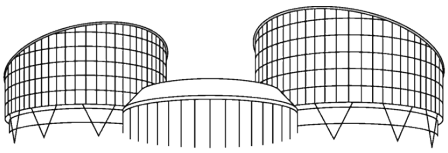

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KELLER v. RUSSIA

(Application no. 26824/04)

JUDGMENT

STRASBOURG

17 October 2013

FINAL

17/02/2014

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

In the case of Keller v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos
Ksenija Turković,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 26824/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Galina Alekseyevna Keller ("the applicant"), on 7 July 2004.

2. The applicant was represented by Ms Y.L. Liptser and Mr R.S. Karpinskiy, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the authorities were responsible for the ill-treatment and subsequent death of her son during his detention in police custody and that they had subsequently failed to conduct an effective investigation into these events. The applicant also complained that her son's detention had been unlawful.

4. On 5 December 2008 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 1937 and lives in the city of Moscow. Her son, Mr Vasiliy Yuriyeivich Keller (V.K.), was born on 30 August 1977 and as of 1998 resided in the city of Ivanovo, in the Ivanovo Region.

A. Theft investigation and the arrest of V.K.

6. On 13 September 2000 the applicant's son was arrested and escorted to the Oktyabrskiy District Department of the Interior in Ivanovo (*Октябрьский районный отдел внутренних дел города Иванова* – "the ROVD").

7. An arrest record was drawn up at 5.30 p.m. by investigator A., following which the applicant's son was questioned as a suspect in the theft of two bicycles.

8. The interrogation record drawn up on that day at 6.30 p.m. noted that the applicant's son was a drug addict infected with HIV, that he had been caught red-handed riding a stolen bicycle and that during the police interview he had confessed to that theft.

9. After the interview the applicant's son was detained in the Regional Department of the Interior's custody room (*ИВС Управления внутренних дел Ивановской области*).

B. Events of 16 September 2000

10. On 16 September 2000 V.K. was brought from the custody room to office no. 315, situated on the third floor of the ROVD station.

11. Acting in the presence of duty lawyer D., investigator Ya. charged V.K. with theft. The applicant's son denied the charges. The interview ended around 1.45 p.m., at which time D. apparently left the office. Investigator Ya. asked her office mate, trainee investigator K., to keep an eye on V.K. while she was away meeting with a prosecutor.

12. At around 3 p.m. that day V.K. was found dead in the internal courtyard of the ROVD station.

13. Immediately following the incident an emergency medical team arrived and its doctors confirmed V.K.'s death.

14. The authorities drew up a scene record and sent the corpse for a forensic medical examination to establish the cause of death.

15. On the same date investigator K. wrote a report about the incident. He stated as follows:

> "... At 2.30 p.m. Ya. left the office, having warned me that she was going to see the prosecutor about the arrest of V.K. At that time V.K. was sitting on a chair two metres away from me and two metres away from the door. At 2.35 p.m. I was minding my own business, when V.K. quickly stood up and ran out of the office. I ran after him and saw that he was running to the other wing of the building. I ran after him and saw him running into the toilet. There was no one in the corridor. I ran into [the toilet] and

saw that the window was half open and V.K. was not there. I looked out of the window and saw that V.K. was lying on the ground and not moving...”

C. Investigation into the events of 16 September 2000

1. Institution of criminal proceedings

16. On 17 September 2000 the applicant asked the prosecutor for the Ivanovo Region to institute criminal proceedings in connection with the death of her son, blaming the police officers in charge of the investigation and escorting V.K. for it.

17. On 19 September 2000 the head of the Ivanovo City civil registry office issued death certificate I-FO no. 524264 in respect of V.K. The certificate stated that his death had taken place on 16 September 2000 in the city of Ivanovo and that the cause of death was “traumatic shock and multiple trauma to the head, chest and torso”.

2. Disciplinary proceedings in respect of the police officers involved in the incident

18. On 20 September 2000 the Ivanovo City Department of the Interior issued order no. 125, admitting the absence of the escorting officers on the spot at the relevant time and the fact that the interview had taken place in the investigator’s office rather than appropriate designated premises. The order stated that this was in breach of Order of the Ministry of the Interior no. 41-96 and also admitted that some of the relevant officials had been unaware of the requirements of Order no. 41-96. A number of the officials involved, including the ROVD’s officer on duty, escorting officer M. and the head of the ROVD were reprimanded in relation to this episode.

19. On 2 October 2000 the senior management of the Regional Department of the Interior discussed the incident leading to the death of V.K. The officials admitted the violation of domestic law, but, having regard to the fact that investigators Ya. and K. had been “inexperienced”, decided to give them a warning.

3. Decision of 7 October 2000

20. On 7 October 2000 an investigator from the District Prosecutor’s Office, having examined the materials collected as a result of the inquiry into the events of 16 September 2000, decided not to institute criminal proceedings in connection with V.K.’s death. The decision was reasoned as follows:

“... in the course of the check it was established that on 13 September 2000 [V.K.] was arrested on suspicion of having committed a crime set out in ... part 2 of Article 158 of the Criminal Code of Russia, and under Article 122 of the Criminal

Procedure Code of the RSFSR was detained in the Ivanovo Regional Department of the Interior's custody room, where he was held between 13 and 16 September 2000. On 16 September 2000 [Ya.] in view of the considerable amount of investigative actions [to be performed] in this case took a decision to carry them out in her office, which is why [V.K.] was escorted from the custody room to [Ya.'s] office situated on the third floor of the ROVD building. After carrying out the investigative actions [Ya.] ... left the office to see the district prosecutor [in order] to decide on the measure of restraint in respect of [V.K.], trainee investigator [K.] remained [in the office] along with [V.K.]. Suddenly [V.K.] ran out of the office and threw himself out of the window of the ROVD building.

[K.], questioned during the check, stated that on 16 September 2000 he was in the office with [V.K.], whilst [Ya.] was away to see the prosecutor. Suddenly [V.K.] ran out of the office, down the corridor and entered the toilet. Having entered the toilet in the footsteps of [V.K.], [K.] saw the toilet window, which was partly opened. He looked out of the window and saw that [V.K.] was lying on the ground [three floors below] without moving. [K.] told the officer on duty and the prosecutor what had happened. It was 2.40 p.m.

During the examination of the scene of the incident it was established that the corpse of [V.K.] was located in the courtyard of the Oktyabrskiy ROVD [station] situated at 39 Lenin Avenue, Ivanovo. The corpse of [V.K.] was 2.5 metres away from the wall of the ROVD building, parallel to that wall. The corpse was lying on its back face up, with the head [facing] towards the garages and the legs pointing towards Lenin Avenue. The face was turned to the right side. The external examination revealed yellowish and greenish-yellow bruises on the face and chest area. Just above the location of the body on the third floor of the ROVD [building] in the male toilet there was a window with two blinds left open towards the inside.

The check revealed that at the time of admission to the custody room [V.K.] did not make any complaints about his state of health, having made a hand-written statement in the search record: 'generally fit'. On 14 September 2000 at 9.25 a.m. the emergency medical team was called upon to see him and the doctor who examined [V.K.] made the following diagnosis: 'myositis of the left side of the chest. He may be held in the custody room.' Subsequently, at the time of his detention in the custody room [V.K.] did not complain about his health.

According to the record concerning the circumstances of the infliction of the bodily injuries, [V.K.] himself explained that the bruises near his left eye and on the right shoulder [had occurred] on 13 September 2000 [when] he had bumped into a door. [V.K.] wrote by his own hand in that record that he had had no complaints against the police officers in this connection.

Thus, basing itself on the results of the check, the investigation considers the arguments made by [the applicant and blaming the officials for the death of her son] in her application unjustified.

...

The investigation is of the view that there is no indication of any crime as defined by the Criminal Code of Russia in the actions of the police officers or other persons."

4. Decision of 24 October 2000

21. On 24 October 2000 the Prosecutor's Office for the Ivanovo Region reviewed the decision dated 7 October 2000 and quashed it as unlawful and unjustified. It was noted that:

> "... the incident became possible through serious breaches by the officers of the Oktyabrskiy ROVD of the relevant requirements concerning the detention, protection and escort of suspects and accused. The breaches of the rules of escort committed in respect of [V.K.] ... manifested themselves in the non-execution or untimely execution of their duties by officials of the Oktyabrskiy ROVD which resulted in the accidental death of a man."

22. By the same decision it was decided to institute criminal proceedings into the circumstances of V.K.'s death and transfer the case to the Ivanovo City Oktyabrskiy District Prosecutor's Office ("the District Prosecutor's Office") for investigation.

23. On 13 November 2000 an investigator from the District Prosecutor's Office interviewed investigator K., who essentially confirmed his statement of 16 September 2000.

5. First round of investigation

24. On 24 December 2000 an investigator from the District Prosecutor's Office summarised the findings made as a result of the criminal investigation and decided to discontinue it, citing the lack of any indication of a crime.

25. As a result of the investigation, some additional written statements had been collected from the witnesses in the case, including the applicant, police officer M. – who had escorted V.K. on 16 September 2000 to office 315, investigator K. and officer on duty A.M. It appears that the latter three essentially confirmed the version of the events set out in the decision of 7 October 2000. The investigator again examined the male toilet's window on the third floor of the ROVD building and obtained an additional forensic examination of the corpse of V.K. dated 23 November 2000. From that forensic examination it was established that apart from the injuries related to V.K.'s fall there were also the following unrelated injuries: three bruises on the face, and six bruises on the chest dating approximately 3 to 7 days before the date of death.

The decision was reasoned as follows:

> "Having analysed the materials of the criminal case, the investigation has come to the conclusion that ... there is no indication of any crime set out in Part 2 of Article 293 of the Criminal Code [criminal negligence] in the actions of the ROVD officers ... [V.K.] took steps himself – ran out of the office of the investigator, tried to escape, jumped out of the window of the toilet situated on the third floor of the building ... There was no physical or psychological pressure [exerted] on [V.K.] by the police officers.

> The investigation is of the view that one could speak of disciplinary liability of the ROVD officers ... who committed serious breaches in the area of treatment of detainees escorted from the custody room ... and indeed they were found disciplinary liable by Order no. 125 of 20 September 2000. However, there is no indication of any crime in their actions or inaction ...”

6. Second round of investigation

26. On 2 March 2001 the decision of 24 December 2000 was quashed by the City Prosecutor’s Office as unfounded.

27. On 6 March 2001 the investigation resumed.

28. On 14 March 2001 an investigator interviewed V., who at the relevant time had acted as the head of the ROVD’s investigation department. She stated that she had witnessed the incident on 16 September 2000:

> “... When I entered the office [of Ya. and K.], I saw investigator K. and an unknown woman talking to each other about something. Ya. should have been in that office, since [Ya. and K.] worked together... I asked K. about the whereabouts of Ya., to which he responded that Ya. had probably gone to see the prosecutor about the measure of restraint [to be applied in respect of] V.K. I went out of the office and went to the office of prosecutor L. He was alone in the office. I asked him about the whereabouts of Ya., to which he responded that she was not there... [having then visited a duty area of the ROVD building and failed to locate Ya., I went back to the office of Ya. and K.] Here I met K. again. The woman was not there anymore. I started to question him in an insistent manner regarding the whereabouts of Ya. Right after I spoke K. got up and silently ran from the office, which surprised me very much. I went to the corridor where I met an officer from the duty area who asked me about the whereabouts of V.K. I told him that I did not know. At this moment, K. approached us from where the toilets were. He was pale and scared, all disturbed. From their conversation I understood that Ya. had brought V.K. to her office. Then I asked K. about whereabouts of V.K., to which he did not respond, but said at the same time that he had looked everywhere and could not find him. After this conversation I realised that V.K. had been in [their] office and had then somehow managed to escape. We then decided to search the toilet [on the third floor]. I was the first to enter it. There was a window on left side. It was neither shut nor open. I opened one of the windows, stood up and leaned with my knee on a window sill and looked out. Down on the paved area I saw a man lying. I had no doubts whatsoever that it was V.K. ...”

29. On 6 April 2001 the District Prosecutor’s Office again discontinued the investigation for essentially the same reasons as stated in the decision of 24 December 2000.

7. Third round of investigation

30. On the same date the decision to discontinue the investigation was again quashed and the investigation resumed.

31. On 17 April 2001 an investigator interviewed investigator K., who now changed his submissions. He admitted that V.K.’s escape had initially gone unnoticed by him until the arrival of V., following which they had

seen V.K.'s body on the ground beneath the toilet window. K. was also questioned about V.K.'s injuries, to which he responded that V.K. "may have had a bruise or two" but that he "could not remember exactly".

32. On 20 April 2001 an investigator questioned V.K.'s lawyer D., who stated in relation to the events of 16 September 2000 that V.K. had had a bruise in the area of his left eye as a result of ill-treatment by the police during his arrest but that he had made no further complaints.

33. On 29 June 2001 the District Prosecutor's Office again discontinued the proceedings. This time the investigator collected statements from a wider range of witnesses, such the applicant's other son and other members of the family, senior ROVD officers, the District Prosecutor, all escorting officers who had been on shift on the relevant date, the investigating officers, two private individuals, Da. and Ko., who were apparently the victims of the crime V.K. had been accused of and who had taken part in his arrest, and Za., a detainee who had seen V.K. on 16 September 2000. The investigator also collected statements from Zh. and S., two police officers who had brought V.K. to the police station on 13 September 2000.

34. On the basis of the evidence in the case file, the investigator essentially upheld the previous factual conclusions but for one element. It was now argued that at 1.45 p.m. V.K. had ceased to be a suspect in the case, as he had become an accused. Since no measure of restraint had yet been chosen, the investigator argued that V.K. had no longer been in custody, had been free to leave and that the police officers had had no duty to take care of him. It was also confirmed that there had been no evidence confirming physical coercion by the police. The latter conclusion was made on the basis of the following pieces of evidence:

> "...Da. and Ko., interviewed as witnesses, gave corroborating statements that on 13 September 2000 they arrived at their place of work in the drug rehabilitation centre ... by bicycle. Having noted that the bicycles had gone missing, they started to search for them. They managed to apprehend [V.K.], who tried to escape on Da.'s bicycle. They did not beat him while they were apprehending him. After that they called the police...
>
> Za., interviewed as a witness, stated that on 16 September 2000 he was brought from the custody room to the ROVD building along with [V.K.] and that he saw a bruise on the latter's face. He knew nothing about the circumstances in which it had been inflicted...
>
> The case file contains a report concerning [V.K.'s] injuries drawn up on 13 September 2000 in the custody room, according to which [V.K.] had bruises in the area of his left eye and on his right shoulder. In the report there is a statement that these injuries were received by [V.K.] at [his home] on 13 September 2000 [when he]: "bumped into a door". [V.K.] wrote by his own hand in that record that he had had no complaints against the police officers in this connection.
>
> The case file contains a certificate from the custody room [to the effect] that during [V.K.]'s admission on 13 September 2000 he made a hand-written statement ... [that

> he was] "fit"... On 14 September 2000 an emergency medical team was called to [V.K.], which authorised his continued detention from the medical point of view. [V.K.] did not make any further complaints about his health during his detention.
>
> The case file contains copies of medical records [drawn up by] the emergency medical team... During his [examination by them] no bodily injuries were identified and he was diagnosed with "Acute respiratory disease. Myositis of the chest on the left side"...
>
> [The post-mortem medical examination of [V.K.] established the following injuries:] three bruises on the face and six bruises on the chest, which had formed as a result of no less than nine blows from blunt and hard objects on the aforementioned areas three to seven days prior to death, and are unrelated to the cause of death...
>
> Therefore, considering the evidence collected in the course of the criminal investigation, the investigation finds that:
>
> 1. Three bruises on the face, six bruises on the chest dating from three to seven days before death, which, according to the expert examinations were unrelated to the cause of death ... were inflicted on [V.K.] during his apprehension [by the victims of the theft] on 13 September 2000. This conclusion is confirmed in part by the ... medical examinations, in part by [a member of [V.K.]'s family who saw him on 13 September 2000 prior to the events], investigator Ya., investigator K. and ... by the other pieces of evidence. At the same time, the investigation concludes that the aforementioned injuries were inflicted on [V.K.] ... by Da. and Ko., whose statements the investigation finds not to be credible. At around 11 a.m. on 13 September 2000 [V.K.] left his home [with no injuries, as confirmed by one of his family members], whilst police officers Zh. and S. who arrived at around 3 p.m. at the rehabilitation centre ... were [able to attest that they had seen] the presence of injuries. There was no need for them to apply force [by then], because [V.K.] had already been apprehended [by Da. and Ko.] and was unable to escape. The investigation is critical of [the information contained in the statement of witness D.] that, according to [V.K.], one of the bruises on [V.K.'s] face had been received by him through ill-treatment by the police officers, as [V.K.] did not make any complaints in this connection, even though he could have done so. This conclusion is confirmed by the hand-written statement of [V.K.] in the [relevant report made in the custody room] to the effect that he had no complaints about the police officers. The investigation does not exclude that the injuries could partly have been received on 13 September 2000, when he "bumped into a door", but did not become fully apparent [until later], which is why [his family member] failed to notice them..."

35. On 10 October 2001 the above decision was essentially confirmed by the same official and repeated, in order to comply with changes in applicable legislation.

8. Fourth round of investigation

36. On 28 June 2002 the General Prosecutor's Office quashed the decision of 10 October 2001 and sent the case for additional investigation to the District Prosecutor's Office. Among the reasons for the decision, the reviewing body cited the lack of any in-depth inquiry into the personality of V.K. and, in particular, him having been infected with HIV.

37. On 31 July 2002 the case was accepted for examination by the District Prosecutor's Office.

38. On 15 August 2002 the authorities took yet another decision to discontinue the investigation and essentially repeated their earlier reasoning.

9. Fifth round of investigation

39. On 22 October 2002 the decision of 15 August 2002 was quashed by the Regional Prosecutor's Office, which took the view that "the relevant police officers had acted with manifest negligence".

40. On 17 November 2003 the investigation was again discontinued by the District Prosecutor's Office. This time, the investigation obtained a new forensic examination of the corpse, studied and presented a new theory of the possible reasons for V.K. to have committed suicide, which it was considered was supported by the fact that he had already had a criminal record and, as a drug addict, feared pre-trial detention because of the difficulty of obtaining drugs in a detention centre. Overall, it was concluded that the officers involved had committed a disciplinary offence which did not contain any elements of a crime. The investigation concluded that the V.K.'s attempt to escape was in itself a crime. As regards V.K.'s injuries, the decision stated:

> "... According to a [fresh] expert examination ..., there were the following injuries on the body of [V.K.]:
>
> 1. On the face: around the left eye [there was] a bruise, purple in the centre area and blue-greenish on the periphery, sized 6 to 9 cm; in the area of the nose and lips on the right side of the [danger] triangle area a similarly-sized bruise and a similarly-sized bruise in the area of the lower jaw around the third and fourth teeth, sized 2 to 3 cm;
>
> 2. On the front surface of the chest: on the right and left sides of the collarbone and front armpit lines [there are] similarly sized bruises (as on the face), numbering six and sized from 2 to 4 and 4 to 6 cm ...
>
> The blue-greenish colouring on the periphery of the bruises on the face and front chest confirms that [these] bruises dated from three or more days before the date of death, were inflicted by blows from blunt and hard objects... and were not causally connected with the cause of death..."

41. As regards V.K.'s motives, the investigation concluded as follows:

> "On the basis of the combined collected evidence in the case, of both a subjective and an objective character, the investigation concludes that the death of [V.K.] took place as a result of an unsuccessful attempted escape from the detention. Fearing that a measure of restraint would be adopted in respect of him, which for him as a drug addict constituted a real challenge in view of the inability to obtain drugs in the remand prison where he would be held for a long time and using the fact that K. was looking away, [V.K.] exited the investigator's office... proceeded to the male toilet on the third floor and jumped out of the window. Given, however, that he had no prior experience of jumping from such a height, he misjudged his actions and died upon landing..."

42. On 24 December 2003 the Ivanovo Oktyabriskiy District Court ("the District Court") examined the applicant's complaint in respect of the decision of 17 November 2003 and quashed the said decision as unlawful and unjustified. The court ruled that many relevant circumstances, such as the exact location of the police officers at the moment of the V.K.'s fall, who the first officer to start looking for V.K. was, and the exact lapse of time between the fall and the discovery of the body were still unclear and had to be examined.

43. On 15 January 2004 the Ivanovo Regional Court essentially upheld the decision of 24 December 2003.

10. Sixth round of investigation

44. On 19 February 2004 the Regional Prosecutor's Office again discontinued the case as it had failed to establish any causal link between the death and the violation of the security rules by the police officers. The investigation concluded that it was unclear exactly how V.K. had gotten to the toilet, but it was clear that it had not happened through or because of any violence. It was concluded with reference to the way he had jumped and landed that he had done so by himself and that there had been no coercion by the police officers in this connection.

45. On 20 April 2004 the District Court quashed the decision of 19 February 2004, ruling that the investigation should have arranged for a confrontation between all witnesses with divergent statements in the case.

46. The decision of 20 April 2004 was upheld by the Regional Court on appeal on 25 May 2004.

11. Seventh round of investigation

47. On 24 May 2004 the District Prosecutor's Officer took a new decision to discontinue the investigation in the case. Having complied with the instructions of the courts, the investigation was of the view that a confrontation would not serve any purpose, as too much time had elapsed from the time of the incident and the witnesses could not recall the event in the necessary detail. The investigators decided that in any event the previous conclusions of the decision dated 19 February 2003 still held true, irrespective of the outcome of any possible confrontation, and accordingly decided to discontinue the case.

48. On 8 June 2004 the Regional Prosecutor's Office quashed the decision of 24 May 2004 so as to comply with the appeal decision of 25 May 2004 (see paragraphs 45-46 above).

12. Eighth round of investigation

49. On 6 July 2004 the case was again discontinued for essentially the same reasons as stated previously.

50. On 10 September 2004 this decision was again quashed by the higher level of the Prosecutor's Office. It was decided that not all the

circumstances of the case were clear, in particular whether the window was open or closed after V.K. fell out of it and whether the corpse was moved after the fall.

13. Ninth round of investigation

51. By a new decision dated 13 October 2004 the investigators decided to discontinue the proceedings, having reiterated the conclusions from all of their previous decisions and concluding that V.K. had unsuccessfully attempted to escape. The decision reads as follows:

> "The instant proceedings were instituted by the Prosecutor's Office for the Ivanovo Region on 24 October 2000 under Article 293 § 2 of the Criminal Code of Russia in connection with the alleged negligence of [policemen] resulting in [V.K.'s] death...
>
> The investigation in the present case established that on 13 September 2000 [V.K.] was arrested on suspicion of having committed theft under Article 158 § 2 (a) of the Criminal Code of Russia and taken to the custody room of the Oktyabrskiy ROVD station in the city of Ivanovo.
>
> On 16 September 2000 [V.K.] was escorted to [the police station]. He was taken to the office of investigator Ya. – a room on the third floor of the police station. The escorting officers left him in that office [with two investigators, Ya. and K.].
>
> On 16 September 2000 at 1.45 p.m. Ya. in the presence of [V.K.]'s lawyer D., officially charged [V.K.] on suspicion of theft and questioned him. Subsequently, Ya. went out of the office to make a decision about the measure of restraint [to be applied] in respect of [V.K.], leaving him with K.
>
> K. was distracted from watching [V.K.] by his work. [V.K.], taking advantage of that situation, [V.K.] left the office aiming to escape. He went to a toilet located on the same floor.
>
> After a few minutes [one of the police officers] noted that [V.K.] had disappeared from the office. K. and [two other police officers] began to search for him. They found that the window in the toilet was half open. They looked out and saw [V.K.]'s body lying in the internal courtyard.
>
> [The applicant] in her statements alleged that her son could not have voluntarily jumped out of the window. She referred to the statement of [one of the police officers] who had found that the window was not fully opened. However that police officer in her statements and during the cross-examination stated that the window had been half open... This gives a basis to conclude that [V.K.] attempted to close the window before he jumped out.
>
> That finding is based, among other things, on the results of the forensic expert examinations. According to the experts' findings, [V.K.] controlled his motions during the fall as he landed on his feet. There is no evidence which could prove that [V.K.] had been pushed out of the window.
>
> [Examination of the scene of the incident showed] no traces of [his] body having been dragged. Greenish-yellow and yellowish bruises were found on [V.K.]'s face and

yellowish bruises were found on his chest during the forensic examinations. No other injuries were registered on the opened parts of his body.

The validity of the record, drawn up at the scene of the incident, is confirmed by the statements of [two attesting witnesses, the expert and the prosecutor] who presented [themselves] there at the relevant time.

B. an ambulance doctor, who had examined [V.K.]'s body on 16 September 2000 at the scene of the incident, stated that he did not change the position of [V.K.]'s body. Referring to the police explanations he noted in a medical record that [V.K.] had died before his arrival because of a fall from a third floor window. The position of the body was typical for a body which had fallen from a height.

According to the additional examination of the scene of the incident of 16 May 2001, the distance between the window and the ground level is eight meters and thirty centimetres.

From the [applicant]'s statements it would appear that she saw two "fresh" bruises above [V.K.]'s lips and on his chin. These claims were groundless since she had no medical education which would allow her to assess these injuries. From the expert reports it is evident that the bruises were inflicted from three to seven days before the death.

[The victims who had caught V.K.] stated that they could not remember the incident in detail. They did not exclude that [V.K.] could have offered resistance or had fallen off the bicycle. [The victims] did not beat him. [V.K.] apologised for the theft of the bicycles. He also told them that he had been seeking money for drugs. The policemen arrested him and took him to the police station.

In the course of the present case the prosecutor's office questioned [V.K.]'s relatives, including his mother, his brother, his partner and K. These witnesses stated that they had been informed of [V.K.]'s arrest. [V.K.]'s brother and [V.K.]'s partner went to visit him on 16 September 2000. On arrival, they found that [V.K.] had died...

The investigating authority questioned two investigators involved in the incident: Ya. and K., two escorting police officers: M. and P., [three police officers] who found V.K.'s body, his lawyer D. and [the prosecutor], who [had been] in the building at the relevant time. The aforementioned witnesses stated that on 16 September 2000 [V.K.] had been arrested and taken to the police station. P. and M. escorted [V.K.] to the office and left him with Ya. and K. D. stated that [V.K.] had made no complaints of pressure [being put] on him. [V.K.] had allegedly explained that the bruises on his body had occurred during his arrest. M. and P. also stated that [V.K.] had not complained of ill-treatment. According to them, [V.K.] had received food and clothes provided by his relatives. At the initial stage of the investigation [V.K.] emphasised that he suffered from HIV. Therefore he was treated with special care. Subsequently [V.K.] became nervous. He was probably concerned about his detention. Ya. informed [V.K.] that she would make a decision about the measure of restraint [to be applied in his respect] after meeting with the prosecutor. [V.K.] was left with K., who was distracted from watching [V.K.] by his work. [V.K.], taking advantage of that situation, left the office.

After several minutes his disappearance was noted, [and] K. and [two other police officers] began searching for him. They noted that the toilet window was half open.

They looked out of the window and saw [V.K.]'s body lying in the in the internal courtyard. Shortly thereafter they called an ambulance and informed the Prosecutor's Office for the Ivanovo Region.

From the witnesses statements it is apparent that [V.K.]'s disappearance was noted shortly afterwards. There were no sounds of a fight, blows and falls which could indicate beatings or [his] body having been dragged. The toilet door was the only unlocked door on that floor. During [V.K.]'s detention from 1 to 4 p.m. he visited the toilet several times. He was aware that the door was not locked. No traces of a fight were found in the toilet...

In the present case the investigating authority ordered two medical examinations of [V.K.]'s body. The examinations were performed by [competent experts]. Later upon the [applicant]'s request the Prosecutor's Office ordered an additional expert examination, performed by a [panel composed of three experts].

Taking into account the fact that [the applicant] put into question the experts' conclusions, the investigative authority granted her request, providing her with certified copies of the experts' reports...

On 16 January 2003 the Prosecutor's Office ordered a new expert examination of [V.K.]'s body...

Following the court order of 25 May 2004 the investigating authority interrogated [one of the experts] who had performed the expert examination of 22 June 2001... He stated that the insignificant differences in the description of [V.K.]'s injuries could be explained by differences in lighting between the bright morgue room and the scene of the incident, which had been examined on a cloudy day. In any event the differences in question could not affect the overall conclusions of the experts about the mechanism, the nature and the alleged time of the infliction of the injuries...

All of the forensic medical examinations established the same cause of [V.K.]'s death. There are no contradictions between the experts' conclusions. The expert reports are valid and reasoned. No additional expert examination of the exhumed body is required.

[The applicant] stated that the experts had found that [V.K.] fell on his right side and did not move. According to her, the police's statements confirmed that [V.K.] was found lying on his back. It gave her a basis to allege that [his body had been moved]. That allegation was groundless because she misinterpreted the expert reports, which had clearly established that [V.K.] landed on his left foot [and shortly thereafter] fell to his right side on his back. The mechanism of injuries demonstrates that [V.K.]'s body was found lying on its back in a result of its own inertial motion from his right side.

In the light of materials in its possession the investigative authority concludes that [V.K.]'s death was a result of his own deliberate actions. Being concerned about his possible detention, drug-addict [V.K.] took advantage of K. having been distracted, left the interrogation room and went to the toilet. In an attempt to escape from the police [station] he jumped out of the window. [V.K.] misjudged the height. He died because of the unsuccessful landing. This conclusion is confirmed by the witnesses' statements, examination of the scene of the incident and the expert reports. Additional expert examination disproves the allegation of [V.K.]'s ill-treatment. His fall was

coordinated, as he landed on his feet. According to the statements of one of his relatives, [V.K.], being in a state of drug intoxication, once wanted to jump off a balcony. There is no indication of the criminal offences prohibited by Articles 105 [murder], 110 [forced suicide] and 111 § 4 [infliction of serious injuries leading, owing to negligence, to the victim's death] of the Criminal Code of Russia in the actions of the policemen. They did not overstep their competence and did not breach Article 286 [abuse of authority] of the Criminal Code of Russia...

There is no direct or indirect evidence that [V.K.]'s death is a result of unlawful actions of the police officers who were involved in the operative actions in respect of him, or who escorted him, or those staff members who were present in the police station on the day of the incident. The case file materials indicate that his death was the result of an unsuccessful attempt to escape from the police, i.e. it is a result of his actions aimed at evading detention. There is no evidence that [V.K.] was forced to commit suicide during the pre-trial stage of the investigation. In this connection the investigation concludes that there is no evidence of the criminal offences prohibited by Articles 105 [murder], Article 110 [forced suicide], Article 111 § 4 [infliction of serious injuries leading, owing to negligence, to the victim's death] and Article 286 [abuse of authority] of the Criminal Code of Russia in the policemen's actions ... The materials of the present case show that [V.K.]'s rights were not breached by the police officers... There was no causal link between the [police actions] and [V.K.]'s death. Accordingly, the actions of the police officers do not constitute the crime [of criminal negligence leading to the victim's death or grave injury] under Article 293 § 2 of the Criminal Code of Russia. "

52. On 18 March 2005 the District Court dismissed the applicant's complaint against the decision of 13 October 2004. The decision was reasoned as follows:

"In accordance with Article 7 of the Code of the Criminal Procedure of Russia, a decision of an investigator should be lawful and reasoned. The court concludes that the impugned decision of the investigator satisfies these requirements. It contains a description of the circumstances of the case [and makes] reference to the evidence.

First of all, the investigating authority examined the expert reports issued by the expert of the Ivanovo Region Bureau of Forensic Medical Examination, by the expert panel of the Ivanovo Region Bureau of Forensic Medical Examination, by the expert panel of the Ministry of Health's National Centre of Forensic Medical Examination and the expert examination of the body performed by the expert from the Ivanovo Region Bureau of Forensic Medical Examination.

The aforementioned expert examinations proved that [V.K.]'s death and his injuries were caused by his fall. The experts found that [V.K.] had landed on his feet, i.e. [V.K.] had controlled his motions. [V.K.] suffered all of the injuries in a short time interval, almost simultaneously. He died immediately after the fall.

The alleged contradictions in the experts' findings given in connection with the injuries on [V.K.]'s face and the time of his death were resolved. The expert from the Ivanovo Region Bureau of Forensic Medical Examination explained why there had been certain differences in the description of the facial injuries. He stated that the differences had been insignificant and could not have affected the overall conclusions about the nature of these injuries, their seriousness and the alleged time of their infliction. He explained that the conclusions of the experts had not been contradictory.

These results had supplemented each other. The conclusions about the origin of the injuries also lacked contradictions, they were reasoned and valid. No additional expert examination of the exhumed body was required.

In the court's view the experts' reports are sufficiently consistent. They are based on the case file materials, including the record of examination of the scene of the incident. The experts who carried out the examinations were competent. They were informed of [the potential] criminal liability for deliberately false reporting. There are no reasons why the court should depart from their conclusions.

The circumstances of the death were examined by the court in its decision of 24 December 2003, which has entered into legal force. The [applicant's] arguments were declared unfounded. The investigator's refusal to order an examination of the exhumed body of 6 November 2003 was upheld by the courts.

The investigator did not examine the expert opinion [which had been submitted by the applicant] because it essentially repeated the previous conclusions of the experts.

The investigator took certain steps towards the reconciliation of certain differences in the statements of the witnesses by ordering cross-examinations between them. During these cross-examinations he established the circumstances [of V.K.'s death]. The description of the events presented by the investigator is sufficiently detailed. Only several insignificant details remained unclear owing to the lapse of time. However, this could not affect the general assessment of the circumstances of [V.K.'s death] and the overall findings of the investigating authorities.

The statements of the witnesses were examined and compared with the expert reports and other pieces of evidence. The court agrees with the investigator's conclusion that [V.K.] was not ill-treated and was not forced to commit suicide.

The investigator responded to [the applicant's allegation] that the crime had not occurred in the place where the body had been found. Referring to the expert examination reports the investigator explained why [V.K.] had been found lying on his back. The investigator took into account the mechanism of [V.K.'s] injuries. There is no evidence which could prove that [V.K.]'s body had been moved.

The investigator established all the circumstances of [V.K.]'s death. He gave an assessment of the actions of the policemen in light of the provisions of the Criminal Code of Russia, including its Article 293 § 2. He concluded that the police officers had breached certain rules of legislation; however there had been no causal link between their [unlawful] actions and [V.K.'s] death.

The court has no reason to call the investigator's conclusions into question. All required investigative actions aimed at gathering of additional evidence and settling the contradictions were carried out. There is no reason to order additional expert examinations.

The court concludes that the decision of 13 October 2004 issued by the [investigative authorities] in connection with [V.K.]'s death is reasoned and lawful."

53. On 15 April 2005 the Ivanovo Regional Court upheld the decision of the District Court on appeal, reiterating its reasoning and conclusions.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

54. Articles 20, 21 and 20 of the Constitution provide that everyone has the right to life and the right to liberty and personal security, which are guaranteed and protected by the State. No one shall be subjected to cruel or degrading treatment or punishment.

55. Articles 45 and 46 of the Constitution guarantee the judicial protection of Constitutional rights.

56. Articles 52 and 53 of the Constitution protect the rights of victims of crimes. The State guarantees victims access to justice and compensation of damages. Everyone is entitled to compensation of damages caused by unlawful actions of State officials.

B. Russian Criminal Code

57. Article 105 of the Code provides that murder is punishable by six to fifteen years' imprisonment.

58. Article 110 of the Code makes incitement to suicide liable to a sentence of up to five years' imprisonment.

59. Article 111 § 4 of the Code provides that serious bodily harm causing the death of the victim is punishable by to five to fifteen years' imprisonment.

60. Article 286 § 3 of the Code provides that actions of a public official which clearly exceed his authority and entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, are punishable by three to ten years' imprisonment, with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

61. Article 293 § 2 of the Code provides that criminal negligence leading to the victim's death or grave injury is punishable by up to five years' imprisonment.

C. Russian Code of Criminal Procedure of 1960

62. Article 53 of the Code of Criminal Procedure of 1960, in force until 1 July 2002, provided that where a victim had died as a result of a crime, his or her close relatives should be granted victim status. During the investigation any such victim was entitled to submit evidence and file motions. Once the investigation was complete a victim had full access to the case file.

63. Article 108 of the Code provided that criminal proceedings could be instituted on the basis of letters and complaints from citizens, public or private bodies, articles in the press or the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

64. Article 109 of the Code provided that the investigating body was to take one of the following decisions within a maximum period of ten days after notification of a crime: open or refuse to open a criminal investigation, or transmit the information to the appropriate body. The informants were to be informed of any decision.

65. Article 113 of the Code provided that, where an investigating body refused to open a criminal investigation, a reasoned decision was to be provided. The informant was to be made aware of the decision and could appeal to a higher-ranking prosecutor or to a court.

66. Articles 208 and 209 of the Code contained information relating to the closure of a criminal investigation. Reasons for closing a criminal case included the absence of *corpus delicti*. Such decisions could be appealed to a higher-ranking prosecutor or to a court.

D. Russian Code of Criminal Procedure of 2001

67. Article 140 of the Russian Code of Criminal Procedure in force as of 1 July 2002 provides that criminal proceedings should be instituted if there is sufficient information which indicates signs of a criminal offence.

68. Article 144 of the Code provides that prosecutors, investigators and inquiry bodies must consider applications and information about any crime committed or in preparation, and take a decision on that information within three days. In exceptional cases, that time-limit can be extended to ten days. The decision should be one of the following: (a) to institute criminal proceedings; (b) to refuse to institute criminal proceedings; or (c) to transmit the information to another competent authority (Article 145 of the Code).

69. Article 125 of the Code provides that the decision of an investigator or a prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a District Court, which is empowered to check the lawfulness and grounds of the impugned decisions.

70. Article 213 of the Code provides that, in order to terminate the proceedings, the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor's office. The investigator should also

notify the victim and the complainant in writing of the termination of the proceedings.

71. Under Article 221 of the Code, the prosecutor's office is responsible for general supervision of the investigation. In particular, the prosecutor's office may order that specific investigative measures be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and inquiry bodies.

E. Legal provisions applicable to escort and supervision of detainees

72. Article 17 of Law no. 103-FZ dated 15 July 1995 "On detention of suspects" provides that the State guarantees personal inviolability to suspects and accused taken into State custody.

73. Order no. 41-96 dated 26 January 1996 of the Ministry of the Interior of Russia sets out the rules for detention, protection and escort of the accused and suspects. Article 2.32 expressly forbids carrying out investigative actions with suspects and accused in the offices of investigators not specifically designed for these purposes. Article 3.33 provides that suspects and accused are always to be escorted to places where investigative actions take place. Article 3.117 obliges the escorting officers to always be present during investigative actions and to follow the suspects and accused in all of their movements, depending on the character of the investigative action in question. Inside buildings the escorting officers are to stand by the windows, whilst the senior escorting officer is to stand guard by the door.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

74. The applicant complained under Article 2 of the Convention that the authorities had been responsible for the death of her son V.K. and that they had subsequently failed in their obligation to conduct a proper investigation into the circumstances surrounding his death. Article 2 of the Convention provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The parties' submissions

75. According to the applicant, a very plausible explanation of V.K.'s fall was that he had been pushed out of the window by the police officers with a view to concealing his previous ill-treatment. She took the view that no reasonable person could jump from a very elevated height of 8.3 metres and expect to escape successfully. The applicant considered that the injuries on V.K.'s face subsequent to the fall were capable of confirming this explanation. In the alternative, the applicant argued that the incident had only become possible through the manifest negligence of the officials in charge of the investigation and escort, who had failed properly to supervise V.K.

76. According to the applicant, the investigation into the circumstances surrounding V.K.'s death had been superficial. She was dissatisfied that not all of the participants of the incident had been properly questioned and cross-examined at once after the events and that the investigation had failed to examine the toilet and to take samples from V.K.'s body for analysis. The presence of various defects in the investigation had been confirmed by the decisions of supervising prosecution bodies, which had pointed to numerous flaws in the investigation.

77. The Government submitted that V.K.s' death had resulted solely from his unfortunate attempt to escape from custody through the toilet window. With reference to the conclusions of the investigating authorities that V.K. had jumped out voluntarily, they declined to accept responsibility for his death. The Government did not dispute that the officers in question had acted negligently, but denied a causal link between their conduct and V.K.'s jumping to his death.

78. The Government stated that the ensuing investigation had been sufficiently thorough. The authorities had made a serious attempt to shed light on the circumstances of V.K.'s death, and the necessary investigative actions had been promptly performed. The authorities had questioned all of the witnesses to the event, ordered several examinations of V.K.'s body and responded to all of the allegations made by the applicant concerning the circumstances of V.K.'s death.

B. The Court's assessment

1. Admissibility

79. The Court notes 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) Alleged violation of V.K.'s right to life

(i) General principles

80. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life "intentionally" or by the "use of force" disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

81. The Court further emphasises that persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts)). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail a Convention requirement for the authorities to take operational measures to prevent that risk from materialising.

82. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified

individual by a third party or himself and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Keenan v. the United Kingdom*, cited above, § 90; *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-III). However, even where it is not established that the authorities knew or ought to have known about any such risk, there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk to protect the health and well-being of the arrested person (*Mižigárová v. Slovakia*, no. 74832/01, § 89, 14 December 2010).

83. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109−11, ECHR 2002−IV).

(ii) Application of those principles to the present case

84. The Court observes that the applicant submitted two different narratives in connection with the substantive limb of Article 2 of the Convention. She alleged that either the police officers had thrown V.K. out of the window or that the manifest negligence of the relevant officials who had insufficiently supervised V.K. had resulted in him attempting to escape and eventually in his death. In any event, the applicant regarded the State as liable for V.K.'s death.

85. As regards the first allegation, the Court reiterates that the applicable standard of proof under Article 2 is that of "beyond reasonable doubt". In the instant case it finds no serious evidence in support of the hypothesis of the intentional taking of V.K.'s life. The applicant's assertion that V.K. could not have been so reckless as to jump from the window does not satisfy this standard and is in itself insufficient to shift the burden of proof on to the respondent Government.

86. The Court observes that the applicant's arguments were refuted by the investigative authorities and the courts at two levels of jurisdiction, which concluded that "[V.K.] was not ill-treated and was not forced to commit suicide" (see paragraphs 51 and 52 above), and the Court finds no need to depart from these findings. They are corroborated by the expert reports concluding that "V.K. controlled his motions during the fall as he landed on his feet" and backed up by the statements of various witnesses

(see paragraphs 44 and 51 above), all of whom confirmed the absence of any signs of coercion in respect of V.K. on the date in question. In this connection, the Court also notes that the injuries on V.K.'s head and chest discovered by the post-mortem examinations of his body pre-dated the incident by at least three days (see paragraphs 25 and 40 above). This being so, they cannot be interpreted as a sufficient indication that V.K. was coerced into jumping or tried to escape in order to flee ill-treatment by police officers.

87. In the light of the above, the Court considers that there is an insufficient factual and evidentiary basis on which to conclude that V.K. was thrown out of the window by the police officers, was coerced into jumping or tried to escape in order to flee ill-treatment by police officers (compare *Erikan Bulut v. Turkey*, no. 51480/99, § 30, 2 March 2006; *Kleyn* and *Aleksandrovich v. Russia*, no. 40657/04, § 43-50, 3 May 2012; and *Mikheyev v. Russia*, no. 77617/01, § 22, 26 January 2006). Having regard to the case file and the parties' submissions, the Court finds that the authorities reached a valid conclusion that V.K.'s death was the result of an unfortunate attempt to escape from police detention.

88. Turning to the applicant's second allegation concerning the State's failure to protect V.K.'s life, the Court reiterates that the obligation to protect the health and well-being of persons in detention clearly encompasses an obligation to protect the life of arrested and detained persons from a foreseeable danger (see *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, § 117, 16 February 2012, and *Mižigárová v. Slovakia*, cited above, § 89). Although there is insufficient evidence to show that the authorities knew or ought to have known that there was a risk that V.K. might attempt to escape by jumping out of a third floor window, there were certain basic precautions which police officers should be expected to take in respect of the persons held in detention in order to minimise any potential risk of attempts to escape.

89. In this connection, the Court finds that the escort and supervision arrangements for V.K.'s detention on 16 September 2000 were seriously deficient. It takes note of the absence of escorting officers on the spot before and during V.K.'s attempt to escape (see paragraphs 18, 19 and 51 above), as well as the fact that the interview had taken place in an investigator's office rather than appropriate designated premises, both omissions clearly having been in breach of the applicable domestic rules (see paragraphs 18, 19, 25 and 73 above). Moreover, even though the investigator in charge of the case had knowledge of V.K.'s drug addiction and, as confirmed by police officers M. and P., V.K. displayed noticeable anxiety on 16 September 2000 (see paragraphs 8 and 51 above), the police did not adopt any safety measures in this connection. Finally, as admitted by investigator K. and his superior V. in their statements to the investigation (see paragraphs 28 and 31 above), after investigator Ya. left the office, V.K.

remained without any effective supervision in an unlocked office for quite some time, which made it possible for him to slip out of the investigator's office unnoticed and remain undisturbed when heading for the toilet on the third floor of the building and jumping out of the window.

90. The Court would reiterate its view that it would be excessive to request the States to put bars on every window at a police station in order to prevent tragic events like the one in the instant case (see *Eremiášová and Pechová*, cited above, § 117). However, this does not relieve the States of their duty under Article 2 of the Convention to protect the life of arrested and detained persons from a foreseeable danger.

91. In the circumstances of the present case, the Court cannot but conclude that the State authorities failed to provide V.K. with sufficient and reasonable protection as required by Article 2 of the Convention. There has accordingly been a violation of Article 2 under its substantive limb.

(b) Alleged failure to carry out an adequate investigation into V.K.'s death

(i) General principles

92. The Court reiterates that where a State or its agents potentially bear responsibility for a loss of a life, the events in question should be subject to an effective investigation or scrutiny which enables the facts to become known to the public and in particular to the relatives of any victims (see *Sieminska v. Poland* (dec.), no. 37602/97, 29 March 2001; see also *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; and *Ergi v. Turkey*, 28 July 1998, § 82, *Reports* 1998-IV).

93. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The Court has also held in the past that the authorities must take any and all reasonable steps available to them to secure evidence concerning the incident, including, among other things, eyewitness testimony and forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of any injuries and an objective analysis of clinical findings, including the cause of death. *(Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 113, ECHR 2005-VII; *Anguelova v. Bulgaria,* cited above, § 139 and; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 96, 4 May 2001).

94. Such investigation must be initiated promptly and conducted with reasonable expedition (e.g. *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 108, ECHR 2001-III (extracts)). There must be a sufficient element of public scrutiny, although it may vary from case to case, and the relatives of the victim must be involved in the proceedings to the extent

necessary to safeguard their legitimate interests (see *Hugh Jordan*, cited above, § 109, and *Kelly and Others*, cited above, § 98)

95. The Court reiterates that for an investigation into a death in custody to be effective, it may generally be regarded as necessary for the persons responsible for carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also practical independence (see *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports* 1998-IV; *Ergi v. Turkey*, cited above, §§ 83-84; *Nachova*, cited above, § 112; *Hugh Jordan*, cited above, § 106; and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II).

(ii) Application of those principles to the present case

96. The Court notes at the outset that the investigation of V.K.'s death was carried out in the course of a criminal case instituted by the Prosecutor's office for the Ivanovo Region in this connection. Having lasted for slightly over four years, it resulted in the decision of 13 October 2004 which concluded that there "was no causal link between the [police actions] and [V.K.]'s death" and that "accordingly, the actions of the police officers [did] not constitute the crime [of criminal negligence leading to the victim's death or grave injury]" (see paragraph 51 above). The reasonableness and lawfulness of the conclusions reached and the measures taken were subsequently examined and accepted by the domestic courts at two levels of jurisdiction (see paragraphs 52 and 53 above).

97. It is clear to the Court that the initial reaction of the relevant authorities was reasonably prompt, as some investigatory measures took place at once after the incident (see paragraphs 13-14 and 20 above) and that the entire investigation was conducted by the prosecutor's office, an authority which was institutionally independent from the police officers involved in the relevant events (see paragraphs 20-51 above). It remains to be examined whether the investigation conducted was effective in the sense of being capable of ascertaining the circumstances in which the incident had taken place and identifying the person or persons responsible for the death in question.

98. As regards the investigation of the question of possible suspicion of coercion or ill-treatment of V.K. prior to his death, the Court would reiterate its earlier conclusion (see paragraph 87 above) that V.K.'s death did not result from him having been thrown out of the window, coerced into jumping or following him having fled ill-treatment at the hand of police officials. Therefore, it endorses the conclusions reached by the domestic authorities and courts in their decisions in so far as they excluded any suspicion of coercion or ill-treatment of V.K. during the events preceding his jumping to his death (see paragraphs 51-53 above).

99. Turning to the quality of investigation of the question of the alleged negligence of the relevant police officials, the Court notes that to some extent the investigation was crippled at the initial stages of the proceedings by an apparent lack of effort to find out the exact sequence of events and the location and movements of the key actors on 16 September 2000. This led to certain unfortunate delays.

100. Nevertheless, despite these delays in the proceedings, the Court observes that the investigation authorities eventually addressed and corrected the shortcomings (see paragraphs 33, 34, 38, 44, 47, 49 and 51 above). In the course of the domestic investigation and subsequent court proceedings, the authorities identified all of the actors who could give evidence in respect of the circumstances of V.K.'s death and conducted multiple interviews with these people and cross-examinations between them with a view to establishing the exact circumstances of the incident. They also examined the scene of the incident and conducted multiple expert examinations of V.K.'s body.

101. On the basis of these materials, the authorities concluded that there was "no direct or indirect evidence that [V.K.]'s death is a result of unlawful actions of the police officers who ... escorted him, to those staff members who were present in the police station on the day of the incident" and that "his death the result of an unsuccessful attempt to escape from the police, i.e. it is a result of his actions aimed at evading detention" (see paragraph 51 above).

102. Thus, the Court does not see any reason to depart from the findings of the domestic courts on this aspect of the case and concludes that the investigation into the death of V.K. conducted by the authorities and taken as a whole was in compliance with the requirements of the procedural aspect of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

103. The applicant complained under Article 3 of the Convention that V.K. had been ill-treated before his death and that the subsequent investigation had been unable to explain the origin of the bruises registered on her son's body. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

104. The applicant claimed that V.K. had been ill-treated in police custody with the purpose of extracting a confession. She relied on the forensic report which had established three bruises on his face and six

bruises on his chest unrelated to his fall from the window. The applicant alleged that the Government had not provided a satisfactory and convincing explanation in respect of these injuries.

105. Denying the applicant's allegations, the Government stated that V.K.'s injuries had been inflicted on him either by the owners of the stolen bicycles who had caught him red-handed or by V.K. himself when he had bumped into a door on 13 September 2000 prior to his arrest.

B. The Court's assessment

1. Admissibility

106. The Court notes 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) The alleged breach of Article 3 under its procedural limb

107. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

108. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, among other things, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines

its ability to establish the cause of the injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory process (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII; *Mikheyev*, cited above, §§ 107-08; and *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 50, 6 December 2007).

109. Turning to the circumstances of the present case, the Court notes that that the investigation authorities were aware of the injuries on the body of V.K. unrelated to his fall shortly after the incident of 16 September 2000. The forensic examination of the corpse was ordered at once (see paragraph 14 above) and the first decision refusing to investigate the incident dated 7 October 2000 mentions "the yellowish and greenish-yellow bruises on the face and chest area" (see paragraph 20 above). The Court considers that these indications, together with the applicant's complaint of 17 September 2000 blaming the police for the death of V.K., constituted an "arguable claim" of ill-treatment at the hands of the police and warranted an investigation by the domestic authorities in conformity with the requirements of Article 3 of the Convention.

110. The Court notes, however, that the relevant authorities did not begin to investigate the origin of these injuries until quite late in the proceedings. The first time the investigation recognised this as an issue and tried to address it was in its decision of 29 June 2001, more than nine months after the events (see paragraph 34 above), and even then the authority merely collected and deferred to the statements of the police officers without making any critical analysis in this connection or arranging for confrontations between witnesses with conflicting statements. On 25 May 2004, which is two years and eleven months later, the domestic courts acknowledged this failure as a defect, but by then this shortcoming could not be addressed and corrected due to the lapse of time (see paragraph 47 above).

111. It is clear to the Court that as a result of these delays the authorities missed an opportunity to collect relevant material evidence, to identify and question all possible witnesses and to order a medical examination of the police officers or private individuals allegedly involved in the matter. In fact, the aforementioned delays constituted such a serious omission that the Court doubts that any subsequent investigation would have been able to remedy the resulting damage. Overall, it concludes that the inquiry into the circumstances in which V.K.'s injuries had been inflicted was not thorough and effective.

112. Having regard to the foregoing, the Court does not consider that the authorities have conducted an effective investigation into the applicant's

allegations of ill-treatment of V.K. and holds that there has been a violation of Article 3 of the Convention under its procedural limb.

(b) The alleged breach of Article 3 under its substantive limb

113. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others*, cited above, § 93).

114. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

115. Turning to the case at hand, the Court has regard to its findings concerning the deficiencies in the domestic investigation into the alleged ill-treatment of V.K. during his arrest on 13 September 2000 and, in particular, serious delays in investigation of these events which impaired the quality of the investigation (see paragraphs 109-112 above).

116. Having regard to the parties' submissions and all the material in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that V.K. was subjected to treatment contrary to Article 3 by policemen, as alleged by the applicant. In particular, the Court notes that V.K. was initially apprehended by two private individuals, Da. and Ko., apparently after V.K.'s unsuccessful attempt to steal a bicycle (see paragraph 8 above), and was only then handed over to policemen Zh. and S., who brought V.K. to the police station (see paragraph 33 above). The factual question to be resolved is, therefore, whether V.K. received the aforementioned injuries prior to the episode involving Da. and Ko., during his encounter with Da. and Ko., or after his arrest by Zh. and S.

117. Clearly, nothing in the case file confirms that all of V.K.'s injuries could have been received prior to his encounter with Da. and Ko. In this connection, the Court is sceptical of the explanations contained in the report of 13 September 2000 and allegedly made by V.K. to the effect that he had "bumped into a door", the admission records from the custody room with V.K.'s own hand-written comments to the effect that he was "fit", and the entry made by the emergency medical team on 14 September 2000 (see

paragraphs 20, 34 and 51 above). These pieces of evidence remained uncorroborated during the subsequent investigation and are inconsistent with the extent and gravity of the injuries described in the second post-mortem examination of V.K.'s body (see paragraphs 34 and 40 above) and the statements by one of his family members mentioned in the decision of 29 June 2001 (see paragraph 34 above).

118. At the same time, the claim that V.K. had been beaten up by Da. and Ko. relies solely on the statements of Zh. and S. and was denied by Da. and Ko. (see paragraphs 34 and 51 above). As already stated by the Court in paragraphs 110 and 111, the investigation failed to verify the statements by conducting a confrontation among the private individuals and the policemen and, more generally, assessing them in a critical light, which makes it difficult to assess their credibility. Likewise, the allegation that V.K. was beaten by the policemen, based on lawyer D.'s alleged conversation with V.K. (see paragraph 32 above), remains uncorroborated by any other piece of evidence and is difficult to be accepted as sufficiently credible.

119. The Court notes, however, that its inability to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention at the hands of the police derives in considerable part from the failure of the domestic authorities to react effectively to the applicant's complaints at the relevant time (compare *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008, with further references, and see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005, again with further references, and *Lopata v. Russia*, no. 72250/01, §§ 124-126, 13 July 2010).

120. Thus, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the applicant's alleged ill-treatment while in police custody.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

121. The applicant complained under Article 5 of the Convention that her son had been detained in breach of domestic law between 13 and 16 September 2000. This complaint falls to be examined under Article 5 § 1 (c) of the Convention, which provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

122. The Government argued that V.K. had been detained lawfully. They also submitted that the applicant had failed to exhaust domestic remedies available to her. In particular, she had not challenged the actions of the investigative authorities before a prosecutor or in court.

123. The applicant disagreed and maintained her complaints. She stated that there had been no effective remedies against the unlawful detention of her son.

124. The Court reiterates that, pursuant to Article 35 § 1 of the Convention, it may only deal with a matter within a period of six months from the final decision in the process of exhaustion of domestic remedies. If no remedies are available, or if they are judged to be ineffective, the six-month period in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), nos. 62566/00 et seq., 10 January 2002).

125. The Court notes that the alleged violation of the rights of V.K. guaranteed by Article 5 occurred between 13 and 16 September 2000. Having examined the case file materials and the parties' submissions, the Court notes that the applicant failed to raise this issue before the competent authorities at the domestic level. Even assuming that there were no domestic remedies to exhaust in this connection, the application was lodged on 7 July 2004, outside the six-month time-limit set out by Article 35 § 1 of the Convention.

126. This part of the case should accordingly be dismissed as belated, pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

127. The applicant further complained under Article 13 of the Convention of a lack of proper investigation into the death of her son.

128. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 2 of the Convention. Therefore, the complaints should be declared admissible. However, having regard to its conclusions above under Article 2 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see, for example, *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 57, ECHR 2005-XIII (extracts); *Polonskiy v. Russia*, no. 30033/05, § 127, 19 March 2009; *Sherstobitov v. Russia*, no. 16266/03, § 94, 10 June 2010; and *Suleymanov v. Russia*, no. 32501/11, § 157, 22 January 2013).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. 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

130. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage.

131. The Government stated that the finding of a violation in itself would constitute just satisfaction in the applicant's case.

132. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 11,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

133. The applicant also claimed EUR 10,000 for costs and expenses incurred before the Court. The applicant submitted a contract for legal representation entered into with her lawyer and a receipt for an advance fee in the amount of EUR 6,000.

134. The Government contested the claim, noting that the applicant was entitled to reimbursement of her costs and expenses only in so far as it had been shown that these had been actually and necessarily incurred and were reasonable as to quantum.

135. The Court notes that the costs claimed by the applicant were necessarily incurred. However, it considers that the sums claimed are not reasonable as to quantum. Regard being had to the information in its possession and to the sums awarded in comparable cases, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

136. 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 applicant's complaints under Articles 2, 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities' failure to safeguard the right to life of V.K.;

3. *Holds* that there has been no violation of Article 2 of the Convention on account of the authorities' failure to conduct an effective investigation into the circumstances of V.K.'s death;

4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to conduct an effective investigation into the origin of V.K.'s injuries;

5. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb on account of V.K.'s injuries;

6. *Holds* that it is unnecessary to examine the applicant's complaint about the quality of the investigation into the death of V.K. under Article 13 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable on the above amount, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant on the above amount, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 17 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President