



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

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THIRD SECTION

CASE OF LEPARSKIENĖ v. LITHUANIA

(Application no. 4860/02)

JUDGMENT

This version was rectified on 9 July 2009
under Rule 81 of the Rules of the Court

STRASBOURG

7 July 2009

FINAL

07/10/2009

This judgment may be subject to editorial revision.

In the case of Leparskienė v. Lithuania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer, *judges*,

Ineta Ziemeļe, *appointed to sit in respect of Lithuania*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 16 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 4860/02) 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, Mrs Julija Leparskienė (“the applicant”), on 5 November 2001.

2. The applicant was represented by Mr R. Andrikis, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agents, Mrs D. Jočienė and Ms E. Baltutytė.

3. Relying on Article 2 of the Convention, the applicant complained that a police officer had unlawfully deprived her son of his life and that the State had failed to punish him for it adequately. She further maintained that she had been afforded no adequate legal remedy to obtain redress in respect of her son’s death.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). The Government designated John Hedigan, the judge elected in respect of Ireland, to sit as a national judge in this case. As John Hedigan left the Court, the Government appointed Ineta Ziemeļe, the judge elected in respect of Latvia, to sit as an ad hoc judge (Article 27 § 2 of the Convention and Rule 29 § 1)

5. By a decision of 15 November 2007 the Court declared the application admissible.

6. The applicant and the Government each submitted further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 10 May 2001 police officer T.B. and another policeman were attempting to stop a vehicle being driven by the applicant's fifteen-year old son, Justinas Leparskis. Three other persons were in the car with the applicant's son. As the applicant's son did not stop, T.B. fired two warning shots. He then fired a shot towards the wheels of the car from a distance of approximately forty metres. The applicant's son was severely injured as that shot was misfired.

8. The applicant's son was hospitalised in a coma.

9. On 10 May 2001 a prosecutor instituted a criminal investigation into the incident. T.B. was suspected of exceeding official duties (Article 287 of the Criminal Code as then in force).

10. According to the Government, on the same day an initial on-site inspection was carried out and witnesses were questioned.

On 14 May 2001 a forensic medical expert report was ordered to establish how severely J. Leparskis was injured. The report was received on 20 July 2001. On 15 May 2001 police officer T.B. was questioned and his service gun and four bullets were seized; on 16 May the bullet extracted from the head of J. Leparskis was seized from the hospital. On 21 May the authorities ordered the forensic ballistic analysis; it was concluded on 19 September 2001 and established that the bullet extracted from the head of J. Leparskis could have been fired from T.B.'s service gun.

11. On 27 July 2001 the applicant's son died without coming out of the coma.

12. According to the Government, on 27 July 2001 a supplementary forensic expert report was ordered. The report was received the next day. It concluded that J. Leparskis had died from complications caused by the gunshot wound to his head.

13. On an unspecified date criminal proceedings for exceeding official duties and manslaughter were brought against T.B.

14. On 27 September 2001 the prosecutor recognised the applicant as a victim in the criminal case.

15. On 14 March 2003 the Pakruojis District Court found T.B. guilty of manslaughter (Article 109 of the Criminal Code as then in force) and exceeding official duties (Article 287). In particular, it was found that T.B. had fired the three shots without any absolute necessity, in breach of the relevant provisions of the Police Activities Act and various ministerial instructions. The court observed that T.B. had used the gun in the absence of a real threat to the life of a police officer or third persons, and without having made any attempts to verify the identity and the age of the driver of

the vehicle. In addition, it was observed that T.B. had not given the applicant's son any time to react after the two warning shots and had immediately fired the third shot from a rather long distance. T.B. was thus found to be responsible for recklessly depriving the applicant's son of his life. He was sentenced to one year and nine months' imprisonment, fined 1,250 Lithuanian litai (LTL, approximately 361.48 euros (EUR)) and barred from employment with law enforcement authorities for a period of five years. The court also awarded the applicant pecuniary damages against the Ministry of Interior in the amount of LTL 5,216.30 (approximately EUR 1,508.47) for funeral expenses. The court did not examine the applicant's claim for non-pecuniary damage, having ruled that she was entitled to satisfaction of that claim in separate civil proceedings.

16. On 4 June 2003 the Šiauliai Regional Court reclassified the charge of exceeding official duties (Article 287 of the Criminal Code in force until 1 May 2003) to that of abuse of office (Article 228 § 1 of the new Criminal Code, in force since 1 May 2003), finding T.B. guilty on the latter count. The conviction for manslaughter remained unchanged. The court imposed a suspended sentence of two years' imprisonment on T.B. The fine and the ban from employment with law enforcement authorities were also lifted. The court upheld the lower court's conclusion that the applicant had a right to satisfaction of her claim in respect of non-pecuniary damage, but the amount of the award was to be decided in separate civil proceedings.

17. On 20 June 2003, upon entry into force of the above judgment, T.B. was dismissed from his job in the police.

18. The applicant appealed, claiming, *inter alia*, that T.B. should have been punished for murder. In this respect the applicant stated that T.B.'s acts should have been characterised by indirect intent rather than recklessness, as he had executed the criminal acts in a dangerous manner, without any effort on his part to protect the lives of other persons. She also claimed non-pecuniary damages in the amount of LTL 1,000,000.

19. On 28 October 2003 the Supreme Court quashed the above judgment, returning the case for a fresh examination at appeal instance. The Supreme Court ruled in particular that the lower courts had failed to answer the applicant's arguments under Article 6 of the Convention about the effectiveness of the investigation into the death in view of the allegedly mild sentence imposed on T.B. The Supreme Court noted that these complaints might also give rise to issues under Article 2 of the Convention. It was observed however that the applicant's claim for non-pecuniary damage should be examined by civil, not criminal, courts. The Supreme Court also emphasised that the applicant's allegations of murder had not been substantiated, T.B. having committed an offence by negligence rather than intentionally.

20. On 12 January 2004 the Šiauliai Regional Court again found T.B. guilty of manslaughter (under Article 109 § 2 of the old Criminal Code) and

abuse of office (Article 228 § 1 of the new Criminal Code). He was given a sentence of two years and six months' imprisonment. The execution of the sentence was suspended for three years. The applicant's claim of LTL 5,216.30 in reimbursement of pecuniary damage in relation to the funeral of her son was upheld. The court also confirmed that she had a right to an award in respect of non-pecuniary damage, but left the sum to be determined by way of a separate set of civil proceedings. The court further noted:

"The circumstances of the incident have been fully clarified and the evidence rightly assessed. The evidence shows that [T.B.] used his firearm ... with the aim of stopping the vehicle the driver of which had not complied with the lawful requirement to stop; at the moment when [T.B.] used his gun there was no danger to life or limb for him or anyone else, as the car had already driven some forty metres from the point where it had been stopped; furthermore the policemen were not precluded from chasing the offender in the police car, in order to stop him without recourse to firearms. (...) [T.B.] endangered the life of the car passengers, exceeded his official duties and consciously acted in defiance of his duty of care, set out in Article 25 of the Police Activities Act ... which defines the conditions for using firearms as an exceptional measure of coercion. (...)

By contrast, there is no indication that [T.B.] breached Article 25 § 4 of the Police Activities Act, as he had fired his shots at the tyres of the car which had already moved away from the people. Nor is there any evidence that [T.B.] knew about the presence of the minors in the car, that he aimed at causing the death of the car driver or was indifferent to the fact that he might cause it.

[T.B.] had been familiar with all the normative acts regarding his duties, *inter alia* those determining the use of [firearms]; he had undergone shooting training. However, [T.B.] irresponsibly overestimated his skills and acted unlawfully, aiming at the tyres of the car which was swiftly moving away. Such actions were correctly classified as manslaughter."

21. The court found no procedural irregularities in the investigation or trial. As to the alleged bias on the part of the judges, it noted that the applicant had not requested the withdrawal of a particular judge. To the extent that the applicant complained of the excessive length of the proceedings, the Šiauliai Regional Court considered that she had not indicated any substantial periods of inaction by the courts, and that her complaint about the alleged delay in the pre-trial investigation could not be a ground for quashing the lower court decisions, as this could only further prolong the proceedings. It was concluded that these, as well as other complaints of the applicant under Articles 2 and 6 of the Convention, were better suited for examination by way of civil proceedings for non-pecuniary damages.

22. On 13 February 2004 the applicant submitted a cassation appeal against this judgment. By reference to Articles 2 and 6 of the Convention, the applicant reiterated that the proceedings had lasted too long, that the courts had not been impartial, that they had wrongly established the

evidence, that T.B. should have been found guilty of murder, that his punishment had been totally inadequate, and that her claim for non-pecuniary damage should have been allowed by the criminal courts.

23. On 1 June 2004 the Supreme Court dismissed the applicant's cassation appeal. The court ruled that the proceedings had been fair and impartial in compliance with the requirements of Article 6 of the Convention in that the applicant had been provided with all procedural guarantees. Her claims for non-pecuniary damages were duly left to be decided by way of civil proceedings as the criminal procedure rules applicable at the material time provided only for assessment of the pecuniary damage (Article 65 of the old Code of Criminal Procedure). The Supreme Court opined that the length of the proceedings at the appellate instance was justified by the legal and factual complexity of the case. Finally, regarding the severity of the punishment imposed on T.B. the court stated:

“The general grounds for imposition of punishment provided for in Article 54 of the Criminal Code require a court to impose a punishment within the limits provided for in the sanction of an article of the criminal law which enshrines liability for the criminal act; it also requires it to take into consideration the extent to which the activity was dangerous, as well as its motivation and objectives, the form of guilt, the personality of the accused, and the circumstances relieving or aggravating the liability. The [lower] court was following the provisions enshrined in the said norm and did not make a mistake; the court, upon taking into consideration the circumstances positively characterising the personality of the convicted person, reasonably imposed a punishment near the medium of the punishment provided for in the sanction for negligent deprivation of life (...). By suspending the sentence of imprisonment for the negligent crime committed by the convicted person the court was following the rules provided for in Article 75 of the Criminal Code. The punishment imposed is relevant to its purpose (...) and does not contradict the principle of justice. Therefore, there is no ground to conclude that in the present criminal case while imposing punishment on the convicted person criminal law was not applied properly.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Article 109 § 2 of the Criminal Code, as in force at the material time, provided that the act of manslaughter, caused by conscious failure to observe the safety rules (*nužudymas dėl neatsargumo, padarytas dėl sąmoningo atsargumo taisyklių nesilaikymo*), should be punished by imprisonment of up to five years. Article 287 of the Code provided for the criminal offence of exceeding official duties (*tarnybos pareigų viršijimas*).

25. Article 75 of the new Criminal Code, which entered into force on 1 May 2003, allows a court to suspend the execution of the sentence for up to three years if a person who has committed a negligent crime has been sentenced to up to six years of imprisonment. Article 228 § 1 of the Code provides for criminal liability for acts of abuse of office (*piktnaudžiavimas*),

which is punishable by, as alternatives, a ban on working in a certain sphere, a fine, arrest or deprivation of liberty of up to four years.

26. Article 30 of the Constitution stipulates that “a person whose constitutional rights or freedoms are violated shall have the right to apply to court.”

27. Article 65 of the old Code of Criminal Procedure (in force until 30 April 2003) provided that the victim of a crime was entitled to lodge a civil claim for pecuniary damage in the criminal proceedings. The claim was to be examined together with the criminal case. A claim for non-pecuniary damage was to be lodged and examined in separate civil proceedings.

28. The Law of 29 October 2002 on the Procedure for Coming into Force and Implementation of the Criminal Code stipulated that the examination of cases in which the trial had already been commenced at the time of entry into force of the new Code of Criminal Procedure was to be completed in accordance with the rules of the old Code of Criminal Procedure, unless the court decided *a contrario*.

29. Article 109 of the new Code of Criminal Procedure (in force after 1 May 2003) provides that a person who has sustained pecuniary and/or non-pecuniary damage because of a crime is entitled to lodge a civil claim in the criminal proceedings. The court is to adjudicate such a civil claim together with the criminal case. According to Article 115 § 2 of the Code, in exceptional cases, when it is impossible to assess the amount of the civil claim without adjournment of the criminal case or without obtaining additional material, the court, when rendering the judgment, may grant the plaintiff the right to satisfaction of the claim and leave the question of the amount of that claim to be resolved in separate civil proceedings.

30. According to Article 23 § 1 of the Police Activities Act of 17 October 2000, a police officer is entitled to use force, including firearms, only where preliminary measures such as attempts to persuade or the use of “psychological force” such as warning shots have not been effective. He or she must select the means of coercion having regard to the particular circumstances, the type of offence at hand and the individual features of the offender. A police officer must try to avoid serious consequences in using such force.

31. Article 23 § 5 of the above Act stipulates that before using a firearm a police officer must warn the person about his/her intention, to enable him or her to fulfil lawful requirements, except in cases when delaying the use of a firearm poses a threat to the life or limb of the police officer or another person, or when such a warning is impossible.

32. In accordance with Article 23 § 8, the prosecutor is immediately informed about use of force by a police officer that caused death or injury. Pursuant to Article 23 § 9, police officers must undergo special

training and be periodically assessed as to whether they are able to act in situations involving the use of firearms.

33. Article 25 of the Police Activities Act stipulates:

“1. When other coercive measures are ineffective, the police officer shall have the right to use a firearm as an extraordinary measure.

2. The police officer shall have the right to use a firearm against persons in the following cases:

1) when defending himself or another person from an actual or intended criminal attempt which poses a direct threat to life or limb;

2) when attempting to arrest a person who has committed a criminal act and who actively evades arrest, if it is impossible to arrest him/her in any other way, as well as in cases when the person refuses to comply with lawful instructions to put down a weapon or another thing with which it is possible to injure an individual, if a threat is posed to the life or limb of the police officer or another individual and it is impossible to disarm him/her in any other way. ...

3. The police officer shall have the right to use a firearm against a vehicle

4. It shall be prohibited to use a firearm in public gathering places, if it endangers other people; against pregnant women, as well as against persons who are visibly disabled, and against minors, if the police officer knows their age or their appearance corresponds to their age, except in cases when the said persons resist in a manner dangerous to human life or limb ... ”.

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

34. The Government noted at the outset that at the admissibility stage the Court had made no decision about exhaustion of domestic remedies and argued that the applicant had civil remedies at her disposal which she had failed to exercise. In particular, in the criminal proceedings the domestic courts had awarded the applicant compensation in respect of pecuniary damage. However, Article 65 of the Code on Criminal Procedure, in force until 1 May 2003, precluded the courts from deciding in the criminal proceedings on an award in respect of the non-pecuniary damage suffered by the victim of the crime. Consequently, in their judgments and decisions the domestic courts had repeatedly indicated that as regards non-pecuniary damage caused by the death of her son the applicant should institute separate civil proceedings and, furthermore, *expressis verbis* acknowledged

her right to have that claim satisfied. Nonetheless, the applicant had never lodged any such civil claim.

35. The Government further contended that a civil claim for non-pecuniary damages was an effective remedy. To prove that they referred to domestic case-law, namely to a decision adopted by the Court of Appeal on 24 November 2006 in a civil case, by which a civil claimant was awarded non-pecuniary damages amounting to LTL 75,000 (approximately EUR 21,739) from the Chief Police Commissariat, in respect of damage suffered due to a crime – violation of the traffic safety rules causing serious injury to the applicant – committed by a police officer, and of which that officer had previously been convicted in a criminal case. As another example of the relevant domestic case-law the Government submitted a decision of the Court of Appeal of 10 April 2006 granting a civil claim for LTL 100,000 (approximately EUR 28,985) as compensation for non-pecuniary damage suffered by a pupil at a secondary school because of a crime committed by the teacher, who also had previously been convicted in a criminal case of injuring that pupil. Lastly, the Government drew the Court's attention to the decision of the Supreme Court of 12 June 2006, adopted in a civil case, instituted for compensation in respect of non-pecuniary damage suffered due to a crime. The persons responsible for that damage had previously been convicted in a criminal case of causing serious physical injury; the Supreme Court amended the decisions of the lower-instance courts and increased the award of non-pecuniary damage suffered to LTL 47,000 (approximately EUR 13,623). From the above the Government concluded that a separate civil action for non-pecuniary damage which the applicant had suffered due to the death of her son offered reasonable prospects of success and therefore was a domestic remedy which the applicant should have exhausted under Article 35 § 1 of the Convention.

36. The applicant contended that police officer T.B. unjustly deprived her son of his life and that the domestic courts' refusal to resolve her civil claim for redress for non-pecuniary damage sustained by that loss was ambiguous. She insisted that her claim should have been examined in the criminal proceedings, especially taking into account that, in her view, under the rules of the new Code of Criminal Procedure the civil claim in respect of the non-pecuniary damage was to be examined in the criminal case, other than in exceptional circumstances. Moreover, she based her civil claims not only on provisions of the Code of Criminal Procedure, but also on Articles 2 and 13 of the Convention as well as on Article 30 of the Lithuanian Constitution. The applicant argued that she had raised the issue of examination of the civil action in the criminal case at all court instances and therefore had exhausted the available domestic remedies.

37. Lastly, the applicant submitted that the examples of instances when the question of non-pecuniary damage suffered because a crime has been committed has been resolved in separate civil proceedings on which the

Government relied were not related to the violations of Article 2 of the Convention.

38. The Court points out that under Rule 55 of the Rules of Court, “[a]ny plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application”. Turning to the present case it notes that in their observations of 3 February 2004 as to the admissibility the Government drew the Court’s attention to the fact that the domestic courts were still examining a possible violation of Article 2 of the Convention in connection with the death of the applicant’s son. Subsequently in the proceedings the Government raised a preliminary objection as concerns non-exhaustion of the domestic civil remedy in the case. In the special circumstances of this case the Court considers that the Government is not estopped from raising the plea of inadmissibility as concerns the non-exhaustion of domestic remedies.

39. The Court recalls that it has already had occasion to declare that there should be available to the victim’s family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention. Furthermore, in the case of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 97-98, ECHR 2002-II).

40. In so far as the applicant complains that police officer T.B. unjustly deprived her son of his life, the Court notes that the domestic courts have acknowledged that there was no absolute necessity to use lethal force in the manner in which it was applied by police officer T.B., and the Court sees no cause to depart from their conclusions, which were based on their direct knowledge of the facts and domestic law. The Court observes that T.B. was convicted of abuse of office and manslaughter and was subsequently dismissed from the police force.

41. The Court further notes that, in addition to the criminal proceedings which were instituted against T.B. for the manslaughter of her son, the applicant had the opportunity to bring a claim for non-pecuniary damages against the authorities on account of T.B.’s actions (see paragraph 34 above). However, the evidence indicates that the applicant deliberately turned with that request to the criminal courts, notwithstanding that they repeatedly urged her to raise such a claim in separate civil proceedings and, furthermore, acknowledged her the right to satisfaction of that claim (see paragraphs 15, 20 and 23 above). Moreover, as is apparent from the domestic case-law examples the Government provided, a claim for

compensation in the civil courts would have had a fair prospect of success (see paragraph 35 above). Yet, the applicant did not avail herself of that opportunity. Accordingly, the Court considers that the applicant has not fully exhausted the remedies which were available to her and it therefore accepts the Government's objection as to her failure to exhaust the domestic remedies in connection with alleged violation of Article 2 under its substantive limb.

42. The Court observes, however, that the Government's preliminary objection concerns only the matter of compensation for the death of the applicant's son and is not related to other aspects of Article 2, namely, the State's positive obligation to conduct an effective investigation which arises once a loss of life is brought to its attention (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 94, 4 May 2001) and is independent of any claim for compensation. It follows, that in this part the Government's objection must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

A. The parties' submissions

1. The applicant

43. The applicant alleged a violation of Article 2 of the Convention, which provides 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.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

44. The applicant complained that the investigation of the circumstances surrounding the shooting was not speedy, that she was not properly informed about its progress, that the authorities refused to treat the death of her son as murder as opposed to manslaughter and that T.B.'s punishment was inadequate.

2. The Government

45. The Government submitted that the domestic courts had not allowed the death of the applicant's son to go unpunished. They recognised that according to the legislation regulating the use of firearms the use of lethal force by police officer T.B. had not been justified in the present case and consequently convicted him of abuse of office and manslaughter. The police officer was sentenced to two years and six months' imprisonment, suspended for three years. Furthermore, he was dismissed from service and never re-employed by the Police Department or in any other post in public service.

46. Regarding the State's obligation to investigate the death as required by Article 2 of the Convention the Government contended that the preliminary investigation of the criminal case had been timely and efficient. The criminal case concerning the incident was instituted by the prosecutor on the day of the shooting. The very same day and the following days various procedural steps were undertaken in this respect, such as an initial on-site inspection, official inquiry, examination of the scene of the crime, questioning of witnesses, and ballistic and medical examinations. The pre-trial investigation was thorough and objective and the case was never returned to the prosecutors for further investigative measures; the courts were therefore able to duly establish all the relevant facts of the incident and secure the police officer's full accountability for his role in the tragedy. Lastly, the Government argued that there was no manifest disproportion between the gravity of the crime and the punishment imposed on T.B. Relying on the above they concluded that the State had respected the requirements enshrined in Article 2 of the Convention.

B. The Court's assessment

1. General principles

47. The Court recalls 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. The essential purpose of such 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. Nevertheless, the Court would emphasise that the obligation to investigate is one of means, not of

result (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 107, 4 May 2001).

48. This investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition, and effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances, or was otherwise unlawful (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; the aforementioned *Hugh Jordan v. the United Kingdom*, §§ 105-109; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 73 and 74, ECHR 2004-XI; and *Huohvanainen v. Finland*, no. 57389/00, § 95, 13 March 2007).

49. The investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case, or the person responsible, is liable to fall foul of the required measure of effectiveness (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 113, ECHR 2005-VII, and, *a contrario*, *Huohvanainen*, cited above, §§ 110-115). Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63). That said, the requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law (*Öneryıldız v. Turkey* [GC], no. 48939/99, § 95, ECHR 2004-XII).

50. It should in no way be inferred from the foregoing that Article 2 may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Öneryıldız*, cited above, § 96).

On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see *Öneryıldız*, cited above, § 96).

2. *Application of these principles to the present case*

51. As noted above, the positive obligation inherent in Article 2 of the Convention requires an investigation capable of leading to the determination of whether the force used was or was not justified in the circumstances (see, for example, *Hugh Jordan*, cited above, § 107). In this connection the Court observes that in the present case the prosecutor on his own initiative started an inquiry into the circumstances of the incident on the very day of the shooting. What is more, on the same and the following days many other investigative actions were carried out (see paragraphs 9 and 10 above). Accordingly, it can be considered that the investigation proceeded at a good pace. The Court also notes that on 27 September 2001 the prosecutor recognised the applicant as the victim of the crime, thus conferring upon her the status of a participant in the criminal proceedings and granting her access to the investigation and the trial. Moreover, it can be deemed that the official investigation was proper and effective, since it allowed the establishment both of the cause of death of the applicant's son and the identity of the person responsible for it. As regards the trial aspect, the first-instance court convicted T.B. on 14 March 2003 and the trial came to an end with the Supreme Court's decision of 1 June 2004, which, in the circumstances of the case, the Court considers to be reasonably expeditious.

52. The applicant's submission concerning the fact that police officer T.B. should have been convicted of murder and not manslaughter and that his punishment was inadequate cannot succeed in the Court's view. In this connection, it reiterates that Article 2 does not give an applicant the right to have a third party prosecuted or sentenced for a criminal offence or an obligation for the prosecution to result in conviction, or indeed in a particular sentence (see paragraph 50 above). On the other hand, the Court would also state that while it is true that it is not its task to address issues of domestic law concerning individual criminal responsibility, or to deliver guilty or not guilty verdicts, in order to determine whether the respondent Government have fulfilled their international law responsibility under the Convention the Court must have regard to the Lithuanian courts' considerations while convicting the police officer and to the punishment imposed on him as a result. While doing that, the Court should grant substantial deference to the national courts in the choice of appropriate sanctions for the death caused by the State agent. However, it must still exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 66, 8 April 2008).

53. Against this background the Court observes that the domestic courts had sufficient regard to the extremely serious consequences of the incident and gave substantial reasoning as to why they had characterised the act committed by the officer as manslaughter as well as specified grounds for imposing the medium term of imprisonment allowed by law and for opting

to suspend it (see paragraphs 20 and 23 above). In particular, the criminal proceedings did concern the protection of the right to life, given that the State agent was prosecuted and subsequently convicted not only of abuse of office but also of manslaughter (see, *a contrario*, *Öneryıldız*, cited above, § 116, ECHR 2004-XII), and sentenced to two years and six months' imprisonment. The Court cannot overlook the fact that the execution of that sentence was suspended; however it was suspended for three years, which is the maximum time for suspension allowed by Article 75 of the new Criminal Code. What is more, in the past the Court has found a suspended sentence in cases which concerned the authorities' attempt to arrest a suspect not to be in contradiction *per se* with the State's obligation to punish those who unlawfully take the life of another (see *Dölek v. Turkey*, no. 39541/98, §§ 79-83, 2 October 2007, and, *a contrario*, *Ali and Ayşe Duran*, cited above, §§ 66-72). The Court also notes that it has previously found a violation of Article 2 in cases where police officers whose actions resulted in death continued serving in the police (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 63, 20 December 2007). However, in the instant case the authorities dismissed T.B. from the police and no indication was given to the Court that he has ever been re-employed by the police or other law enforcement authorities¹. In the light of the foregoing, the Court cannot hold that the punishment which the State imposed on T.B. was disproportionate in view of the gravity of the act he had committed.

54. Taking into account all of the above the Court concludes that there has been no violation of Article 2 of the Convention in its procedural limb.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that, by reason of the failure to exhaust domestic remedies, it is unable to take cognisance of the merits of the case as regards the substantive aspect of Article 2 of the Convention;
2. *Dismisses* the Government's preliminary objection concerning the exhaustion of civil domestic remedies as regards the procedural aspect of Article 2 of the Convention;

¹ Rectified on 9 July 2009: the text was "However, in the instant case the authorities dismissed T.B. from the police and no indication was given to the Court that the applicant has ever been re-employed by the police or other law enforcement authorities."

3. *Holds* that there has been no procedural violation of Article 2 of the Convention.

Done in English, and notified in writing on 7 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President