

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

SECOND SECTION

CASE OF DACHNEVIČ v. LITHUANIA

(Application no. 41338/06)

JUDGMENT

STRASBOURG

20 November 2012

FINAL

20/02/2013

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



In the case of Dachnevič v. Lithuania,

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

Ineta Ziemele, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 41338/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Genoefa Dachnevič ("the applicant"), on 2 October 2006.

2. The applicant was represented by Mr E. Bušmovičius, a lawyer practising in Šalčininkai. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that because of her limited knowledge of legal matters, her inability to speak Lithuanian and, to an extent, her age, she had not had a fair hearing of her civil claim for damages, in breach of Articles 6 § 1 and 14 of the Convention.

4. On 10 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1944 and lives in Šalčininkai.

6. In May 2002 the applicant approached the Children's Rights Protection Agency of Šalčininkai District Council for a determination of whether she could become the legal guardian of her grandson, J.B. The

Government specified that the Agency had provided the applicant with the information requested, but the applicant had never submitted an official application for guardianship.

7. On 26 April 2003 M.B., who did not possess a driver's licence, was driving a car and caused a car accident. As a consequence, the applicant's grandson J.B., who had been a passenger in the car, died from his injuries. He was 16 years old. Two other passengers were seriously hurt.

8. The applicant was granted the status of a victim in criminal proceedings in respect of M.B. When being questioned by an investigator on 10 and 20 June 2003, she stated that she did not speak the Lithuanian language. On the latter date, the applicant submitted a civil claim which was written in Russian and translated by a translator from a police station. She claimed 12,311 Lithuanian litai (LTL) in respect of pecuniary damage, listing expenses which she had incurred in connection with her grandson's funeral. The applicant also claimed LTL 5,000 in respect of non-pecuniary damage.

9. On 17 September 2004 the Šalčininkai District Court, following criminal proceedings, found M.B. guilty of dangerous driving which had resulted in the death of a person (Article 281 § 5 of the Criminal Code). He was sentenced to four years' imprisonment, but the execution of the sentence was suspended for two years. The court did not pronounce on whether M.B. had been driving while intoxicated.

During the hearing, where the applicant, an interpreter, M.B. and his lawyer were present, the applicant asked that LTL 15,000 be awarded to her in compensation for pecuniary and non-pecuniary damage. The prosecutor asked the court to grant the request. M.B. stated that he could pay the applicant LTL 500 each month.

The criminal court left the applicant's civil claim to be examined in separate civil proceedings.

10. On 5 April 2005 the applicant instituted civil proceedings, claiming LTL 11,260 for pecuniary and LTL 3,740 for non-pecuniary damage. She stated that before his death her grandson had lived with her, as his mother lived in the Republic of Kazakhstan and his father had another family. M.B.'s death had caused the applicant severe emotional distress. In the applicant's understanding, the criminal court had already awarded her the sum of LTL 15,000 in disposing of the criminal proceedings. She noted that although two years had passed since the car accident, M.B. had not paid her the money. The applicant also referred to the possibility that, in the event that M.B. was in a difficult financial situation, compensation for the damage she had sustained might be paid to her in several instalments rather than as a lump sum.

The Government have provided the Court with an invoice from a law firm to the effect that on 6 April 2005 the applicant paid LTL 30 for "legal services".

11. On 2 June 2005 the applicant presented the court with an estimate of her loss in connection with her grandson's death. She claimed LTL 15,000 in total. That sum consisted of LTL 11,260 for pecuniary damage, which included a detailed calculation of her grandson's burial costs, and LTL 3,740 in compensation for non-pecuniary damage.

12. In a written response M.B. asked the court to grant the claim in part and to award the applicant LTL 4,000.

13. Seeing the potential for the parties to reach a friendly settlement, on 14 June 2005 the judge held a preliminary hearing. The applicant, an interpreter, M.B. and his lawyer were present. As is evident from the transcript of the hearing, after the judge had explained the parties' rights to them, the applicant asked the court to include a calculation of her expenses in the case file. M.B.'s lawyer, without making any other observations or statements, asked that documents concerning M.B.'s salary and family situation also be included in the file. Both requests were granted.

When asked to present her arguments and claims on the merits, the applicant stated that during the criminal proceedings she, the prosecutor, M.B. and his lawyer had agreed that M.B. would pay her LTL 15,000 in compensation under both heads. However, M.B. had paid nothing so far. The applicant argued that her financial situation was not good. She had no further requests.

M.B. acknowledged the civil claim in part, but stated that the sum of LTL 15,000 was too high.

The court held that the case should be decided following a court hearing with the participation of the parties and an interpreter.

14. On 6 July 2005 the applicant sent the court a letter, raising the claim for compensation in respect of non-pecuniary damage by LTL 5,000 and requesting that she be awarded LTL 8,740 in total under that head. She noted that her family had been suffering for more than two years and implied that no steps towards reconciliation had been taken on M.B.'s part.

15. According to the transcript of the Šalčininkai District Court hearing of 8 July 2005, the applicant, an interpreter and the lawyer for M.B. took part in that hearing. It was also noted that the judge had explained the parties' rights to them and that the parties understood them. The judge also asked the parties to put forward any requests, if they had any. The applicant asked the court to include her modified compensation claim in the case file. Given that the other party did not object, the judge accepted the modified claim.

When hearing the case on the merits, the applicant again explained to the court that during the criminal proceedings the parties had come to an oral agreement that M.B. would pay her LTL 15,000, but to that day he had paid nothing. She presented a very detailed calculation of her expenses, based on invoices, for her grandson's funeral and headstone construction costs. All in all, the applicant asked the court to award her the sum of LTL 11,260 in

compensation for pecuniary damage and LTL 3,740 in compensation for non-pecuniary damage.

The lawyer for M.B. acknowledged that, given that her client had already been found guilty in criminal proceedings, only the question of damages remained. She also accepted that the applicant had suffered non-pecuniary damage because of her grandson's death. That being so, the lawyer asked the court to grant the applicant's civil claim in part and to award her payment of the costs which were justified by invoices. As to non-pecuniary damage, the lawyer asked the court to make an award which would be reasonable and fair, taking into account the economic situation in Lithuania and the fact that M.B. only had a low salary and had no other property.

The judge noted that the court's decision would be announced on 12 July 2005.

16. On 12 July 2005 the Šalčininkai District Court granted the applicant's claim in part. The court took notice of M.B.'s conviction for dangerous driving and held that, consequently, it was not necessary to prove his liability in the civil proceedings. M.B. was ordered to fully compensate the pecuniary damage he had caused to the applicant by her grandson's death. Having had regard to the documents before it, the court awarded the applicant LTL 7,936 in compensation for pecuniary damage.

17. As to non-pecuniary damage, the Šalčininkai District Court took note of the applicant's claim that the loss of her grandson had caused her great mental suffering. For the court, it was nonetheless important to point out that the car accident had been caused by M.B.'s recklessness, and not deliberately. It was also relevant that M.B. was relatively poor: he had a job but his salary was low (the court did not specify the level of salary in the decision), and he had no other property or income. Moreover, M.B. was a young person, therefore "the amount of compensation was not to ruin his life". Relying on the above arguments, the Šalčininkai District Court awarded the applicant LTL 3,000 in compensation for non-pecuniary damage.

18. The applicant appealed, arguing that the award of damages was too low and asking that the case be remitted to the first-instance court for fresh examination, "in accordance with Article 326 § 1 (4) of the Code of Civil Procedure". She submitted, with references to specific provisions of that Code, that the first-instance court had breached the principle of adversarial proceedings, the principle of the parties' procedural equality and a person's right to State legal aid. The applicant argued that she, as a Russian-speaking person of old age and little education, had not been able to properly exercise her rights at the hearing and effectively assert her claim. Neither had she been able to effectively support her claim by evidence.

19. In her appeal, the applicant also wrote that the judge hearing her case at the Šalčininkai District Court, just before the preliminary hearing concerning her claim and without noting it down in the transcript, had

suggested to her that she find a lawyer. According to the applicant, the lawyer she approached had asked her to pay LTL 2,000 for legal services. The applicant had no such money and had therefore had to represent herself before the court of first instance. According to her, the same lawyer in fact had represented M.B. before the court. Only after the first-instance court had adopted the decision on the merits had the applicant found out that she had had the right to free legal aid, paid for by the State. In her view, had she had a lawyer, she would have been in a much better position to defend her interests and to obtain a court decision that would have fulfilled her expectations.

20. The appeal hearing before the Vilnius Regional Court took place on 25 October 2005, in the presence of the applicant and an interpreter. Neither M.B. nor his lawyer took part in that hearing, although M.B. had been informed of its date. As is evident from the transcript of the hearing, after the presiding judge explained the applicant's rights to her, the applicant asked the court to admit in evidence two documents about her and her husband's state of health. The request was granted. The applicant also submitted that she and her husband had been raising their grandson, J.B., as of 2001. After his death, there was no one to help them in the household. The applicant asked the court to grant her civil claim on the basis of the submissions that she had already made in writing.

21. By a ruling of 8 November 2005, the Vilnius Regional Court dismissed the applicant's appeal. The court noted that at hearings on 14 June and 8 July 2005 the first-instance court had explained the applicant's procedural rights to her, in the presence of an interpreter, and that the applicant had understood those rights. There was no information in the case file leading to the conclusion that the Šalčininkai District Court had breached the rules of civil procedure or the principles mentioned by the applicant. The court held that the applicant's suggestion that her claim would have been fully granted if she had had a lawyer was unfounded, as a lawyer's participation in proceedings could not guarantee a favourable outcome. Moreover, the fact that M.B. had been represented by a lawyer with whom the applicant had failed to conclude an agreement to represent her did not affect the lawfulness and fairness of the decision the first-instance court had adopted.

22. The Vilnius Regional Court noted that before the accident, the applicant's grandson J.B. had lived with her for a couple of years and had often helped her, and that she had indeed lost the opportunity to communicate with him and to receive help from him. Nonetheless, the compensation award of LTL 3,000 for non-pecuniary damage which the first-instance court had made was reasonable. The lower court had also been correct in taking into account the fact that the applicant's grandson had died because of M.B.'s recklessness and not because of a premeditated crime, as well as M.B.'s difficult financial situation. Lastly, the Vilnius Regional

Court found that the written evidence about the applicant's state of health that she had submitted to the appellate court did not give grounds to annul the first-instance court's decision.

23. On 7 February 2006 the applicant submitted an appeal on points of law, drafted by a lawyer. She reiterated her argument that because she was a Russian-speaking person of old age, poor health and with little education, she had been unable to protect her interests properly in court without professional legal assistance. The applicant drew the Supreme Court's attention to its ruling of 7 December 2005 (see paragraph 29 below), arguing that the lower courts should have taken the above factors into account. She also argued that the lower courts had wrongly established that M.B. had caused the car accident merely by not being careful. In the applicant's view, M.B. had been openly reckless: he had had no driving licence and had been speeding. She did not argue that M.B. had been driving drunk. The applicant asked the Supreme Court to grant her civil claim in full and to award her the money she had paid for legal representation.

M.B. did not lodge a response to the applicant's appeal on points of law.

24. On 15 May 2006 the Supreme Court, in written proceedings, dismissed the applicant's appeal on points of law. It noted that non-pecuniary damage was always to be compensated when a loss of life had occurred because of a crime. In this case, M.B. had not questioned his liability, the dispute thus concerning only the sum to be awarded in compensation for non-pecuniary damage. The Supreme Court also observed that the applicant's grandson had died not because of M.B.'s premeditated actions, but because of his being reckless when driving and violating traffic rules. The lower courts had taken all the circumstances into account when assessing the amount of compensation. It was also noteworthy that the award of LTL 3,000 was close to the initial sum that the applicant had asked for in bringing the claim on 5 April 2005. Only later had she raised that claim by LTL 5,000 (paragraph 14 above). Should the Supreme Court raise the amount of compensation, it would mean re-evaluating the facts of the case *de novo*, and this was not within the competence of that court.

The Supreme Court did not pronounce on the applicant's claim that she had not been in a position to effectively defend her interests before the first-instance and appellate courts.

25. In response to a request for information by the Government, on 8 June 2011 Šalčininkai Council wrote that people living in the municipality are informed of free legal aid via a local newspaper, published in both the Lithuanian and Russian languages. They can also obtain leaflets on the subject at the council's offices. Lastly, information about free legal aid is presented on billboards at the Šalčininkai District Court. Should a person request State legal aid, he or she can submit such a request without necessarily having to do so in the Lithuanian language.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As to parties' rights and obligations in the context of civil proceedings

26. The Code of Civil Procedure (hereinafter – "the CCP") provides that court proceedings are conducted in the country's official language, that is, Lithuanian (Article 11). Civil proceedings are adversarial and each party must prove the facts it relies upon (Article 12).

27. Practice direction no. A3-112 of the Supreme Court of 7 October 2004 reads as follows:

> "... The limits of a civil claim are defined by the ... entirety of the material legal basis [for the claim] indicated to the court (the subject of the claim) and by the evidence with which the requirements [of the law] are fulfilled (the factual basis of the claim). Since, according to Article 42 § 1 of the CCP, only the plaintiff has the right to change the subject or the basis of the civil claim, [or] to increase or decrease the claim, the court when adopting a procedural decision may not overstep the limits of the civil claim; i.e. may not change the subject of the civil claim (the court may not adjudge something that was not requested by the plaintiff (*extra petita*) or adjudge a higher amount than was requested (*ultra petita*), nor change the basis of the civil claim (in its decision the court cannot rely on facts that were not indicated by the plaintiff or evidence that the case file does not contain) (Article 265 § 2 of the CCP))."

28. The Supreme Court's ruling of 20 December 1999 in civil case no. 3K-3-904/1999 reads as follows:

> "... The principle of equality of arms has an immediate connection with the fundamental principles of civil proceedings – those of adversarial proceedings and control of the litigation by the parties (*dispozityviškumas*). It has been established by the CCP that all civil cases in all courts shall be examined in accordance with the principle of adversarial proceedings. This means that all the circumstances of the case shall be proved by the parties, and the court, taking into consideration the evidence provided by them, only assesses the evidence, establishes the circumstances of the case and applies the law. Pursuant to the CCP, each party has to prove the circumstances on which their claims and responses are based. The court thus does not examine facts or collect evidence on its own initiative, but has to explain the parties' rights to them and equally assist them in exercising those rights when the parties are in need of such assistance (for example, to obtain certain evidence on a party's request, when that party does not have access to such evidence). The court however is not entitled to take the side of one of the parties and help [that party] to collect evidence, as in such a case not only would the principle of adversarial proceedings, but also the principles of equality of arms and impartiality of the court be violated ..."

29. On 7 December 2005 the Supreme Court, when assessing the pecuniary damage a claimant had sustained as a consequence of her injury during a car accident, noted that the claimant's personality, age and state of health were circumstances to be taken into consideration when assessing her

capacity to collect and present evidence (ruling in civil case no. 3K-3-643/2005).

30. On the issue of explaining the parties' rights, in its ruling of 23 June 1999 in civil case no. 3K-3-323/1999 the Supreme Court held:

> "... The courts are bound by the CCP to explain to the persons taking part in the proceedings their rights and obligations ... Such [an] obligation on the court, however, does not mean that the court is bound to indicate what specific requests a party should submit or what specific means of defence against a civil claim a party should use in a particular case ..."

31. If the presiding judge considers that a party to civil proceedings is incapable of adequately protecting its rights, he or she may suggest that that party obtain legal representation (Article 161 of the CCP).

32. According to Article 182 § 3 of the CCP, in civil proceedings it is not necessary to prove *de novo* facts that have been proved in criminal proceedings in which a court judgment has entered into force.

An appellate court may quash the first-instance court's decision in part or in its entirety and refer the case for fresh examination (Article 326 § 1 (4)).

An appeal on points of law must be drafted by a lawyer (Article 347 § 3). The court reviewing such an appeal is bound by the facts established by lower courts and may only decide questions of law (Article 353 § 1).

33. Free legal aid is regulated by the Law on State Legal Aid. It is provided by, *inter alia*, State-funded legal aid services ("Services"), municipal authorities and the Lithuanian Bar. Each municipal authority and Service must regularly inform local residents about the possibility of receiving free legal aid. The law defines two categories of legal aid. Primary legal aid, that is the provision of legal information, legal advice, and drafting of documents to be submitted to municipal authorities and State institutions, is provided for at the municipal level. When a person wishes to receive secondary legal aid, which consists of drafting procedural documents and representation in court, he or she must address the Service of that court's geographical area and prove his or her eligibility, which depends on the individual's financial means.

34. Pursuant to Article 281 § 5 of the Criminal Code, a person who has caused a car accident that has resulted in the death of a person may be punished by deprivation of liberty for up to eight years.

B. As to compensation for pecuniary and non-pecuniary damage

35. Article 6.263 of the Civil Code provides that pecuniary loss resulting from any bodily or property damage caused to another person and also, in cases established by the law, non-pecuniary damage must be fully compensated by the person liable.

36. Under Article 6.250 of the Civil Code, non-pecuniary damage is deemed to be a person's suffering, emotional distress, inconvenience,

mental shock, emotional depression, diminution of the chance to associate with others, and so on, as evaluated by a court in monetary terms. Non-pecuniary damage is to be compensated in all cases where it has occurred due to crime, injury to health or loss of life, as well as in other cases provided for by law. In assessing the amount of non-pecuniary damage, a court must take into consideration the consequences of such damage sustained, the extent to which the person who caused the damage was at fault, his financial status and any other circumstances of importance for the case, in addition to the criteria of good faith, fairness and reasonableness.

37. In their observations on the admissibility and merits the Government provided four examples of domestic case-law regarding compensation for wrongful death. They noted the 17 May 2005 decision of the Court of Appeal in case no. 2A-138/2005, wherein compensation in the sum of LTL 70,000 was awarded to each of two children whose father had died in a car accident; LTL 50,000 was awarded to his spouse and LTL 25,000 to each of his parents. In addition, the court awarded monthly maintenance costs for the children. The defendant in that case was the Chancellery of the Lithuanian Parliament, whose driver had caused the accident.

By a decision of 4 October 2004 in civil case no. 3-3K-511/2004, the Supreme Court awarded LTL 50,000 each in respect of non-pecuniary damage to two minor children and their grandmother, whose mother and daughter, respectively, had died because of medical malpractice. Compensation for pecuniary damage in the sum of LTL 7,053 was also awarded. The court awarded LTL 145 per month to each of the children until they reached the age of majority.

By a ruling of 26 April 2005 in civil case no. 3K-7-159/2005, the Supreme Court awarded the sum of LTL 7,000 in compensation for non-pecuniary damage to a mother whose son had been killed in a car accident. The sum of LTL 8,000 was awarded to compensate pecuniary loss.

Lastly, the Government referred to the ruling of 28 August 2007 in civil case no. 2A-362/2007 by the Court of Appeal, where LTL 5,000 was awarded in compensation for non-pecuniary damage to the claimant, whose mother had been murdered. The court noted that the son was not in close contact with his mother.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant complained that because of her limited knowledge of legal matters, her linguistic handicap and, to an extent, her age, she had not had a fair hearing of her civil case, in breach of Articles 6 § 1 and 14 of the Convention.

39. The Court considers that the complaint falls to be examined under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The submissions by the parties

1. The applicant

40. The applicant argued that she had not had a fair hearing of her case. She submitted that her relationship with her grandson J.B. had been very close, given the fact that his parents had avoided their parental responsibilities and that J.B. had lived with her. His death had caused her great mental suffering. Yet, when assessing the circumstances of her civil claim for damages, the Lithuanian courts had not ensured that the principles of adversarial proceedings and equality of arms were adhered to. Both at the stage of the criminal proceedings and during the civil litigation M.B. had been represented by a lawyer and thus had been able to effectively exercise his rights by responding to the applicant's claim. In contrast, the applicant, being of old age, in poor health and a Russian speaker, having no understanding of legal matters, had been unable to use all the means theoretically available to her by law. She had pointed this out to the appellate and supreme courts, but with no success. For the applicant, such procedural inequality in a case entailing a great emotional toll had been in breach of the principle of adversarial proceedings.

41. The applicant also submitted that one did not have to be a professional lawyer to understand that the presence of a lawyer during proceedings guaranteed that a person could make proper use of his or her rights during litigation. However, she had not been granted legal aid.

2. The Government

42. The Government argued that the applicant had been fully capable of arguing her case before the Lithuanian courts. She had been present at the court hearings and had exercised her procedural rights actively by giving

explanations, submitting requests and providing evidence. They observed that there had been few hearings in the applicant's civil case – a preliminary hearing, one hearing at first instance and one on appeal. It was also noteworthy that at the latter hearing only the applicant had taken part and given explanations; neither M.B. nor his lawyer had been present.

43. For the Government, the applicant's civil claim for damages had not been complicated. The defendant, M.B., had never contested his liability, which, moreover, had been proven by the court's judgment in the criminal proceedings and had therefore needed no further substantiation. Nor had the defendant or his lawyer contested the fact that damage had been caused to the applicant. The only issue in dispute in the civil proceedings had been the sum to be awarded in compensation, which the domestic courts had been required to assess on the basis of the evidence before them and taking into account the individual circumstances of the applicant's case.

44. The Government were critical as to the applicant's submission about the influence of her age, inability to speak Lithuanian and limited knowledge of legal matters on her ability to submit evidence and prove her claim. At the time of the civil proceedings the applicant was 61 years old and this in itself did not presuppose any difficulties as to her understanding her procedural rights. As to the applicant's argument about her being a Russian speaker, the Government observed that an interpreter had taken part in every court hearing, thus allowing the applicant to make use of her procedural rights. Lastly, as regards the applicant's argument about her limited knowledge of legal matters, the Government submitted that the applicant had had legal assistance for the preparation of her civil claim submitted on 5 April 2005, as well as in connection with her appeal on points of law. Moreover, from the content of the applicant's statement of appeal, it could be concluded that it had been drafted by a lawyer. On the other hand, had it not been written by a lawyer, the applicant could not claim that she had had a limited knowledge of legal matters, as the opposite conclusion derived from the content of the statement of appeal, wherein the applicant had, amongst other things, extensively referred to provisions and legal principles of Lithuanian law.

45. For the Government, contrary to the facts in *Steel and Morris* (*Steel and Morris v. the United Kingdom*, no. 68416/01, § 63, ECHR 2005-II), not only had the proceedings in the present case been much simpler, but the procedural status of the applicant had also been different, in that the applicant, who had herself initiated court proceedings for redress, had not been a defendant but rather a claimant. Therefore, she had not been in a more vulnerable situation than the opposing party.

46. The Government admitted that the right to State legal aid had not been explained to the applicant by the civil court. However, in their view, the Code of Civil Procedure did not expressly provide for an obligation on a court to instruct the parties to proceedings of such a right. Neither could a

right to State legal aid be regarded as one of the procedural rights of the parties. Article 161 of the CCP merely provides that a presiding judge may suggest that a party obtain legal representation in the proceedings, should he or she consider that party to be incapable of adequately protecting his or her rights. This right of a court, as opposed to an obligation upon it, is to be exercised in compliance with the other principles of civil proceedings, such as the principle that the parties control the litigation (principle of disposition), and after having assessed the particular circumstances of each case. Above all, the applicant herself had not made any submissions to the civil court of first instance about her inability to submit certain evidence or inability to represent herself effectively, in which case the court could have examined such submissions and possibly advised the applicant to seek legal representation. However, as was clear from the case file, the applicant had failed to indicate any difficulties of such a kind. Moreover, the case file did not contain any indications as to the applicant's inability to state her case effectively or provide evidence.

47. On this last point the Government noted that, once the criminal proceedings regarding her grandson's death had been instituted, the applicant had coherently and consistently sought redress for the damage she had suffered. The applicant's claim had not varied significantly throughout the course of the criminal and civil proceedings, regardless of whether it had been formulated by a lawyer, or, possibly, by herself. The major part of her claim had been granted by the domestic courts. There were thus no indications of the alleged inequality between the parties or the alleged difficulty for the applicant to prove her claim. On the matter of free legal aid, it was also noteworthy that information on how to apply for it had been accessible to the applicant (see paragraph 25 above).

48. At the Court's request, the Government addressed the Lithuanian courts' practice as regards compensation awarded in "wrongful death" cases, which, in their view, showed that the sums awarded in respect of pecuniary and non-pecuniary damage depended on the particular circumstances of each case. When pecuniary damage was at issue, including claims for maintenance costs, the parties normally had to provide material evidence to substantiate their claims. As regards awards for compensation in respect of non-pecuniary damage, it was not possible to generalise the case-law, because the entirety of the criteria determining the amount of compensation awarded had to be assessed in each specific case, and the criteria, their importance and the correlation among them could differ in individual cases.

49. That being so, certain trends could be observed: when the claimant was a parent, the compensation awarded was usually higher when the deceased person was a minor child or a child who had reached the age of majority but lived with his or her parents and had a close relationship with them, regard being had to the emotional link between the claimant and the

deceased. It was understood that adult children who lived separately from their parents or the parents of such children who were not in close contact would experience their death with less severe psychological and emotional consequences. Nonetheless, the domestic courts would always take the individual circumstances of each case into consideration and certain exceptions were possible. It had, however, to be emphasised that cases in which the claimant was a grandparent or a grandchild of the deceased person were very rare in Lithuanian case-law.

50. For the Government, the sum awarded to the applicant had been comparable to the sums awarded in similar cases by the domestic courts (paragraph 37 above). All the relevant circumstances had been taken into consideration, namely the applicant's explanations as to the nature and closeness of her relationship with her grandson (they had lived together for less than two years), the documentary evidence presented by both parties, and the degree of M.B.'s guilt. Most importantly, the amount awarded in compensation had not differed significantly from the amount initially requested by the applicant: the major part of her claim had been satisfied.

51. In the light of the above considerations, the Government submitted that the applicant had been granted a fair hearing in the determination of her civil rights under Article 6 § 1 of the Convention and that the principles of a fair hearing, including those of equality of arms and adversarial proceedings, had been respected.

B. The Court's assessment

1. Admissibility

52. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

53. The Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective. This is particularly so as regards the right of access to court in view of the prominent place held in a democratic society by the right to a fair trial (see *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; *Bertuzzi v. France*, no. 36378/97, § 24, ECHR 2003-III). It is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the

courts and that he or she is able to enjoy equality of arms with the opposing side (see, among many other examples, *De Haes and Gijsels v. Belgium*, 24 February 1997, § 53, *Reports of Judgments and Decisions* 1997-I; *Steel and Morris*, cited above, § 59).

54. The Court further recalls that, despite the absence of a provision similar to Article 6 § 3 (c) of the Convention in the context of civil litigation, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for effective access to court, either because legal representation is rendered compulsory, or by reason of the complexity of the procedure or of the case (see *McVicar v. the United Kingdom*, no. 46311/99, § 47, ECHR 2002-III; *Laskowska v. Poland*, no. 77765/01, § 51, 13 March 2007).

55. However, as the *Airey* case itself made clear (§§ 24 and 26), Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants a right of effective access to court. The question whether or not that Article requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case and, in particular, upon whether the individual would be able to present his case properly and satisfactorily without the assistance of a lawyer (see *McVicar*, cited above, § 48). In any event, it is not the Court's function to indicate, let alone dictate, which measures should be taken by the State; all that the Convention requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Article 6 § 1 (see, *mutatis mutandis*, *Airey*, cited above, § 26).

(b) Application of the above principles to the present case

56. The Court must examine the facts of the present case with reference to the above criteria.

57. In the first place, as regards what was at stake for the applicant, it is true that, in contrast to certain earlier cases where the Court has found legal assistance to have been necessary for a fair hearing, the proceedings in issue here were not determinative for the applicant's future family rights and relationships (see *Airey*, cited above, and *P., C. and S. v. the United Kingdom*, no. 56547/00, ECHR 2002-VI). In the instant case, the applicant had claimed damages for the wrongful death of her grandson. The Court also gives some weight to the Government's argument that, unlike in *Steel and Morris* (cited above, § 63), the applicant in the instant case was the claimant, and not a defendant. In other words, it was the applicant who chose to commence the proceedings for damages.

58. Secondly, as to the complexity of the civil proceedings for damages, the Court considers, like the Government, that the applicant's case was legally straightforward. Given that M.B.'s liability for dangerous driving had already been proved in the criminal proceedings, the civil proceedings initiated by the applicant required her to prove that her grandson's death had

caused her suffering and enable the domestic courts to quantify it. As is evident from the materials submitted by the Government, there was, at that time, domestic legislation and case-law concerning damages for wrongful death (paragraphs 35-37 above). Neither can the Court hold that the civil proceedings were of significant scale, given that only three hearings were held and the entire judicial process took a little over one year (paragraphs 10 and 24 above; see, by contrast, *Steel and Morris*, § 65).

59. Against this background, the Court must assess the extent to which the applicant was able to argue her case effectively. The Court will therefore review the two aspects of the applicant's submissions in that regard.

60. The Court first turns to the applicant's complaint that her age and inability to speak Lithuanian prevented her from effectively exercising her right to court. Whilst noting that at the time of the civil proceedings the applicant was 61 years old, the Court does not regard this fact, in itself, as conclusive. Furthermore, on the issue of the applicant's inability to speak Lithuanian, the Court, bearing in mind that the Convention does not provide for a right to have court proceedings conducted in a language of one's choice, observes that the applicant, being a Russian speaker, at all four court hearings, including the criminal proceedings in respect of M.B., had an interpreter (paragraphs 9, 13, 15 and 20 above). Accordingly, this submission by the applicant fails.

61. The applicant's next argument rested on what she saw as the disparity between the respective levels of legal assistance enjoyed by her and M.B. The applicant implied that, had she had a lawyer of her own, she could have sought advice on any aspects of the law or procedure of which she was unsure.

62. The Court observes that the applicant's submission is not entirely accurate. As it appears from the documents in the case file, on 6 April 2005 the applicant paid the sum of LTL 30 for "legal services". It is not for the Court to state with certainty whether this was a fee for the civil claim she had submitted a day earlier, although the Government appear to suggest so. That being so, the Court, along with the Government, notes that the applicant's appeal lodged with the Vilnius Regional Court did indeed contain legal language making specific references to the rules of the Code of Civil Procedure. Lastly, the applicant's appeal on points of law was drafted by a lawyer (paragraphs 10 and 18 above).

63. As to the way in which the applicant was able to exercise her procedural rights in court, the Court observes that at the beginning of each hearing the judge explained the parties' rights to them and asked them whether they had any requests to make. The applicant made at least three requests that the calculation of her expenses be included in the case file; each of them was granted. She did not make any further requests (paragraphs 13, 15 and 20 above).

64. The Court reiterates its view that the applicant's case did not raise particularly difficult legal issues. On the contrary, the applicant's civil claim was based on her own personal circumstances, which the applicant was in the best position to present and substantiate most effectively. As regards pecuniary damage, the applicant was faced with the burden of having to submit invoices for M.B.'s burial costs. Similarly, her claim in respect of non-pecuniary damage was based on loss and suffering she had to describe. The Court believes that the applicant should have understood what was expected from her in terms of those two issues. It is also noteworthy that neither before the domestic courts, nor before this Court, did the applicant argue that some specific evidence was not made available to her or that the domestic courts refused to assist her in obtaining it (see paragraph 28 above). Neither can the Court fail to observe that when arguing M.B.'s case at the hearings of 14 June and 8 July 2005 at the Šalčininkai District Court his lawyer merely admitted her client's liability, although in part, and did not, for example, cite any domestic case-law in an attempt to challenge that the applicant had been close to her grandson (paragraphs 13 and 15 above). On this last point, the Court notes that when determining the amount of compensation for non-pecuniary damage the emotional relationship between a victim and the deceased is a factor to be taken into account under Lithuanian law and jurisprudence (paragraphs 35-37 above). For the Court, it is also important that it was only the applicant who took part in the appellate court's hearing and presented her arguments at that hearing (paragraph 20 above).

65. Lastly, in her submissions to the Court the applicant appears to suggest that a lawyer's participation in the court hearings would have allowed her to obtain more compensation for the damage she suffered. The Court does not consider that this argument, in itself, can be accepted. In addition, whilst noting that there have been occasions when the Lithuanian courts have awarded larger sums of money in compensation for wrongful death, the Court observes that in the instant case the applicant had claimed a sum that was not as high and the courts were bound by the principle of *non ultra petita* (see paragraph 27 above). Above all, the applicant was fairly consistent as regards the sum she claimed and the civil courts granted the major part of that claim. Thus, in her first civil claim of 20 June 2003 submitted in the course of the criminal proceedings, the applicant claimed LTL 12,311 and 5,000 in respect of pecuniary and non-pecuniary damage, respectively. Two years later, on 5 April 2005, the applicant lodged a civil claim, asking the courts to award her LTL 11,260 and 3,740 in compensation for pecuniary and non-pecuniary damage, respectively, raising the amount sought under the latter head of claim by LTL 5,000 two months later. The civil courts granted her claim to the greater extent, given that they awarded her LTL 7,936 and 3,000 under those two heads. Accordingly, the Court cannot hold that the applicant faced any serious

difficulties in proving her claim. Furthermore, it may not be held that in the instant case the Lithuanian civil courts awarded the applicant a sum which was plainly unreasonable. Provided that this is the case, it is not for the Court to speculate whether any particular sum would have been awarded to the applicant if she had been represented by a legal-aid lawyer in court.

66. In all the circumstances, the Court concludes that the applicant was afforded a reasonable opportunity to present her case under conditions that did not place her at a substantial disadvantage *vis-à-vis* M.B. Moreover, she was not prevented from presenting her civil claim effectively before the domestic courts, nor was she denied a fair hearing. It follows that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 20 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Ineta Ziemele
Registrar	President