

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

SECOND SECTION

CASE OF TUMĖNIENĖ v. LITHUANIA

(Application no. 10544/17)

JUDGMENT

STRASBOURG

1 October 2019

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Tumėnienė v. Lithuania,

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

Valeriu Griţco, *President,*
Egidijus Kūris,
Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 10544/17) 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 Diana Tumėnienė ("the applicant"), on 30 January 2017.

2. The applicant was represented by Ms E. Matulionytė, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms L. Urbaitė.

3. On 22 June 2018 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Kėdainiai.

A. The applicant's brother's death

5. On 7 July 2005 the applicant's twenty-two-year-old brother, M.K., was hospitalised in Klaipėda with serious injuries. According to a police report drawn up on that day, he refused to be examined by doctors or to talk to the police. On the evening of 10 July 2005 M.K. died at the hospital. His body was examined by a court medical expert, who found that the cause of M.K.'s death had been an injury to the head which had fractured the skull and led to swelling of the brain. The expert found multiple contusions and bruises all over M.K.'s body which had likely been caused by blows from

hard blunt objects. Another expert later found that M.K. had had a blood alcohol level of 3.85 per mille.

B. Pre-trial investigation

1. Initial investigative measures

6. On 7 July 2005 the authorities in Tauragė opened a pre-trial investigation concerning M.K.'s injuries. After his death, the legal grounds for the investigation were changed to murder. On various dates the applicant and her mother and siblings were granted victim status and questioned as witnesses.

7. The applicant's mother told the pre-trial investigation officers that on the evening of 6 July 2005 M.K. had left her house without telling her where he was going. At around 2 a.m. that night she had been woken by the doorbell and had seen M.K. sitting outside the house, bleeding. She had called an ambulance, which had taken M.K. to hospital.

8. On 7 July 2005 the Tauragė authorities also examined the courtyard of the applicant's mother's house, where they found bloodstains and a single cigarette. They also spoke to several neighbours, but were unable to obtain any useful information.

9. On the same day the authorities questioned one of M.K.'s acquaintances, V.S. He stated that in the past he and M.K. had gone abroad together to commit burglaries, but he had not seen M.K. for about a month. V.S. also told officers that he had previously attempted to commit suicide and was planning to do it again because he did not wish to live anymore.

10. On 11 July 2005 the applicant's mother was questioned again and she stated that M.K.'s mobile phone and jewellery had disappeared after the assault. She also stated that when M.K. had been at the hospital, a man whom she did not know had come to see him. However, a nurse working at the hospital later told the officers that nobody had come to see M.K.

11. In July 2005 the authorities searched the applicant's mother's house and two cars which had been used by M.K., obtained records of telephone conversations, and questioned further witnesses. Several of M.K.'s siblings and acquaintances stated that M.K. had previously been assaulted by V.S. (see paragraph 9 above), or that they had heard that V.S. had played a part in M.K.'s death. In addition, some witnesses expressed their belief that the assault on M.K. might have been related to his alleged involvement in human trafficking.

12. On 5 August 2005 a hospital in Tauragė informed the authorities that from 2 to 28 July 2005 V.S. had been hospitalised in its psychiatric ward (an open facility) after a suicide attempt, but he had subsequently left the hospital. On 28 August 2005 V.S. committed suicide.

13. Between August 2005 and August 2006 the authorities questioned six more witnesses. When questioned on 12 April 2006, M.K.'s sister A. stated that in July 2005 M.K. had had a heated argument with his acquaintance T.D., but she had not mentioned it during her previous questioning because at that time she had not considered it to be important.

14. On 22 November 2006 the authorities ordered a forensic examination of the cigarette which had been found near the applicant's mother's house (see paragraph 8 above). On 29 June 2007 the expert reported that the cigarette did not contain traces of human blood, and that it was not possible to determine if it contained any human biological traces.

2. T.D.'s confession

15. On 28 November 2006 the Tauragė district prosecutor ordered the pre-trial investigation officers to, *inter alia*, locate and question T.D. (see paragraph 13 above). On 2 January 2007 the police questioned T.D.'s mother and on 10 January 2007 T.D. was apprehended.

16. On 10 January 2007, in the presence of his lawyer, T.D. confessed to the murder of M.K. and was served with an official notice that he was a suspect. In a written confession, T.D. stated that on the night of 6-7 July 2005 he had arrived at M.K.'s house with the intention of asking him to give back car wheels which he had borrowed. M.K. had pointed a gun at T.D. and had started threatening him, so T.D. had hit M.K. with a baseball bat and consequently M.K. had dropped the gun. M.K. had then grabbed a metal stick from his car and the two men had begun fighting. When the fight had subsided, T.D. had taken M.K.'s metal stick and taken it with him to his mother's house. T.D. stated that he had hit M.K. because he had been aware of M.K.'s impulsive character and had been afraid for his own life.

17. On the same day T.D. was taken to M.K.'s house and he showed where the fight had occurred and how he had hit M.K. He stated that after the fight, on his way home, he had thrown the baseball bat out of the car window, but he could not remember where exactly. T.D. was then taken to his mother's house, where he showed the metal stick which he had taken from M.K. and had kept in storage.

18. T.D. was questioned again on 18 January, 19 January and 12 July 2007, and on each occasion he stood by his previous statements.

19. On 22 January 2007 the applicant's mother and her live-in partner told the authorities that, to their knowledge, M.K. had not owned any guns or sticks. They were shown photographs of several metal sticks, including the one which had been taken from T.D. (see paragraphs 16 and 17 above), but did not recognise any of them.

20. T.D. was kept in pre-trial detention from 12 to 27 January 2007. On 26 January 2007 he was released from detention, his passport was taken

from him, he was prohibited from leaving the country, and he was ordered to periodically register at the local police station.

21. On 20 August 2007 the district prosecutor observed that only some of the instructions which had been given to the pre-trial investigation officers on 28 November 2006 (see paragraph 15 above) had been carried out. He ordered the officers to locate and question three other acquaintances of M.K., identify the individual who, according to the applicant's mother, had come to see M.K. at the hospital (see paragraph 10 above), and examine the circumstances of the disappearance of M.K.'s personal belongings (see paragraph 10 above).

22. Subsequently the applicant's mother was shown photographs of several men, but she was unable to recognise the individual who had come to see M.K. at the hospital.

23. One of the witnesses identified by the prosecutor (see paragraph 21 above) was questioned and stated that, to his knowledge, M.K. had been assaulted by V.S. and T.D.

24. Another individual identified by the prosecutor was serving a prison sentence in Ireland. He was questioned in Ireland on 12 November 2008 and stated that he had seen M.K. on the day of the assault, but he did not know anything about the circumstances of the assault and did not know who T.D. was. It appears that the witness statement was sent to the Lithuanian authorities on 27 February 2009.

25. On 30 May 2008 the district prosecutor ordered the pre-trial investigation officers to question certain other witnesses and examine the circumstances under which M.K. had consumed alcohol before the assault (see paragraph 5 above), as several witnesses who had seen M.K. on the day of the assault had stated that he had been sober and that he had rarely drunk alcohol.

26. On 20 March 2009 the victims' lawyer was informed that the pre-trial investigation had been completed and that he could consult the case file.

3. Withdrawal of T.D.'s confession

27. On 6 May 2009 T.D. was questioned again at his request. He withdrew his previous statements (see paragraphs 16-18 above) and denied having assaulted M.K. He stated that he had falsely incriminated himself under pressure from police officers. T.D. was questioned again on 4 June 2009 and again stated that the text of his confession had been dictated to him by police officers.

28. In June 2009 one of the two police officers who had recorded T.D.'s confession was questioned as a witness. He stated that T.D. had been apprehended after operational information had been received about his involvement in the assault on M.K., and denied that there had been any pressure on T.D. to confess.

29. Between July and October 2009 four witnesses, including the applicant and her mother, were questioned again. Two of them gave statements similar to those they had given before, namely that M.K. had previously been injured by V.S. and that they had heard that V.S. had contributed to M.K.'s death (see paragraph 11 above). The applicant's mother additionally stated that a few days after M.K.'s funeral V.S. had come to her house, kneeled in front of her and apologised, saying that "they had not meant it". She also stated that, in her opinion, M.K. had been assaulted by several individuals, because when she had found him outside her house, he had said to her "they [wanted] to steal the car". The applicant confirmed that she had been at her mother's house when V.S. had come and that she had heard his words. She further stated that when M.K. had been at the hospital, she had seen the man who had come to visit M.K. and had recognised him as V.S.'s brother, N.B.; however, according to the applicant's mother, the man at the hospital had not looked like N.B. The applicant also claimed that she had spoken to police officers soon after the assault, but her statements had not been recorded.

30. In November 2009 the authorities contacted N.B. by telephone (see paragraph 29 above). N.B. stated that he lived in Ireland and did not intend to return to Lithuania. He also stated that he had known M.K., but had not been in touch with him. From the documents in the Court's possession, it does not appear that N.B. was specifically asked about the circumstances of the assault on M.K., or his alleged visit to the hospital.

4. Discontinuation and reopening of the pre-trial investigation

31. On 28 December 2009 the district prosecutor discontinued the pre-trial investigation on the grounds that there was insufficient evidence that the suspect, T.D., had committed the crime.

32. The applicant and the other victims appealed against that decision to a senior prosecutor, who on 17 February 2010 reopened the investigation. The senior prosecutor stated that insufficient evidence against T.D. was only grounds for discontinuing the investigation in respect of T.D. However, the investigation as such had to continue, because not all the circumstances of M.K.'s death had been uncovered. In particular, there had been suspicions that M.K. had participated in smuggling or human trafficking (see paragraph 11 above), but they had not been investigated; at least two witnesses had not been questioned (see paragraph 21 above); the motive for the murder had not been identified; and certain contradictions in witness testimonies concerning M.K.'s final hours had not been clarified, including those concerning his alcohol consumption.

33. The applicant and the other victims appealed against the senior prosecutor's decision, arguing that there was sufficient evidence against T.D. and that charges against him should be transferred to a court for examination. On 19 April 2010 the Tauragė District Court allowed the

appeal in part and reopened the investigation in respect of T.D. It held that the senior prosecutor had correctly decided to reopen the investigation, but the decision to discontinue the investigation in respect of T.D. had been unfounded. The court noted that T.D. had initially given consistent statements about his guilt as regards M.K.'s murder (see paragraphs 16-18 above) but had later withdrawn them, claiming that police officers had pressured him to incriminate himself. However, his allegation of undue police pressure had not been sufficiently investigated, and only one of the two officers who had questioned him had been questioned (see paragraph 28 above). Furthermore, it had not been established whether T.D. had an alibi for the night of the assault. The court therefore held that although there was not enough evidence to draw up an indictment against T.D. and transfer the case to a court for examination, T.D. had to remain a suspect and his role in M.K.'s murder had to be further investigated.

5. Further investigative measures

34. In May 2010 the authorities questioned the other police officer who had recorded T.D.'s confession. Like the first officer (see paragraph 28 above), he stated that T.D. had been apprehended after operational information had been received about his involvement in the assault on M.K., and denied that there had been any pressure on T.D. to confess. The officer stated that T.D., in the presence of a lawyer, had voluntarily confessed and had expressed remorse for killing M.K., which the officers had found honest.

35. In the meantime, in February 2010 T.D. had left for the United Kingdom, and in May 2010 he declared that that was his official place of residence. In June 2010 the Lithuanian authorities announced an official search in respect of him, and in November 2010 they issued a European arrest warrant. In May 2011 T.D. was surrendered to the Lithuanian authorities and was placed in detention on remand.

6. Disciplinary proceedings carried out by the Prosecutor General's Office

36. Before T.D.'s arrest (see paragraph 35 above), the applicant's lawyer sent a letter to the Prosecutor General's Office, complaining that the search was not being pursued and that the victims were not being informed of the developments in the investigation. The lawyer asked the Prosecutor General to verify whether the Tauragė district prosecutor was acting in line with his legal obligations.

37. In December 2010 the Prosecutor General's Office informed the applicant's lawyer that an internal inquiry had been carried out and that it had been found that the pre-trial investigation into M.K.'s murder was being conducted sluggishly (*ikiteisminis tyrimas atliekamas vangiai*) and in

breach of procedural requirements, that the prosecutors in charge of the investigation had likely failed to ensure that it was being conducted in a thorough and intensive manner, and that they had failed to properly control the investigation, which had caused an excessive delay. Disciplinary proceedings were opened in respect of the two prosecutors who had been in charge of the investigation.

38. In January 2011 the Prosecutor General's Office issued the conclusions of the disciplinary proceedings. It found that the prosecutor who had been in charge of the pre-trial investigation from July 2005 to December 2009 had not taken all available measures to investigate the criminal offence within the shortest possible time. As a result, many potential witnesses had gone abroad, one important witness had died (see paragraph 12 above), and others had "clearly withheld evidence", and the investigation had become very difficult. It was therefore doubtful whether an appropriate and objective investigation of M.K.'s murder was possible at all. The Prosecutor General further held that because of the inappropriate and insufficient investigation during the initial stages, a great deal of important data of potential evidentiary value had been lost, and thus it was questionable whether the evidence which had been gathered was sufficient to transfer the case to a court for examination on the merits. However, since the relevant prosecutor had retired from office, the Prosecutor General discontinued the disciplinary proceedings against him.

39. As for the prosecutor who had taken over the pre-trial investigation afterwards, the Prosecutor General held that he had not taken all available measures in order to examine M.K.'s alleged involvement in smuggling and human trafficking and uncover the motive of the crime; although the case file included reports stating that those circumstances had been investigated, those reports were "uninformative and formalistic". Furthermore, the prosecutor had not taken sufficient measures to clarify what M.K. had been doing during the last few hours before the assault and under what circumstances he had consumed alcohol; the prosecutor had also failed to determine in good time that T.D. had gone abroad, and had failed to promptly announce the search in respect of him (see paragraph 35 above). As a result, the length of the pre-trial investigation had been excessive. However, the Prosecutor General concluded that in view of the fact that the investigation had been conducted inappropriately from July 2005 to December 2009, the subsequent shortcomings had not had a significant effect on the overall course of the investigation. Taking into account the prosecutor's positive character references, the Prosecutor General decided not to give him a disciplinary penalty.

7. End of the pre-trial investigation

40. After T.D.'s apprehension in the United Kingdom and surrender to the Lithuanian authorities (see paragraph 35 above), he was questioned

again in May 2011. T.D. denied his guilt and alleged that M.K. could have been killed by V.S., although he did not have any proof of that. T.D. also participated in a formal confrontation with one of the police officers who had recorded his initial confession. During the confrontation, T.D. claimed that the officers had pressured him to confess by threatening to detain him with criminals who had known M.K., by threatening his family, and by promising that if he confessed, he would not go to prison. The officer denied T.D.'s allegations and stated that T.D. had confessed of his own free will.

41. In July 2011 the Lithuanian authorities requested that the relevant United Kingdom authorities extend the scope of the European arrest warrant against T.D. (see paragraph 35 above) in order to add a charge of theft of a firearm by means of physical violence, for his theft of M.K.'s gun. The United Kingdom authorities gave their consent in October 2011.

42. On 8 December 2011 the authorities informed the victims' lawyer that the pre-trial investigation had been completed and that he had the right to consult the case file.

C. Court proceedings

43. On 21 December 2011 an indictment was drawn up against T.D. and the case was transferred to the Klaipėda Regional Court for examination. The applicant and the other victims lodged civil claims.

1. The Klaipėda Regional Court

44. Between March 2012 and February 2014 twelve hearings were scheduled before the Klaipėda Regional Court. Four of them were adjourned because of the illness or absence of a judge.

45. On 20 February 2014 the Klaipėda Regional Court acquitted T.D. on the grounds of insufficient evidence. It observed that the charges against him had essentially been based on his own confession given during the pre-trial investigation (see paragraphs 16-18 above). However, that confession had been unpersuasive and illogical – the court found it particularly unlikely that T.D. might have hit M.K. with a baseball bat while the latter had been holding a gun. The court also considered, on the basis of the report of the court medical expert (see paragraph 5 above) and the expert's testimony at the hearing, that it was likely that M.K. had been injured by several different objects, but from T.D.'s confession it was not clear how the metal stick had found its way into M.K.'s hands and how T.D. could have hit M.K. with both the baseball bat and the metal stick.

46. The court further observed that several witnesses, including M.K.'s family members, had testified that M.K. had referred to his attackers as "them" (see paragraph 29 above), which indicated multiple perpetrators, but that hypothesis had never been investigated. One of the pre-trial

investigation officers testified before the court that she had had the impression that M.K. had been assaulted by several individuals, but since T.D. had confessed and no other suspects had been identified, that line of investigation had not been pursued. Another officer testified that T.D. had been identified as a suspect after the police had received operational information, but the officer was unable to explain to the court why the person who had provided that information had not been questioned as a witness; the officer stated that after T.D. had confessed, "it had not been considered necessary".

47. The court held that there was no objective evidence linking T.D. to the crime. The baseball bat with which he had allegedly beaten M.K. had not been found, and the metal stick in T.D.'s storehouse had not contained any traces linking it to the crime. The court also considered it illogical that T.D. would have thrown away his baseball bat but kept M.K.'s metal stick - the murder weapon – in storage at his mother's house.

48. The court lastly held that when T.D. had confessed almost two years after the murder, investigative measures had been carried out hastily (*skubotai*) and no objective evidence had been gathered either before the discontinuation of the investigation (see paragraph 31 above) or after it had reopened (see paragraph 33 above). In particular, M.K.'s personal belongings which had allegedly been stolen from him on the night of the murder (his mobile phone and jewellery) and his gun had not been found.

49. After acquitting T.D., the court dismissed the civil claims lodged by the applicant and the other victims.

2. The Court of Appeal

50. The applicant lodged an appeal against the Klaipėda Regional Court's decision. She argued that the court had not assessed the evidence in its entirety and, without good reason, had refused to rely on T.D.'s confession, which had been detailed, consistent and corroborated by witness testimonies.

51. The prosecutor lodged an appeal as well, arguing that there was sufficient evidence to convict T.D. and that there were no objective grounds to believe that there might have been multiple perpetrators.

52. Between April 2014 and May 2016 seven hearings were scheduled before the Court of Appeal. One of them was adjourned because a judge was ill, and another one was adjourned because of the absence of a witness.

53. On 10 May 2016 the Court of Appeal dismissed the appeals. It upheld the lower court's findings that T.D.'s confession had been unreliable and that there had been no objective evidence of his guilt.

54. The Court of Appeal considered that, when questioned on each occasion, T.D. had given a slightly different account of the night of the assault, which gave grounds to doubt his confession. In particular, T.D. had provided contradictory details as to where exactly he and M.K. had met that

night; at what moment M.K. had pointed a gun at him; when the metal stick had appeared and where it had come from; where the gun, the baseball bat and the metal stick had been dropped during the fight; whether, after the fight, T.D. had gone to his mother's house or to his own rented flat; and whether he had hidden the metal stick in storage at his mother's house immediately that night or sometime later. The contradictions had not been clarified at the scene of the crime, nor had any additional investigative measures been carried out to credibly establish the circumstances of the crime. The court pointed out that between T.D.'s questioning on 12 July 2007 (see paragraph 18 above) and March 2009, when the parties to the proceedings had been informed about the end of the investigation (see paragraph 26 above), no investigative measures had been taken in order to promptly and thoroughly examine the circumstances of the crime.

55. The court further stated that between the start of the pre-trial investigation in July 2005 and T.D.'s arrest in January 2007 no other suspects had been identified. Police officers had testified before the court that during the investigation they had obtained operational information that T.D. had murdered M.K., yet no evidence collected in line with the domestic law on operational activities had been presented in the proceedings and none of the officers had identified the source of such information. It remained unclear whether an operational investigation had been conducted, and, if so, when and on what grounds, what information had been obtained and how it had been used. The court also emphasised that the crime had been committed in July 2005 and that T.D. had been arrested in January 2007, but the officers had not mentioned the operational information allegedly received about T.D. until 2009. The court considered that, in the absence of details about the source of the operational information, the officers' testimony in that regard could not be considered credible.

56. The court also stated that the investigation had not established what car T.D. had been driving on the night of the murder, whether there had been phone calls between T.D. and other individuals which could have confirmed or denied his guilt, or whether on the night of the assault M.K. had actually had a gun or any other personal belongings which had allegedly been taken from him, since no such items had been found.

57. The court remitted the case to the prosecutor for further investigation and identification of the perpetrator.

3. The Supreme Court

58. The applicant lodged an appeal on points of law, but on 29 August 2016 the Supreme Court refused to accept it for examination, on the basis that it raised no important legal issues.

D. Further developments

59. On 30 June 2016 the Tauragė police informed the prosecutor that the pre-trial investigation was ongoing, but that the investigative measures which had been taken to date had not identified any more witnesses or potential suspects. On 18 July 2016 the prosecutor discontinued the investigation.

60. On 14 September 2018 a senior prosecutor quashed the decision to discontinue the investigation, finding that there were no legal grounds to do so. However, the senior prosecutor suspended the investigation, on the grounds that thirteen years had passed since the criminal offence, the investigation had lasted six years and all available measures had been carried out, but it had not been possible to identify the perpetrator. The applicant and the other victims were informed about the senior prosecutor's decision. It was also explained to them that if new relevant circumstances came to light, the investigation would be resumed.

II. RELEVANT DOMESTIC LAW

61. From 1 May 2003 until 1 October 2010 Article 176 § 1 of the Code of Criminal Procedure (hereafter "the CCP") provided that a pre-trial investigation had to be completed within the shortest possible time. Article 176 § 2 of the CCP provided that the prosecutor was under an obligation to control compliance with that requirement.

62. Since 1 October 2010 Article 176 § 1 (3) of the CCP has provided that a pre-trial investigation concerning serious and very serious crimes has to be completed within nine months. Article 176 § 2 of the CCP provides that that time-limit can be extended by a senior prosecutor when the case is complex or of a large scope, or when there are other important circumstances.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicant complained, without invoking any specific provision of the Convention, that the investigation into her brother's death had been lengthy and ineffective. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under the

procedural limb of Article 2 of the Convention. The relevant part of that provision reads:

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

A. Admissibility

Exhaustion of domestic remedies

(a) The parties' submissions

64. The Government submitted that the applicant had failed to exhaust effective domestic remedies. In particular, she could have lodged a civil claim against the authorities which had been in charge of the investigation (the police and the prosecutors' offices) or against the State, and obtained compensation in respect of non-pecuniary damage for the authorities' failure to act with due diligence. The Government also submitted that the applicant's mother could have obtained compensation from the State in accordance with domestic legislation on compensation for the victims of violent crime.

65. The applicant argued that monetary compensation could not be considered an effective remedy for her complaint that the investigation into her brother's death had not been effective. She also submitted that she had exhausted the available avenues of redress in the criminal proceedings, and therefore she had not been obliged to institute additional proceedings for compensation. Lastly, she submitted that her mother was not an applicant in the present case, and thus any domestic remedies which might have been available to her mother were irrelevant.

(b) The Court's assessment

66. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. However, the only remedies which have to be exhausted are those that relate to the alleged violation and are capable of redressing it. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 76, 17 May 2016, and the cases cited therein).

67. The Court also reiterates that in cases of fatal assault, a breach of Article 2 of the Convention cannot be remedied exclusively through an award of compensation to the relatives of the victim (see *Tsalikidis and Others v. Greece*, no. 73974/14, § 109, 16 November 2017, and the cases cited therein). Consequently, an action for monetary compensation in

respect of non-pecuniary damage was not a remedy that the applicant had to exhaust in the present case.

68. Nor can the Court accept that the existence of a remedy which, according to the Government, was available to the applicant's mother but not to the applicant herself (see paragraph 64 above) could affect the admissibility of the applicant's complaints before the Court.

69. The Court further observes that the applicant participated in the criminal proceedings concerning her brother's death; she was granted victim status and lodged a civil claim, and she submitted applications and appeals in those proceedings (see paragraphs 6, 32, 33, 36, 43, 50 and 58 above). In such circumstances, the Court is satisfied that the applicant fully exhausted the avenues of redress available to her under the criminal law and that she was not required to institute separate civil proceedings (see *Semache v. France*, no. 36083/16, § 54, 21 June 2018, and *Akelienė v. Lithuania*, no. 54917/13, § 68, 16 October 2018). Accordingly, it dismisses the Government's objection regarding exhaustion of domestic remedies.

70. The Court lastly notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

71. The applicant submitted that the investigation into her brother's death had not been thorough and had not been carried out with the requisite diligence; there had been substantial delays and the authorities had failed to follow up on various leads. In particular, despite multiple witness testimonies hinting at V.S.'s involvement in M.K.'s murder (see paragraph 11 above), the authorities had failed to question V.S. again before he had committed suicide (see paragraph 12 above). The applicant also claimed that T.D. had been identified as one of the main suspects at the very beginning of the investigation, but the authorities had not begun searching for him until November 2006 (see paragraph 15 above). Furthermore, after T.D.'s confession in January 2007, it had taken the authorities two years to complete the investigation and nearly three more years to bring the case before a court (see paragraphs 26 and 43 above).

72. The applicant further contended that she and the other victims had fully cooperated with the authorities and had immediately disclosed to them all the relevant information concerning M.K.'s relations with V.S. and T.D. However, she claimed that many of their conversations with the authorities had taken place in an informal context and had not been recorded (see

paragraphs 9 and 29 above). The applicant lastly submitted that, while at the hospital, M.K. had communicated with the authorities to the extent that his injuries had permitted him (see paragraph 5 above).

(b) The Government

73. The Government submitted that the initial investigative measures had been carried out without any delay – the authorities had examined the scene of the crime, questioned multiple witnesses and carried out searches (see paragraphs 6-11 above). M.K.'s body had been examined by a medical expert and the cause of death had been established (see paragraph 5 above). However, due to the fact that no material evidence had been found at the scene of the crime, witness testimonies had been the main source of information for the authorities. In this regard, the Government submitted that M.K., before his death, had refused to cooperate and provide details about the assault (see paragraph 5 above), and that his relatives had failed to provide important information right away. In particular, the applicant's sister had mentioned M.K.'s conflict with T.D. only in April 2006 (see paragraph 13 above), and only in 2009 had the applicant's mother revealed the fact that V.S. had come to her house to apologise (see paragraph 29 above). The Government therefore argued that the efforts of the authorities had been limited by a lack of cooperation on the witnesses' part, and thus they could not be reproached for the fact that the investigation had failed to produce tangible results. In response to the applicant's claim that some conversations between the victims and the authorities had not been recorded (see paragraph 72 above), the Government stated that "it might be true that some details of the investigation [had been] left unrecorded", but they would base their submissions on the written material in the case.

74. The Government disputed the applicant's submission that T.D. had been identified as a suspect immediately after M.K.'s death (see paragraph 71 above) – they stated that T.D. had been mentioned for the first time by the applicant's sister in April 2006 (see paragraph 13 above). As soon as that information had been received, the authorities had promptly apprehended and questioned T.D. and taken steps to verify his confession by taking him to the scene of the crime and repeatedly questioning other witnesses (see paragraphs 16-24 above). However, the Government emphasised that it had also been necessary to protect T.D.'s right not to incriminate himself, and thus after he had withdrawn his confession, it had been necessary to question him again and duly investigate his allegations of pressure by the police (see paragraphs 27-30 above).

75. The Government pointed out that a total of thirty-five witnesses had been questioned in the course of the proceedings, many of them repeatedly. However, despite the authorities' efforts, the investigation had been made difficult by various factors outside of their control: one of the potential suspects, V.S., had committed suicide; another suspect, T.D., had changed

his testimony; and some witnesses had also changed their testimony or moved abroad (see paragraphs 12, 24, 27 and 30 above). Nonetheless, the authorities had managed to complete the pre-trial investigation and forward the case to a court for examination on the merits. The Government contended that, despite the shortcomings established by the Prosecutor General's Office (see paragraphs 38 and 39 above), in the circumstances of the case, the investigation had to be considered effective.

76. The Government further submitted that after the case against T.D. had been forwarded to the court for examination on the merits, both the first-instance and appellate courts had played an active role and had held oral hearings and examined witnesses. In addition, the appellate court had decided to carry out a fresh assessment of the evidence – a decision which had prolonged the proceedings, but had been favourable to the applicant.

77. Lastly, the Government acknowledged that the overall length of the investigation might appear excessive, but argued that it was justified in the circumstances. They also argued that the duration of the proceedings had not affected the authorities' ability to establish the relevant facts and secure the available evidence. Furthermore, after T.D.'s acquittal, the courts had remitted the case for further investigation, and that investigation was still ongoing (see paragraphs 59 and 60 above). The statute of limitations would expire in 2025, therefore if any new circumstances came to light, those responsible for M.K.'s killing could still be identified and punished.

2. The Court's assessment

78. The Court observes at the outset that the applicant did not contend that the authorities of the respondent State had been responsible for the death of her brother; nor did she imply that the authorities had known or ought to have known that her brother had been at risk of physical violence at the hands of third parties and had failed to take appropriate measures to safeguard him against such a risk. Accordingly, the present case falls to be examined from the perspective of the State's obligation to conduct an effective investigation under the procedural limb of Article 2 of the Convention.

79. The relevant general principles concerning the effectiveness of an investigation within the meaning of Article 2 of the Convention were summarised in *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 169-82, 14 April 2015).

80. Turning to the circumstances of the present case, the Court notes that the applicant did not challenge the independence of the investigation, and nor does the Court see any grounds to do so. Furthermore, having examined the documents in its possession, the Court is satisfied that the applicant was involved in the domestic proceedings to the extent necessary to safeguard her legitimate interests. Accordingly, what needs to be assessed is whether the investigation was adequate, that is to say, capable of leading to the

establishment of the facts and the identification and punishment of those responsible, and whether it was carried out with promptness and reasonable expedition (ibid., §§ 172 and 178).

81. In this connection, the Court observes that the authorities opened the pre-trial investigation promptly after M.K.'s hospitalisation. In July 2005 they carried out multiple investigative measures aimed at establishing the cause of M.K.'s death and the factual circumstances of the assault (see paragraphs 6-11 above). The Court takes note of the contents of the police report drawn up on the day of M.K.'s hospitalisation, which stated that M.K. refused to talk to the police (see paragraph 5 above). Although the applicant argued that, before his death, M.K. had cooperated with the authorities to the extent that his injuries had permitted him (see paragraph 72 above), in the absence of any written material in support of that claim, the Court is able to accept that without the direct victim's testimony, it was significantly more difficult for the authorities to establish all the circumstances of the crime (see the Government's submissions to that effect in paragraph 73 above). In these circumstances, the Court is satisfied that during the first month the investigation into the applicant's brother's death was prompt and thorough.

82. However, in the Court's view, after those initial steps, the investigation could no longer be considered either thorough or prompt. It notes in particular the authorities' actions with regard to V.S. The authorities questioned him very early in the investigation (see paragraph 9 above) and the Court considers that to be indicative of the fact that they had reasons to believe that V.S. might have been involved in the killing of M.K. Furthermore, in July 2005 several witnesses testified that M.K. had previously been assaulted by V.S. (see paragraph 11 above). The Court points out that at that time the authorities were aware of V.S.'s intention to commit suicide – V.S. told them about it himself, and a psychiatric hospital informed them about his previous suicide attempt (see paragraphs 9 and 12 about). However, despite having reliable information that V.S. might take his own life, the authorities did not take any prompt action to locate and question him about his previous assault on M.K., or carry out any other measures to examine his possible role in M.K.'s death. The Court agrees with the Government that the death of V.S. made it more difficult to establish the circumstances of the crime against M.K. (see paragraph 75 above). However, the authorities failed to act with the promptness required in the circumstances to secure evidence from V.S. before he committed suicide.

83. Furthermore, it does not escape the Court's attention that following the death of V.S., between August 2005 and August 2006 only six witnesses were questioned and no other relevant investigative measures were taken (see paragraph 13 above).

84. The Court further observes that in April 2006 the applicant's sister indicated to the authorities that T.D. was another potential person of interest (see paragraph 13 above). Although the applicant claimed that T.D. must have been a suspect from the very beginning of the investigation (see paragraph 71 above), the Court does not have any documents supporting that claim. In any event, from the material in the Court's possession, it appears that there were no attempts to locate T.D. before November 2006, that is to say, not until seven months after the authorities had become aware that there had been a conflict between him and M.K. (see paragraph 15 above). No explanation for this delay has been provided to the Court.

85. After T.D. was apprehended and confessed to assaulting M.K., the applicant's mother and her live-in partner were questioned about certain details of T.D.'s confession, and did not corroborate them (see paragraph 19 above). However, it does not appear that any measures were taken to address this discrepancy. In this connection, the Court further notes that the domestic courts which subsequently examined the charges against T.D. found that his confession had been "unpersuasive and illogical" and had contained multiple contradictions, but that no investigative measures had been carried out to eliminate them (see paragraphs 45, 47 and 54 above).

86. The Court further observes that from the start of the investigation there were some indications that M.K. might have been assaulted by several individuals (see paragraphs 11 and 23 above). It can accept that after T.D. confessed to killing M.K. alone, the authorities did not have sufficient grounds to examine the possibility that there might have been multiple perpetrators. However, soon after T.D. withdrew his confession, the applicant and her mother testified that following M.K.'s funeral, V.S. had apologised to the applicant's mother, saying that "they had not meant it" (see paragraphs 27 and 29 above). The Court notes that in that same statement the applicant claimed that she had already told the authorities about V.S.'s apology, but that this had not been recorded (see paragraph 29 above). However, the Government denied that claim (see paragraph 73 above), and the Court does not have in its possession any material supporting the applicant's claim.

87. Be that as it may, even assuming that the applicant and her mother did not give the information about V.S.'s apology to the authorities promptly, there is no indication that after receiving it in 2009 the authorities actually assessed the possibility of there being multiple perpetrators – the testimony of the applicant and her mother was not dismissed as unreliable or unsubstantiated, but no actions were taken to investigate their allegations (see, *mutatis mutandis*, *Hakim Aka v. Turkey*, no. 62077/08, § 39, 6 November 2018). Indeed, the indictment was drawn up essentially on the basis of T.D.'s initial confession, in which he claimed to have killed M.K. alone (see paragraph 43 above). The Court observes that the Klaipėda Regional Court, which acquitted T.D., also criticised the pre-trial

investigation for not addressing the hypothesis that there were multiple perpetrators, and that during the proceedings before that court a pre-trial investigation officer testified that there had been suspicions that M.K. had been assaulted by several individuals, but "since T.D. had confessed and no other suspects had been identified, that line of investigation had not been pursued" (see paragraph 46 above).

88. In this connection, the Court reiterates that failing to follow an obvious line of inquiry undermines to a decisive extent an investigation's ability to establish the circumstances of a case and, where appropriate, the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009). It considers that, in the present case, the authorities' failure to adequately examine all the above-mentioned circumstances undermined the thoroughness of the pre-trial investigation.

89. The Court also reiterates that in so far as an investigation leads to charges being brought before the national courts, the procedural obligations under Article 2 of the Convention extend to the trial stage of the proceedings. In such cases, the proceedings as a whole, including the trial stage, must satisfy the requirements of this provision of the Convention (see *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria*, no. 3524/14, § 38, 12 January 2017, and the cases cited therein). The Court notes that, in the present case, the proceedings before the Klaipėda Regional Court lasted almost two years, during which time only eight hearings were held and four were adjourned for reasons not attributable to the applicant (see paragraph 44 above). Similarly, the proceedings before the Court of Appeal lasted slightly more than two years, during which time only five hearings were held and two were adjourned for reasons not attributable to the applicant (see paragraph 52 above). Although acknowledging the complexity of the present case, the Court finds that the length of the court proceedings was excessive and not justified by any circumstances of the case.

90. Lastly, the Court observes that during various stages of the domestic proceedings, prosecutors and courts indicated numerous shortcomings in the pre-trial investigation (see paragraphs 15, 21, 25, 32, 33, 37, 38, 39, 45-48 and 53-57 above). It notes, in particular, the conclusions adopted by the Prosecutor General's Office after disciplinary proceedings instituted following the applicant's complaint. The Prosecutor General found that the prosecutors in charge of the investigation had not taken all available measures to investigate the criminal offence within the shortest possible time; that because of the inappropriate and insufficient investigation during the initial stages, a great deal of important data of potential evidentiary value had been lost; that some of the reports in the case file were "uninformative and formalistic"; and that the length of the pre-trial investigation had been excessive. In the view of the Prosecutor General, all the shortcomings made it doubtful whether an appropriate and objective

investigation of M.K.'s murder was possible at all (see paragraphs 38 and 39 above; see also *Antonov v. Ukraine*, no. 28096/04, § 50, 3 November 2011). In the light of that conclusion, the Court is unable to give much weight to the Government's argument that the pre-trial investigation is officially still ongoing (see paragraphs 59 and 60 above; see also *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, 26 July 2007).

91. Accordingly, the Court concludes that the investigation into the applicant's brother's death was not sufficiently thorough – it was marred by the authorities' failures to obtain and secure relevant evidence, was excessively long, and contained numerous unjustified periods of inactivity. As a result, more than thirteen years after the applicant's brother's death, the circumstances of his death have still not been fully established.

92. There has therefore been a violation of Article 2 of the Convention under its procedural head.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

94. The applicant claimed 2,650 euros (EUR) in respect of pecuniary damage, an amount consisting of M.K.'s funeral expenses. She also claimed EUR 10,000 in respect of non-pecuniary damage for the suffering and inconvenience caused by the authorities' failure to adequately investigate her brother's death.

95. The Government did not challenge the applicant's claim in respect of pecuniary damage. However, they considered her claim in respect of non-pecuniary damage excessive and unsubstantiated.

96. The Court does not discern any causal link between the violation of the procedural limb of Article 2 of the Convention found in the present case and the pecuniary damage alleged by the applicant; it therefore rejects this claim.

97. However, the Court acknowledges that the applicant must have suffered emotional distress and inconvenience because of the violation found. It therefore awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

98. The applicant also claimed the following amounts for costs and expenses:

- EUR 2,685 for the costs and expenses incurred before the domestic courts, an amount consisting of EUR 1,815 for legal fees paid by the applicant and EUR 870 for legal fees paid by her sister, her mother and her mother's partner;
- EUR 1,590 for the costs and expenses incurred before the Court, an amount consisting of EUR 1,500 for legal fees and EUR 90 for the translation of documents from English to Lithuanian.

99. The Government did not dispute the claim for costs and expenses in respect of the proceedings before the Court. However, they argued that the applicant had failed to properly substantiate the costs and expenses allegedly incurred before the domestic courts.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court will uphold claims for costs and expenses only in so far as they are related to the violations it has found, and will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible.

101. In the present case, the Court does not see any grounds to award the costs and expenses which were incurred by the applicant's relatives in the proceedings before the domestic courts; it therefore rejects that part of the claim. It further observes that the applicant did not justify why translation from English to Lithuanian had been necessary, and rejects the part of the claim concerning translation costs (see *Fridman v. Lithuania*, no. 40947/11, § 40, 24 January 2017, and *Kožemiakina v. Lithuania*, no. 231/15, § 65, 2 October 2018).

102. As to the remainder of the claim for costs and expenses, the Court considers it to be properly substantiated and reasonable as to quantum. It therefore awards the applicant EUR 3,315 under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural head;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,315 (three thousand three hundred and fifteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 1 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Valeriu Griţco
Deputy Registrar	President