and his father’s death.

51. The Court of Appeal reiterated the case-law of the Supreme Court, according to which the courts had to assess doctors’ actions from the perspective of the obligation of means, rather than of result – namely, whether in a given situation healthcare had been provided with the greatest possible effort, by taking all the available and necessary means and by using them in an attentive, careful and professional manner.

52. The Court of Appeal stated that, having examined the available written documents and the parties’ submissions, it agreed with the conclusion reached by the Vilnius Regional Court that it had not been demonstrated that the ambulance or the hospital had acted unlawfully.

53. In particular, the Court of Appeal rejected the applicant’s argument that the ambulance should have taken his father to a different hospital (see paragraph 43 above). It held that, according to relevant regulations, an ambulance had to take a patient to the nearest healthcare facility providing relevant medical services. The Šalčininkai municipal hospital provided emergency and intensive care services, and the applicant had not proved that the hospital had not had the capacity or the competence to provide his father with the necessary medical treatment.

54. Moreover, having examined the available written evidence – the medical records, the doctors’ written statements (see paragraph 13 above) and the analysis of medical records (see paragraph 15 above) – the Court of Appeal endorsed the lower court’s conclusion that the death of the applicant’s father had been caused by his pre-existing diseases and the delay in seeking medical help (see paragraph 38 above). The documents in the medical file disproved the applicant’s allegations that the hospital had not performed any medical examinations with respect to his father, that he had not been properly monitored and that he had not been provided with timely medical assistance; those allegations were not supported by any evidence.

55. As to the applicant’s arguments regarding the analysis of medical records (see paragraph 40 above), the Court of Appeal noted that that analysis had not been the only material on the basis of which the Vilnius Regional Court had reached its decision but that the latter court had also itself examined the relevant medical records. The Court of Appeal considered that there had

been no reason not to rely on the analysis. In addition, it referred to regulations regarding the competences of an internal-medicine doctor and dismissed as unfounded the applicant's argument that that doctor had not had the necessary competence to provide such an analysis (see paragraph 40 above).

56. In the light of the foregoing, the Court of Appeal concluded that the applicant had not proved that the ambulance crew or the hospital had acted unlawfully, or that there had been a causal link between his father's death and the allegedly inadequate medical treatment.

57. Lastly, in response to the applicant's argument that the Vilnius Regional Court should have offered him legal representation (see paragraph 41 above), the Court of Appeal noted that, according to the Code of Civil Procedure, the court examining the case "may suggest" to a party that it find a representative (see paragraph 81 below). Contrary to the applicant's position, the fact that the Vilnius Regional Court had not made such a suggestion or had not explained to him his right to be represented by a lawyer did not mean that the proceedings had not been fair or that the court's decision was unlawful. Moreover, the applicant had indicated in his claim that he might be represented by a lawyer (see paragraph 19 above), which showed that he had been aware of his right to have a lawyer but had made the decision not to, thereby assuming the risks associated with that decision.

D. Proceedings before the Supreme Court

58. The applicant lodged an appeal against that decision on points of law, reiterating the arguments which he had raised in his previous appeal (see paragraphs 39-43 above). In addition, he submitted that the Court of Appeal should have stayed the civil case pending the criminal proceedings, about which he had informed the court (see paragraph 45 above). Moreover, he contended that in cases concerning alleged medical negligence the parties were not in an equivalent position because the claimant usually did not have specialist medical knowledge and all the evidence was either in the respondent's possession or could only be obtained with the use of specialist knowledge. Thus, in such cases the courts should not be allowed to remain passive but should be required to take all necessary measures to rectify the imbalance between the parties. In particular, where a case could not be resolved without specialist knowledge, the courts should not only have the right, but also the obligation, to order an expert assessment on their own initiative.

59. On 13 March 2023 the Supreme Court refused to accept the appeal on points of law for examination on the grounds that it did not raise any important legal issues.

IV. CRIMINAL PROCEEDINGS

A. The applicant's request that an investigation be opened

60. In August 2022 the applicant lodged a request with the Vilnius regional prosecutor's office to open a pre-trial investigation in respect of the hospital. He alleged that the hospital had committed the criminal offence of falsification of documents (Article 300 § 1 of the Criminal Code, see paragraph 74 below): his father's medical file contained records indicating that some medical procedures, such as measuring his temperature, had been performed on 27 December 2020 – the day after his death – which clearly showed that those records were false. Moreover, the death certificate contained contradictory information: on the one hand, a pulmonary oedema was identified as the direct cause of death, while on the other hand, the principal cause of death was a chronic cardiovascular disease (see paragraph 5 above). In addition, the medical file contained a record of various medical examinations which had allegedly been performed on 26 December 2020, but the applicant had spoken with his father on the phone at around 5 p.m. that day and his father had told him that nobody had attended to him during the day, which also gave grounds to believe that the records had been falsified. The applicant also alleged that his father had been taken to a hospital which had not been able to provide qualified treatment and that the treatment which he had received at the hospital had been inadequate; thus, there were grounds to believe that the doctors had committed the criminal offence of causing death by negligence (Article 132 § 1 of the Criminal Code, see paragraph 73 below).

B. Investigative measures taken by the authorities

61. On 12 August 2022 the Šalčininkai police opened a pre-trial investigation into the applicant's allegations under Article 132 § 1 and Article 300 § 1 of the Criminal Code.

62. The police requested the State Accreditation Service for Healthcare Activities under the Ministry of Health (hereinafter "the Accreditation Service") to evaluate the healthcare services provided to the applicant's father in the ambulance and at the hospital.

63. The Accreditation Service delivered its report to the police in March 2023. It found that the ambulance crew had complied with all the relevant legal requirements: they had arrived within the time-limit prescribed by law, assessed the patient's health and taken him to the nearest hospital which provided internal-medicine services and intensive care. By contrast, the hospital had breached several requirements of the law. In particular, the doctor who had been on duty on the night of 25 to 26 December 2020 had failed to record a detailed description of the patient's condition and medical

history, to call an intensive care specialist to examine him, to arrange for an X-ray of the chest and a biochemical blood examination, and to provide an assessment of the results of the general blood test and the electrocardiogram which had been performed on the day of the hospitalisation. Moreover, the doctor who had been on duty on the evening of 26 December 2020 had not called a specialist to resuscitate the patient, contrary to relevant regulations; the doctor had attempted to resuscitate the patient herself, but the hospital did not have a protocol for resuscitating patients and it was unclear what rules the doctor had followed. Lastly, the hospital had failed to ensure the continuous availability of radiologist consultations – a radiologist worked at the hospital only seven hours per day, and during the rest of the day such services were not provided, which was not in accordance with the law.

64. On 28 March 2023 the Accreditation Service issued a warning to the hospital and ordered it to rectify the violations established with regard to the availability of a radiologist and the absence of a protocol for resuscitating patients (see paragraph 63 above).

65. In April 2023 the applicant asked the prosecutor to order an expert assessment in order to determine the cause of his father's death. That request was granted and the State Forensic Medicine Service (hereinafter "the SFMS") was asked to examine the relevant documents, including the medical file of the applicant's father and the Accreditation Service's report (see paragraph 63 above).

66. The SFMS delivered its assessment in March 2024. Having examined A.'s medical history, it found that he had consulted a radiologist for the first time in 2011 and had been diagnosed with pulmonary arterial hypertension; that diagnosis had been reiterated in 2013, 2016 and 2017, and in 2019 and 2020 he had been diagnosed with further heart disorders (see paragraph 36 above). The SFMS stated that the precise cause of death could be determined only by a post-mortem examination, but such an examination had not been performed (see paragraph 6 above). According to the available documents, the likely cause of death had been a sudden heart failure which had occurred in the presence of a chronic cardiovascular disease. The medical assistance provided to him in the ambulance and at the hospital had been adequate. At the hospital he had been properly diagnosed and all the necessary medical examinations had been performed. There was no causal link between his death and the actions of the ambulance staff or the doctors working at the hospital. Lastly, the SFMS concluded that, having regard to the likely cause of his death, it could not have been avoided.

67. In March 2024 the nurse who had been on duty at the hospital on 26 December 2020 was questioned as a witness in the investigation. She could no longer remember any facts relating to the applicant's father, however, she submitted that it had been a general practice of the hospital staff to record in advance that the prescribed medication had been administered to a patient or that a patient's temperature had been measured; that had typically

been done in the evenings because the hospital was short on staff and the available staff was very busy in the mornings. Such records would be corrected subsequently, if needed. That could explain why the medical file of the applicant's father contained a list of prescribed medication supposedly administered on 27 December 2020 – the relevant column had been filled in the day before and later crossed out, since the patient had died and the medication had not in fact been administered. Similarly, the medical file indicated that his temperature had been measured on 27 December 2020, but it was most likely that his temperature had been normal on 26 December 2020 and that the nurse had entered the same record for 27 December 2020 to save time.

68. In April 2024 the investigating authorities asked the SFMS whether it might be necessary to exhume A.'s body and conduct a post-mortem examination. The SFMS replied that, in view of the time which had passed since his death, doing so would not serve any purpose.

C. The prosecutor's decision

69. On 24 April 2024 the prosecutor discontinued the pre-trial investigation. According to the prosecutor's decision, although it had been established that the hospital had breached certain legal requirements (see paragraph 63 above), that was not sufficient to warrant criminal responsibility under Article 132 § 1 of the Criminal Code because such responsibility could arise only when there was a causal link between the culprit's actions or omissions and another person's death. In the case at hand, the SFMS had examined A.'s medical file, the Accreditation Service's report and other material obtained during the investigation, and concluded, *inter alia*, that there had been no causal link between A.'s death and the actions of the ambulance staff or the doctors working at the hospital (see paragraph 66 above). Accordingly, the prosecutor stated that, after having carried out all the necessary procedural measures, there was no objective evidence which might confirm that the death of the applicant's father had been caused by the actions or omissions of the ambulance crew or hospital staff.

70. As to the alleged falsification of documents under Article 300 § 1 of the Criminal Code, the prosecutor referred to the testimony given by the nurse (see paragraph 67 above) and observed that, although the practice of filling in medical records in advance might be inappropriate, it lacked the necessary level of dangerousness to warrant criminal liability; nor were there grounds to believe that the nurse had had the requisite intent to commit the criminal offence at issue. With regard to the applicant's argument concerning the allegedly contradictory information in his father's death certificate (see paragraph 60 above), the prosecutor stated that it was no longer possible to determine the cause of the death conclusively because a post-mortem examination had not been performed in time. As a result, it could not be

unequivocally stated that the death certificate contained inaccurate information and that the document was clearly false.

D. Subsequent decisions

71. The applicant appealed against the prosecutor's decision, first to a senior prosecutor, then to a pre-trial judge of the Vilnius District Court, and lastly to the Vilnius Regional Court. In his appeals he contended that his father's death had been the result of the various shortcomings in the work of the hospital that had been identified by the Accreditation Service (see paragraph 63 above). However, all of the appeals were dismissed on the grounds that the pre-trial investigation had been thorough and that there were no objective grounds to believe that the alleged criminal offences had been committed. In particular, both the senior prosecutor and the courts noted that the expert assessment carried out by the SFMS had not established a causal link between any of the actions or omissions of the hospital and the death of the applicant's father (see paragraph 66 above). The final decision in the criminal proceedings was given by the Vilnius Regional Court on 31 July 2024.

RELEVANT LEGAL FRAMEWORK

I. CONSTITUTION

72. The relevant provisions of the Constitution read:

Article 19

"The right to life of a human being shall be protected by law."

Article 53

"The State shall take care of the health of people and shall guarantee medical aid and services for a person in the event of sickness. ..."

II. CRIMINAL CODE

73. Article 132 § 1 provides that anyone who has taken the life of another person through negligence is to be punished by detention or up to four years' imprisonment.

74. Article 300 § 1 provides that anyone who has produced a false document or forged a real document, or stored, transported, sent, used or sold a document knowing that it was false or forged, is to be punished by community service, a fine, restriction of liberty, detention, or up to three years' imprisonment.

III. CODE OF CIVIL PROCEDURE

A. Evidence

75. According to Article 179 § 1, evidence must be provided to the court by the parties and other participants to the proceedings. If the available evidence is insufficient, the court may suggest to the parties or the participants that they submit additional evidence within a set deadline.

76. Article 185 § 2 provides that no evidence has a pre-determined weight in the eyes of the court, save for the exceptions provided in the Code of Civil Procedure.

77. Article 212 § 1 provides, *inter alia*, that in order to elucidate questions arising in a case which require special scientific, medical, artistic, technical or professional knowledge, the court may order an expert assessment and, having regard to the views of the participants to the proceedings, appoint an expert or ask a relevant expert body to provide an assessment.

78. Article 218 provides that an expert assessment is not binding on the court and has to be assessed according to the judge's inner conviction, based on a comprehensive, thorough and objective assessment of the available evidence. However, should the court disagree with an expert assessment its decision must indicate the reasons why.

79. Article 314 provides that a court sitting as an appellate court must refuse to admit new evidence where such evidence could have been presented before the first-instance court, unless the latter refused to admit it without good reasons or the necessity to present that evidence arose later.

B. Representation

80. Article 51 § 1 provides that individuals may present their case to the court themselves or via representatives. The participation in person by an individual in court proceedings does not preclude him or her from having a representative in those proceedings.

81. Article 161 § 1 provides, *inter alia*, that where the court examining the case considers that a party to the case may not be able to properly defend his or her rights without a representative, it may suggest to the latter that they authorise a representative and adjourn the examination of the case while the party does so. According to Article 161 § 2, if the party in question decides not to follow the court's suggestion, the examination of the case is resumed.

C. Stay of civil proceedings

82. Article 163 § 1 (3) provides that the court must stay the examination of the case where it is not possible to examine that case until another pending civil, criminal or administrative case is examined.

IV. PATIENTS' ACT

83. Article 3 § 1 provides for the right of patients to receive healthcare services of good quality.

84. Article 13 provides, *inter alia*, that in the event of the death of a patient, persons who had a particularly close and intimate bond with him or her have the right to claim compensation in respect of pecuniary or non-pecuniary damage. The existence of a particularly close and intimate bond has to be established by the Commission on the basis of information provided by such persons, having regard to the intensity of the relationship and the nature of their care for one another.

85. Article 23 § 1 provides, *inter alia*, that a patient who believes that his or her rights were violated in a healthcare institution has the right to lodge a complaint with that institution within a year from finding out about the violation of his or her rights, but no later than three years after that violation occurred. Article 23 § 6 provides, *inter alia*, that the lodging and examination of such complaints is free of charge. Article 23 § 5 provides, *inter alia*, that when a patient disagrees with the decision taken by the healthcare institution with regard to his or her complaint concerning access to and quality of healthcare services, he or she may lodge a complaint with the Accreditation Service or directly with the courts.

86. Article 24 § 1 provides, *inter alia*, that the patient or another individual who has the right to claim compensation (see paragraph 84 above) must lodge a written request to that effect with the Commission, following the procedure established by the government, within three years from the date on which he or she learned or ought to have learned about the damage in question. The lodging and examination of such claims is free of charge.

87. Article 26 § 6 provides, *inter alia*, that when examining a claim for compensation, the Commission must obtain the necessary documents, such as the patient's medical file and statements of the healthcare institution or healthcare specialists in question, which contain the relevant information about the patient, including the patient's stay at the healthcare institution, his or her state of health, diagnosis, prognostics and treatment. The Commission may also request healthcare specialists that are included on the list of experts approved by the Minister of Health to provide an opinion on matters which require specialist knowledge.

88. Article 24 § 6 provides, *inter alia*, that compensation is awarded in those cases where the Commission establishes that, when providing healthcare services, damage was done to the patient's health and that such damage was not unavoidable. The Commission makes a decision to award compensation without assessing the fault of the healthcare institution or the individual healthcare specialist. The award made by the Commission is paid as a lump sum.

89. Article 2 § 9¹ defines unavoidable damage to health as, *inter alia*, damage caused to a patient's health which is linked to the healthcare services provided to him or her but which occurred because of circumstances which the healthcare specialist and/or institution could not foresee, control and/or prevent. The criteria for determining unavoidable damage are to be established in secondary legislation.

90. Article 25 § 1 provides, *inter alia*, that an appeal against the Commission's decision may be lodged with a court of general competence within thirty days. Where such an appeal is lodged, the court will examine the question of compensation in respect of pecuniary and non-pecuniary damage on the merits.

V. ORDER ON THE COMPENSATION OF PECUNIARY AND NON-PECUNIARY DAMAGE CAUSED BY DAMAGE TO A PATIENT'S HEALTH

91. The Order, adopted by the government on 8 January 2020 in the implementation of Articles 2 § 9¹ and 24 § 1 of the Patients' Act (see paragraphs 86 and 89 above), defines unavoidable damage as, *inter alia*, a consequence or complication of a disease or disorder which the patient had before the damage arose which could not have been avoided given the level of medical and nursing science and good medical practice existing at that time (paragraph 9.2.2.1).

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

92. The applicant complained that the investigation into the adequacy of the medical treatment provided to his father had been ineffective. He relied on Article 6 § 1 and Article 13 of the Convention.

93. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017), considers that the applicant's complaint falls to be examined solely under Article 2 of the Convention, the relevant part of which reads as follows:

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

A. Preliminary remarks

94. The Court observes that the applicant did not allege that his father's death had been caused intentionally. Nor did he allege that his father had been denied access to medical treatment in general or to emergency medical treatment in particular. Moreover, there is nothing in the present case to

suggest that there existed, at the material time, any systemic or structural dysfunction in hospital services (*ibid.*, §§ 190-92).

95. While in the domestic proceedings the applicant argued that the medical treatment and supervision which had been provided to his father by the staff of the ambulance and the hospital had been inadequate and had led to his death (see paragraphs 7, 20-22, 42 and 60 above), his complaint before the Court concerned mainly the alleged failure of the domestic courts to address his allegations of inadequate medical treatment and to establish a causal link between the alleged medical negligence and his father's death (see paragraphs 103-109 below).

96. Accordingly, the Court finds that the present case does not concern the State's substantive positive obligations under Article 2 of the Convention. The applicant's complaint must therefore be examined solely from the angle of the State's procedural obligations under that provision. In assessing whether the State discharged its procedural obligations, the Court must determine whether, in the specific circumstances of the case and, bearing in mind both the fundamental importance of the right to life guaranteed under Article 2 of the Convention and the particular weight the Court has attached to the procedural requirement under that provision, the legal system as a whole responded adequately to the case at hand (see *Harutyun Karapetyan v. Armenia*, no. 53081/14, § 66, 29 October 2024).

B. Admissibility

1. The parties' submissions

97. The Government submitted that the applicant had failed to exhaust the effective domestic remedies. His complaint concerned procedural shortcomings on the part of the domestic courts examining his civil claim, and the Civil Code provided for the possibility to seek compensation in respect of damage caused by unlawful actions of a judge or a court. Under Article 6.272 § 2 of the Civil Code, the State had a duty to compensate for such damage where it was established that a judge or a court official had been at fault. The Government submitted that such fault could be found to have existed where the judge or the court had committed a manifest and serious error in the interpretation and application of the law.

98. The applicant submitted that he was not complaining about any unlawful actions of judges but about inadequate medical treatment. Having raised that complaint in both civil and criminal proceedings, he had not been required to exhaust any other domestic remedies.

2. The Court's assessment

99. The general principles pertaining to the exhaustion of domestic remedies have been summarised in the case of *Communauté genevoise*

d'action syndicale (CGAS) v. Switzerland ([GC], no. 21881/20, §§ 138-44, 27 November 2023, and the cases cited therein).

100. The Court reiterates, in particular, that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy advanced by them was an effective one, available in theory and in practice at the relevant time (*ibid.*, § 143).

101. As the Court has noted above, the crux of the applicant's complaint concerns the State's procedural obligation under Article 2 of the Convention to respond effectively to a potential violation of the right to life (see paragraphs 94-96 above). However, the Government relied on a remedy under Article 6.272 § 2 of the Civil Code aimed at redressing judicial errors, rather than failures by the State to investigate or respond to such violations. This remedy does not therefore appear to be relevant to the core of the applicant's complaint. Accordingly, the Court finds that the Government have failed to discharge their burden of proof under Article 35 § 1 of the Convention and that this objection must be dismissed.

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

C. Merits

1. The parties' submissions

(a) The applicant

103. The applicant submitted that the courts in the civil proceedings had failed to conduct an objective and thorough examination of the adequacy of the medical treatment which had been provided to his father. Determining the reason for his father's death required specialist medical knowledge, but the courts had not ordered an expert assessment. He submitted that he had not been represented by a lawyer in the proceedings before the first-instance court and that, in view of his limited legal and medical knowledge, he had not understood that an expert assessment had been essential in this case. The courts had made an unfounded conclusion that specialist knowledge had not been necessary (see paragraph 49 above) and had essentially established the cause of his father's death themselves; moreover, they had based their conclusion exclusively on the documents provided by the respondents (see paragraphs 35, 36 and 54 above), despite the fact that the latter had an obvious interest in the outcome of the proceedings and that some of those documents were illegible or might have been forged.

104. The applicant further submitted that the courts had failed to properly consider the fact that the available documents had contained contradictions or appeared to have been forged (see paragraph 42 above).

105. Moreover, less than a month after the applicant had lodged an appeal against the Vilnius Regional Court's decision, the authorities had opened a pre-trial investigation concerning his allegations of causing death by negligence and falsification of documents (see paragraph 61 above), of which he had informed the Court of Appeal (see paragraph 45 above). However, the latter court had not stayed the civil proceedings while the investigation was pending.

106. The applicant pointed out that, in the context of the criminal proceedings, the Accreditation Service had identified several shortcomings in the treatment which his father had received at the hospital (see paragraph 63 above).

107. He further submitted that cases concerning medical negligence were undeniably linked to the public interest in ensuring the provision of high-quality healthcare services; proper examination of such cases was necessary to protect everyone's constitutional right to the protection of health. He also contended that the application without any adjustment of the ordinary rules of civil proceedings to cases concerning medical negligence imposed an excessive or even unrealistic burden of proof on claimants – many of whom were individuals who did not have specialist knowledge or access to medical records and who might be unable to afford a professional analysis of those records. Those circumstances required the courts to undertake a more active role in such cases, otherwise there was a risk that the truth would not be established and errors in the healthcare system would not be rectified.

108. In reply to the Government's observations concerning the proceedings before the Commission (see paragraph 114 below), the applicant raised a number of complaints concerning the nature of those proceedings, namely, that the time-limit for complaining to the Commission was short, which made it difficult for claimants to collect any evidence; the choice of the specialist providing an analysis of medical records was entirely within the Commission's discretion; there was no procedure for verifying that the specialist had the necessary qualifications; the specialist did not take an oath; he or she was not called on to participate in the Commission's meetings; and claimants had no possibility to put their questions to the specialist. The applicant contended that the procedure before the Commission was not objective and was thus ineffective. Nevertheless, the courts tended to rely uncritically on the Commission's findings instead of obtaining independent expert assessments, which was what had occurred in the case at hand.

109. Lastly, in reply to the Government's observations concerning the pre-trial investigation (see paragraph 118 below), the applicant submitted that that investigation had been discontinued without sufficient grounds. He contended that, in practice, decisions taken by prosecutors to discontinue an investigation were reviewed by the pre-trial judge in a very formalistic manner and only very rarely overturned. He also submitted that during the investigation he had not had an opportunity to exercise his rights as a victim,

such as to put questions to experts and witnesses or to request the removal of an expert.

(b) The Government

110. The Government submitted that the circumstances of the present case did not amount to a situation which went beyond mere error or medical negligence, so as to require recourse to criminal law (see *Lopes de Sousa Fernandes*, cited above, § 215). Having regard to the cause of death of the applicant's father (see paragraph 5 above) and the fact that none of his relatives had requested the hospital to report the death to the police, the authorities had not been under an obligation to institute a pre-trial investigation on their own initiative.

111. Moreover, as the applicant's father had suffered from a chronic cardiovascular disease, and the direct cause of his death had been a pulmonary oedema (see paragraph 5 above), which was the most common complication of heart failure, the Government contended that it had been reasonable for the hospital to consider that a post-mortem examination had not been necessary (see paragraph 6 above). The applicant had had the right to ask for such an examination but he had chosen not to (see paragraph 6 above).

112. The Government noted that the Court had already found that a sufficient legal framework for securing high professional standards among health professionals and for establishing any liability arising from deaths of individuals under their care existed in Lithuania (see *Rinkūnienė v. Lithuania* (dec.), no. 55779/08, 1 December 2009).

113. They further submitted that the applicant's claims had been examined without any undue delay. Thus, the present application concerned essentially the thoroughness and impartiality of the domestic proceedings.

114. The Government submitted that individuals who wished to claim compensation for damage caused by alleged medical negligence had to firstly lodge their claims with the Commission. The aim of that procedural step was to ensure that patients' complaints would be examined by a body with specialist knowledge before judicial litigation. The Commission was comprised of relevant specialists, mainly medical professionals. Accordingly, it was reasonable for the courts to rely on its conclusions, especially where those conclusions were corroborated by other available evidence.

115. Moreover, in the present case, the Commission had obtained an analysis of the applicant's father's medical records which had been carried out by an independent professional – namely, a doctor practising in a different hospital (see paragraph 15 above). The applicant had been informed of the Commission's decision to obtain an expert assessment (see paragraph 14 above) but he had not submitted any questions; nonetheless, he had been given the possibility to comment on the analysis (see paragraph 16 above). The Government further submitted that the applicant could have asked for the

doctor who had prepared the analysis to be called as a witness before the court but he had not made such a request.

116. Regarding the question whether the courts ought to have ordered an expert assessment of their own motion, the Government firstly submitted that the applicant's claim had been prepared with the assistance of a lawyer (see paragraphs 18 and 26 above). Secondly, each party bore the burden of proving the circumstances on which it sought to rely, and in the proceedings before the first-instance court the judge had given the parties several opportunities to submit additional material (see paragraphs 25 and 27 above). The Government contended that the circumstances of the case did not reveal any important reasons which might have warranted the court collecting evidence of its own motion.

117. As to the applicant's complaint that the Court of Appeal had not stayed the civil proceedings pending the pre-trial investigation (see paragraph 105 above), the Government emphasised that the applicant had not requested that the civil case be stayed (see paragraph 45 above). According to the case-law of the Supreme Court, the courts would have been obliged to stay the civil proceedings *proprio motu* if the criminal case had been under examination by a court, but no such obligation existed while the criminal case was at the investigation stage.

118. Finally, they noted that the pre-trial investigation, which had been instituted at the applicant's request, had further confirmed that the treatment provided to his father had been adequate (see paragraphs 69-71 above).

2. *The Court's assessment*

(a) **General principles**

119. The general principles regarding the States' procedural obligation under Article 2 of the Convention in the context of healthcare have been summarised in the case of *Lopes de Sousa Fernandes* (cited above, §§ 214-21, and see the cases cited therein) and, more recently, in the case of *Harutyun Karapetyan* (cited above, §§ 67-75, and see the cases cited therein).

(b) **Application of the above principles in the present case**

120. The applicant's father was taken to the Šalčininkai municipal hospital on the evening of 25 December 2020, after he had started feeling unwell on the morning of that same day (see paragraph 4 above). He died at the hospital the following evening, 26 December 2020. In the domestic proceedings the cause of his death was found to have been linked to a chronic cardiovascular disease (see paragraphs 5 and 66 above). It was also established that he had been diagnosed with various heart diseases in the years preceding the hospitalisation (see paragraphs 36 and 66 above). The applicant alleged that his father had not received timely and adequate medical treatment or supervision at the hospital, which had led to his death. The Court would

accept that, in view of the circumstances of the case, the applicant had arguable grounds to suspect that his father's death could have been the result of medical negligence. The respondent State's duty to ensure compliance with the procedural obligations arising under Article 2 of the Convention, in the proceedings instituted in connection with his father's death, is therefore engaged in the present case (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, § 222, and *Harutyun Karapetyan*, § 76, both cited above).

121. The Lithuanian legal system provides, in principle, three avenues of recourse for victims alleging medical negligence by healthcare professionals: (i) a civil procedure before the Commission and the courts, capable of leading to an award for damages (see paragraphs 86-90 above); (ii) a request to a prosecutor to open a criminal investigation concerning, *inter alia*, the criminal offence of causing death by negligence (see paragraph 73 above); and (iii) proceedings in order to establish the disciplinary liability of the medical practitioners concerned (see paragraph 85 above and the domestic law summarised in *Rinkūnienė*, cited above). The Court notes that, in order for doctors' civil liability to be established, it is not necessary to prove that they had been at fault but only that they had failed to act with care and diligence (see the relevant domestic law in paragraph 88 above and the Supreme Court's case-law summarised in paragraph 30 above; compare and contrast *Eugenia Lazăr v. Romania*, no. 32146/05, § 90, 16 February 2010). In the Court's view, this legal framework is, in principle, capable of holding healthcare providers accountable and providing redress to victims of alleged medical negligence.

122. It is therefore satisfied that the Lithuanian legal system offers litigants remedies which, in theory, meet the requirements of the procedural obligations under Article 2 of the Convention (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, cited above, §§ 223-24, and *Kornicka-Ziobro v. Poland*, no. 23037/16, § 73, 20 October 2022). The applicant has not argued otherwise.

123. The Court notes that, in the instant case, there is nothing to indicate that the death of the applicant's father was caused intentionally, and the circumstances in which it occurred were not such as to raise suspicions in that regard. In this respect, the Court reiterates that, in cases involving allegations of "medical negligence", Article 2 of the Convention does not necessarily require the institution of criminal proceedings (see *Lopes de Sousa Fernandes*, cited above, §§ 215 and 232; compare *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, ECHR 2013; *Asiye Genç v. Turkey*, no. 24109/07, 27 January 2015; and *Aydoğdu v. Turkey*, no. 40448/06, 30 August 2016, cases in which the conduct of the healthcare providers went beyond mere medical negligence). In the circumstances of the present case, it considers that a criminal-law remedy was not required in order for the State to discharge its procedural obligation under Article 2 of the Convention. However, since the applicant pursued both the civil-law and the criminal-law

remedies, the Court will assess whether those two remedies, taken together, were capable of satisfying that procedural obligation. As the applicant did not seek to establish the disciplinary liability of any medical practitioners (see paragraph 121 above), the Court is not called to assess that remedy in the present case.

124. Turning first to the civil proceedings, the Court notes that the applicant did not complain about their length or about his ability to participate in them. While he submitted that the domestic authorities had not been objective (see paragraphs 103 and 108 above), he based that argument essentially on his disagreement with the decisions taken by those authorities. He did not allege that there had been any hierarchical or institutional connection or a lack of formal or *de facto* independence between the authorities tasked with determining the cause of his father's death and the healthcare institutions and professionals involved in the events (see *Lopes de Sousa Fernandes*, § 217, and *Harutyun Karapetyan*, § 80, both cited above). Moreover, in the domestic proceedings he did not make any requests for any judges or members of the Commission to be removed. The Court therefore considers that the question of the independence and impartiality of the civil proceedings does not arise in this case.

125. The applicant's main complaint concerned the adequacy and thoroughness of the domestic proceedings. In particular, he complained that the courts in the civil proceedings had not ordered an expert assessment of the adequacy of the treatment provided to his father: the Vilnius Regional Court had not ordered such an assessment of its own motion and had not suggested that the applicant should request it; when he did make such a request to the Court of Appeal that court had dismissed it.

126. It was not disputed that the applicant had the right to ask the courts to order an expert assessment and that during the proceedings before the Vilnius Regional Court he had an opportunity to make requests and to submit additional material to the court (see paragraphs 25 and 27 above). He contended that he had been unable to fully avail himself of his procedural rights because he had not been represented by a lawyer (see paragraph 103 above). In this connection, the Court observes, firstly, that the applicant did not allege that there had been any objective reasons which had precluded him from seeking legal representation. It further observes that the applicant's submission that he was not represented is in any event contradicted by the fact that in January 2022 he authorised a lawyer to prepare a claim for compensation for damage caused by medical negligence (see paragraph 18 above), that he enclosed the legal services agreement with his claim lodged with the Vilnius Regional Court (see paragraph 24 above) and that during the preparatory hearing before that court he indicated that his claim had been prepared with the assistance of a lawyer (see paragraph 26 above).

127. The applicant did not indicate any other particular circumstances pertaining to the case which might have required the Vilnius Regional Court

to suggest to him that he request an expert assessment, or to order such an assessment of its own motion. Having examined the material in its possession, the Court does not discern any such circumstances either.

128. The applicant lodged a request for an expert assessment at the appellate stage (see paragraph 44 above) but the Court of Appeal dismissed it, relying on two grounds: firstly, because the request had been lodged too late (see paragraph 48 above), and secondly, because it considered that the available evidence was sufficient and that an expert assessment was not necessary (see paragraph 49 above).

129. In this connection, the Court reiterates that it may not itself assess the facts which have led a national court to adopt one decision rather than another, or question the admissibility and assessment of evidence at a trial. If it were otherwise, it would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action. The only circumstance in which the Court may, as an exception to this rule, question such findings and conclusions is where they are flagrantly and manifestly arbitrary, in a manner which flies in the face of justice and common sense and gives rise in itself to a violation of the Convention (see *Garrido Herrero v. Spain*, no. 61019/19, § 85, 11 October 2022, and the cases cited therein).

130. The Court observes that the domestic courts had before them the medical records obtained from the hospital, an analysis of those medical records carried out by a doctor from a different hospital, and written statements given by the medical staff who had attended to the applicant's father (see paragraphs 35, 36 and 54 above). The applicant questioned the quality and sufficiency of that material (see paragraph 42 above). The Court of Appeal addressed some of his arguments, in particular, those relating to the analysis of medical records on which the domestic courts had relied and the competence of the doctor who had prepared it (see paragraph 55 above). The Court has no reason to consider the domestic court's reasoning in that respect to be arbitrary.

131. At the same time, it does not escape the Court's attention that certain other arguments which the applicant raised in the domestic proceedings, which contained allegations of specific shortcomings in the healthcare services provided to his father and of discrepancies in the medical records, were not explicitly addressed by the courts (see paragraph 42 above).

132. Irrespective of whether the aforementioned omission may be sufficient in itself to render the civil proceedings ineffective within the meaning of Article 2 of the Convention, the Court reiterates that when assessing the State's compliance with its procedural obligations under that provision, it must assess the domestic legal system taken as a whole (see *Lopes de Sousa Fernandes*, cited above, § 225).

133. In the present case, a pre-trial investigation was opened at the applicant's request while the civil proceedings were pending. In that investigation, the prosecutor ordered an expert assessment which was carried

out by the SFMS. The latter had before it the applicant's father's medical file and the report by the Accreditation Service which had identified certain shortcomings in the work of the hospital (see paragraph 63 above). After examining the documents submitted to it, the SFMS concluded that there had been no causal link between the actions or omissions of the hospital and the death of the applicant's father, and that, having regard to the likely cause of his death, it could not have been avoided (see paragraph 66 above). The applicant did not raise any complaints – either before the domestic authorities or before the Court – regarding the independence or impartiality of the SFMS or its competence to carry out the expert assessment in question, nor did he ever allege that the SFMS may have disregarded any relevant information when carrying out that assessment (see, *mutatis mutandis*, *E.M. and Others v. Romania* (dec.), no. 20192/07, § 51, 3 June 2014).

134. The Court emphasises that it is not for it to speculate, on the basis of the medical information submitted to it, on whether the conclusions of the medical experts on which domestic court decisions were founded were correct (see *Lopes de Sousa Fernandes*, cited above, § 171, and the cases cited therein).

135. Moreover, in the course of the pre-trial investigation, the authorities questioned a nurse working at the hospital who explained why some of the medical records had been filled out in advance (see paragraph 67 above). The prosecutor found such a practice to be inappropriate but not sufficiently dangerous to merit criminal responsibility (see paragraph 70 above). Thus, the Court is satisfied that the domestic authorities established the reason for the impugned discrepancy in the medical records and that that discrepancy in itself did not give grounds to question the adequacy of the treatment provided to the applicant's father.

136. The Court emphasises that the States' procedural obligation under Article 2 of the Convention is not an obligation of result but of means only. Thus, the mere fact that proceedings concerning medical negligence have ended unfavourably for the person concerned does not in itself mean that the respondent State has failed to discharge that obligation (*ibid.*, § 221, and the cases cited therein).

137. Lastly, the applicant complained that the Court of Appeal had not stayed the civil proceedings while the criminal investigation was pending (see paragraph 105 above). However, he did not ask for the civil proceedings to be stayed (see paragraph 45 above) and the domestic law did not provide for an obligation for the courts to stay civil proceedings of their own motion in all cases where a pre-trial investigation had been opened (see paragraph 82 above). Having regard to the entirety of the relevant circumstances, the Court is of the view that the fact that the civil proceedings were not stayed pending the pre-trial investigation did not in itself affect the overall effectiveness of the two sets of domestic proceedings taken together.

138. The Court emphasises that, in the circumstances of the present case, the civil proceedings constituted the principal avenue through which the domestic authorities examined the applicant's allegations of medical negligence and the circumstances of his father's death. These proceedings were accessible, adversarial, and provided the applicant with a reasonable opportunity to present his case. The parallel pre-trial investigation, including the expert assessment obtained therein, served to complement the civil proceedings and further contributed to clarifying the relevant facts. Taken together, these two avenues enabled the authorities to conduct a sufficiently thorough and impartial examination of the circumstances of the applicant's father's death.

139. In the light of the foregoing, the Court concludes that the respondent State complied with its procedural obligations under Article 2 of the Convention. There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention.

Done in English, and notified in writing on 8 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President