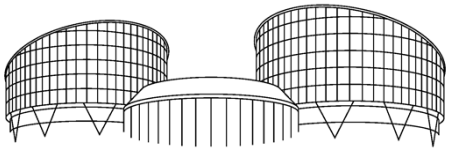

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VORIENĖ v. LITHUANIA

(Application no. 39423/15)

JUDGMENT

STRASBOURG

29 January 2019

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

In the case of Vorienė v. Lithuania,

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

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 8 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 39423/15) 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 Vita Vorienė ("the applicant"), on 30 September 2015.

2. The applicant was represented by Mr J. Povilionis and Mr S. Žostautas, lawyers practising in Panevėžys. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. On 13 June 2016 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Biržai.

5. On 11 April 2008 the applicant's son, M.P., was arrested on suspicion that he had committed a burglary and stolen a laptop computer. He was taken to a police station in Biržai, where he was held until his death (see below). On 12 April 2008 the police searched M.P.'s home and found an amount of drugs (cannabis). On 13 April 2008 the authorities informed M.P. that he was suspected having committed crimes of theft and possession of drugs.

6. By a ruling of 13 April 2008, a court sanctioned M.P.'s pre-trial detention for a period of eighteen days, on the grounds that he could flee from justice, for previously he had worked in Norway and had connections in that country. M.P. confessed to possession of drugs, but denied the theft.

M.P. was present at the court hearing; he also had a lawyer, J.P., representing his interests in the courtroom. The court indicated that M.P. had no criminal record.

7. While detained at Biržai police station, M.P. was kept in cell no. 1 alone for the entire time, given that the other detainees at that station had prior convictions, and, pursuant to the relevant domestic law, persons with no criminal record had to be held separately from those with prior convictions (see paragraph 53 *in fine* below).

8. As later established by the prosecutor, whilst detained at Biržai police station between 12 and 14 April 2008 M.P. was taken out of his cell four times so that he could meet his lawyer and the investigator. During the pre-trial investigation M.P.'s lawyer, J.P., would later also testify that he had met M.P. at around 2-3 p.m. on 14 April at Biržai police station to discuss whether to appeal against the court ruling imposing detention, but M.P. had stated that there had been no need because he had been ready to confess of the theft. Later that day the lawyer had taken part in M.P.'s questioning by the pre-trial investigator, when M.P. had made a statement about the theft. According to the lawyer, M.P. had communicated in a calm manner, he had not been agitated and had had no complaints.

A. Death of the applicant's son at Biržai police station and the ensuing pre-trial investigation into the circumstances of his death

9. On the morning of 15 April 2008 M.P. was found dead in his cell at Biržai police station. As was later established during the pre-trial investigation, at around 8 a.m. that morning the guards' shift was changing, and, in accordance with the applicable rules, the doors of all the cells were being opened. M.P. was found standing with his feet on the ground leaning forward; a blanket was looped tightly around his neck while the other end of the blanket was attached to the metal bar at the side of the top bunk of his bunk bed. The body bore the marks of strangulation, without marks of any other injuries. Police Officer D.M. immediately took M.P. out of the noose and laid him on the floor of the cell.

10. As transpires from the medical records and the prosecutor's decision of 19 December 2014 (also see paragraph 44 below), at 8.08 a.m. on 15 April 2008 officers at Biržai police station called an ambulance, which arrived at the scene within a couple of minutes, at 8.12 a.m. The paramedics indicated in the medical report and also later testified during the pre-trial investigation that they had examined M.P.'s body at 8.12 a.m.: the body had been found lying on the floor, had shown no signs of breathing or a pulse, the pupils had been dilated and had not reacted to light, the neck had shown signs of strangulation, post-mortem discoloration had set in, as had rigor mortis. The paramedics also stated that they had not attempted to resuscitate M.P. because according to what they had seen he had died one or two hours

before. The paramedics further asserted that apart from strangulation marks on M.P.'s neck there had been no injuries on M.P.'s face or hands. They also attested that there had been no signs on M.P.'s hands which would have indicated that he had been handcuffed or tied with a rope. The paramedics also noted that, if any other injuries had have been visible on M.P.'s body, they would have been noted in the medical report.

11. There was a suicide note found in the cell. It was addressed "To Mother". An empty box of matches was found in M.P.'s cell, and the authorities later established that the suicide note had been written with charcoal from used matches (also see paragraphs 21 and 44 below).

12. On 15 April 2008, the incident scene was inspected, photographs were taken, one of them showing a white sheet on the bunk bed, and police officers who worked at Biržai police station had been questioned. The same day the prosecutor also questioned the applicant, who stated that "recently her son [had] not complain[ed] about any problems or troubles, everything [had been] good". She also stated that previously "M.P. ha[d] never attempted to hang himself or to commit suicide, there [had been] no similar accidents in the past, and he [had] not mention[ed] such things either". The prosecutor continued questioning the police officers on 17 April 2008.

13. On 15 April 2008 an autopsy was ordered. The prosecutor provided the expert with a plastic bag containing M.P.'s clothes and a blanket which had been found in M.P.'s cell. The expert examination was performed the following day, 16 April 2008. The expert, who was from the Panevėžys branch of the Mykolas Romeris University Forensic-Medicine Institute (*Mykolo Romerio Universiteto Teismo medicinos instituto Panevėžio skyrius*), concluded that the cause of M.P.'s death had been mechanical asphyxiation as a result of his neck being squeezed by a noose. Whilst noting that there were light scratches on M.P.'s forehead and nose, the expert observed that this could have resulted from scratching of acne and concluded that it was not related to M.P.'s death (report no. M 224/008(05)).

14. The applicant requested that an additional autopsy be performed and the prosecutor granted her request. The additional autopsy was performed on 18 April 2008 (report no. M 759/08(01)). The forensic expert at the Vilnius branch of the Mykolas Romeris University Forensic-Medicine Institute concluded that there were strangulation marks on the neck and bruising on the back. The neck injuries could have been inflicted several minutes prior to death as a result of the neck being squeezed by the bed sheet. As to the bruising on the back, this could have been caused when the body hanging in the noose went into convulsion hitting off hard blunt surfaces. The expert concluded that there were no objective indications which could have denied M.P.'s cause of death as having been asphyxiation when the neck had been squeezed in a noose. The expert noted that there

were no signs of strangulation by hands; he also indicated that it had been a one-time constriction on the neck.

The findings of this additional autopsy were later confirmed when, following the last reopening of the criminal proceedings, the pre-trial investigation judge ordered another forensic examination (report no. EKM 52/14(01)) to be performed to answer certain questions, including those submitted by the applicant.

15. According to the Government – who have not been contested on this point by the applicant – upon the applicant's request, after the second autopsy the bailiff examined the corpse and took photographs in order to establish factual circumstances. The bailiff noted injuries on the back and the neck of the corpse.

16. On 7 May 2008 the applicant was granted victim status. She was represented by a lawyer.

1. First round of the investigation

17. On 25 November 2008 the prosecutor 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. The prosecutor considered that M.P. had died through suicide, which was corroborated by his suicide note.

18. However, by a ruling of 5 February 2009 the Panevėžys Regional Court, on appeal by the applicant, found that the pre-trial investigation had not been thorough and annulled the prosecutor's decision to discontinue it. For the court, it had been necessary to investigate whether M.P. had been harmed by other persons, taking into account the injuries on M.P.'s wrists, as alleged by the applicant, as well as to examine the suicide note and to establish whether it had been written by M.P. and with what writing instruments. The video recordings from Biržai police station had not been properly inspected, and the statements of some of the police officers had been contradictory, even false. Moreover, an internal investigation had established gross breaches of duty by the police officers at the police station (see paragraphs 47-50 below), which in turn could attract criminal liability under Article 229 of the Criminal Code (see paragraph 52 below). Nevertheless, the prosecutor had failed to assess that internal-investigation report.

2. Second round of the investigation

19. In March and April 2009 another prosecutor continued the investigation and questioned witnesses.

20. In May 2009, and in order to establish whether the suicide note had been written by M.P., the prosecutor ordered a handwriting expert examination of the note, which then was compared to several other documents handwritten by M.P. One of those other documents was a note

which M.P. had handwritten to the applicant on 14 April 2008, whilst detained at Biržai police station. It transpires from the material before the Court that that document had been in the possession of the applicant who had refused to give it to the authorities. A copy of that note had eventually been obtained by the authorities under a court order.

21. In June 2009 the handwriting experts produced a report concluding that the suicide note had been undoubtedly been written by M.P. In December 2009 the forensic experts concluded that there was high probability that the suicide note had been written with burned matches, which could have come from one of the two match boxes that had been found in M.P.'s cell or from another box of matches (expert report no. 11–1457(09)).

22. On 29 January 2010 the prosecutor again discontinued the pre-trial investigation, holding that M.P.'s death had been suicide. In reaching that decision he relied on an abundant body of evidence, including analyses of the video recordings from the police station cameras, which showed that no–one had entered M.P.'s cell at the relevant time. Between 5 p.m. on 14 April 2008, when M.P. had already been in the cell, until 8.04 a.m. on 15 April 2008, when M.P.'s body had been found, the doors of his cell had been opened only once, at 8.00 p.m. on 14 April 2008, when the guards D.M. and D.A. had changed shift. Furthermore, the recordings showed that the guards D.A. and D.M. had checked on M.P. several times though the peep hole, and during the night the guard D.M. had patrolled his area several times.

23. As to the possible criminal liability under Article 229 of the Criminal Code (see paragraph 52 below) on the part of the police, the prosecutor took into account the conclusions of the internal investigation to the effect that the Officers D.M. and R.S. had not followed the internal instructions regarding the obligation to constantly observe detainees. That being so, the prosecutor also noted that the two officers could not have foreseen the consequences of such behaviour – M.P.'s suicide – and prevent it, because M.P. had been a quiet and introverted person, he had been calm, had caused no problems in the police station and had not complained. There had been no indication that M.P. had had suicidal tendencies or a tendency to self-harm, and therefore no signs that special supervision had been needed. Accordingly, since there had been no causal link between the actions of the officers and the consequences, there were no grounds to start a pre-trial investigation for failure to perform official duties.

24. On the basis of an appeal by the applicant, who had argued that during such a flawed pre-trial investigation her suspicions that her son had been murdered had only become stronger, by a ruling of 13 May 2010 the Panevėžys Regional Court in a public hearing again annulled the prosecutor's decision to discontinue the criminal proceedings. This time the

court considered that there were certain contradictions with regard to the bed sheet as the object used for strangulation.

3. Third round of the investigation

25. Having performed an additional examination of the bed sheet in the light of all available evidence, such as the witnesses' statements, the photographs from the scene and expert reports, by a decision of 6 September 2010 the prosecutor again discontinued the pre-trial investigation into the circumstances of M.P.'s death.

26. The applicant appealed, and on 25 October 2010 the Rokiškis County District Court quashed the prosecutor's decision. The court considered that, in order to eliminate all doubts as to how M.P. could have killed himself, it was possible to conduct a reconstruction which would also verify the applicant's version that her son could not have killed himself in the way suggested (see paragraph 9 above). The court also stated that it was necessary to establish why burned matches with which M.P. had written the suicide note had not been found in the cell. Lastly, the specific instrument which had been used as a noose around M.P.'s neck had to be established. That decision was upheld by a higher court.

4. Fourth round of the investigation

27. On 14 December 2010 two reconstructions were performed at Biržai police station, with the participation of the applicant, the prosecutor, Police Officer D.M., who had found M.P.'s body, and others. It was examined whether M.P. could have hanged himself in the manner stated by the police officers on 15 April 2008 (see paragraph 9 above). After the first reconstruction the applicant maintained that her son could not have hanged himself in the manner described. She had no remarks as to the results of the second reconstruction. The results of those reconstructions were written down in two reports.

28. In order to find the instrument which had caused M.P.'s strangulation, the prosecutor sent requests to the Biržai county prosecutor's office and to the forensic experts in Panevėžys, and questioned certain witnesses. Even so, the blanket could not be found.

29. In the meantime, the applicant lodged an application to have a pre-trial investigation on the charges of failure to perform official duties (Article 229 of the Criminal Code, see paragraph 52 below) opened in respect of the prosecutors who had earlier discontinued the pre-trial investigation. By a final ruling of 10 January 2011 the Panevėžys Regional Court refused her application, noting that it was within the prosecutors' competence which actions to take when handling a criminal case. More importantly, in this case, once the courts had annulled the prosecutors' decisions to discontinue criminal investigation, the prosecutors had

continued the pre-trial investigation and the actions which the court had ordered had been carried out.

30. On 10 February 2011 the Rokiškis County District Court allowed an application by the applicant's lawyer to have a medical expert evaluate the results of the second reconstruction (see paragraph 27 above) in order to answer the question as to whether in hanging himself in the manner shown during the second reconstruction M.P.'s neck bones should have broken. According to the applicant, one needed "acrobatic" skills to commit suicide in such a manner. Having performed the examination of the second reconstruction report and the additional autopsy report (see, respectively, paragraphs 14 and 27 above), on 27 November 2011 the expert concluded that he could not answer the question posed by the applicant's lawyer, because the question was speculative.

31. On 13 January 2012 the prosecutor again discontinued the pre-trial investigation into the circumstances of M.P.'s death and also, for the reasons set out earlier (see paragraph 22 above) refused to open one in respect of Officers D.M. and R.S. for failure to perform official duties.

His decision was upheld by the first-instance court, which dismissed the applicant's appeal.

32. By a final ruling of 6 April 2012 the Panevėžys Regional Court rejected an appeal by the applicant and upheld the part of the prosecutor's decision regarding the refusal to open a criminal investigation in respect of the actions of Officers D.M. and R.S., on the grounds that they had failed to perform their duties. The court reached this decision in a public hearing in which the applicant and her lawyer took part and could present their arguments. The court concurred with the prosecutor's view that the authorities had not been aware that M.P. had been a suicide risk, so as to confer liability on the officer. Pursuant to domestic law as applied in this case, persons detained in several cells at Biržai police station had to be constantly monitored through spy holes. Even so, on the basis of the medical report the court nevertheless underlined that M.P. had died within a couple of minutes of the moment when the noose had closed around his neck, that is to say within a very short time. It would have been physically impossible for D.M. and R.S. to constantly monitor, through the holes in the cell doors, all the persons detained at the police station, including M.P. This was one more reason why the court could not hold that D.M.'s and R.S.'s failure to perform their duties had caused M.P.'s death.

33. On 27 April 2012 the Rokiškis County District Court granted the applicant's appeal and quashed the prosecutor's decision of 13 January 2012 in the part discontinuing the pre-trial investigation into the circumstances of M.P.'s death (see paragraph 31 above). The court held that in order to eliminate any contradictions about alleged violence against M.P., a confrontation had to be performed between the applicant and one of the police interrogators who had questioned her son on 14 April 2008

(see paragraph 8 above). In addition, the applicant requested that other persons who were detained at Biržai police station between 14 and 15 April 2008 be questioned, and the court granted that request.

5. Fifth round of the investigation

34. As requested by the court, the prosecutor then performed a confrontation between the applicant and the police interrogator and questioned eight individuals who had been detained at Biržai police station at the time of M.P.'s death. They all stated that they had heard no suspicious sounds during that night. In particular, D.Ž., M.P.'s co-accused in the case of theft, who had also been detained in the same Biržai police station but in another cell, averred that the two of them had talked through the slots intended for passing food at about 9 p.m. on 14 April 2008. M.P. did not state that any violence had been used against him or that he had been threatened. Neither had D.Ž. heard any suspicious sounds from M.P.'s cell.

35. On 22 October 2012 the prosecutor again discontinued the pre-trial investigation into the circumstances of M.P.'s death, holding that it had been the result of suicide.

36. As she was dissatisfied with the way in which the pre-trial investigation had been conducted, on 14 November 2012 the applicant applied to have the entire office of the Panevėžys regional prosecutor's office removed from the investigation. By a final ruling of 7 March 2013 the Panevėžys Regional Court held that her complaints were without substance, and that there was no reason to believe that any prosecutors from that office would not be able to effectively carry out the pre-trial investigation.

37. By a ruling of 31 January 2013 the Panevėžys Regional Court however allowed an appeal by the applicant against the prosecutor's decision to discontinue the criminal proceedings (see paragraph 35 above). The applicant was present at the court hearing. She asked that an expert report be prepared in order to establish whether the video recordings from Biržai police station had not been tampered with. The court granted her request.

6. Sixth round of the investigation

38. The prosecutor then proceeded with the pre-trial investigation. On 20 June 2013 the forensic experts produced report no. 11–745(13), wherein they concluded that even if there were small gaps between the clips, each of the clips in those video recordings was complete, and that none of the clips had any signs of having been altered by deletion or addition.

39. By a decision of 8 July 2013 the prosecutor again discontinued the pre-trial investigation. He relied on the entirety of the evidence in the criminal file, including the expert conclusions regarding the video–recordings (see the above paragraph).

40. The applicant appealed, arguing that the pre-trial investigation had been flawed, and that a number of pieces of evidence, such as, among other things, the marks on her son's wrists and the video recordings, had been improperly evaluated.

41. By a decision of 1 October 2013 the Panevėžys Regional Court again quashed the prosecutor's decision. The court considered that there still remained certain contradictions, in particular, whether the short gaps within the video recording had occurred owing to a technical problem or because of another cause. It was also necessary to ascertain whether the video files had been provided in sequence. Moreover, no clear answer had been obtained from the medical expert as regards the possible reasons for M.P.'s injuries in the light of the results of the second reconstruction (see paragraphs 27 and 30 above). A supplementary medical evaluation had to be performed in which the specialists would be provided with all the existing information about M.P.'s injuries so that the mechanism of his death could be determined and the question of whether there had been signs of violence against M.P. answered. The applicant and her lawyer were given the opportunity to pose questions to the experts. Lastly, the court underlined that a person's death, and even more so a death in a police station, was "a particular situation (*yra ypatingas atvejis*)", which had to be thoroughly examined.

7. Seventh round of the investigation

42. In accordance with the Panevėžys Regional Court's instructions (see the paragraph above), the prosecutor then asked the forensic experts to examine the video recordings at issue. On 1 April 2014 an expert at the Forensic Science Centre of Lithuania (*Lietuvos Teismo ekspertizės centras*) then concluded (report no. 11–3422(13)) that it was most likely that the gaps between the clips had appeared when transferring the video files to DVD. The video files were in chronological order. The expert also noted that one of the cameras had recorded two paramedics at the police station at 8.12 a.m. on 15 April 2008.

43. As instructed by the Rokiškis County District Court on 25 November 2013, the experts at the State Forensic-Medicine Service (*Valstybinės teismo medicinos tarnyba*) had been given the material of the pre-trial-investigation file, which had amounted to four volumes, to perform an expert examination of the cause of M.P.'s death. They conducted the examination from 26 May to 28 November 2014 and produced report no. EKM 52/14(01). The experts firstly concluded that M.P. could have died as had been demonstrated during the second reconstruction, which had been performed on 14 December 2010 (see paragraph 27 above). They also noted that M.P.'s neck organs could have been placed under pressure because of his own weight, and also underlined the fact that, when a person's body is in a certain position, his or her weight is sufficient to bring about suffocation.

The experts also explained that the death of M.P. should have occurred while he was in a vertical or similar position, as proven by the location of the post-mortem discolouration, and that the bruises on M.P.'s back could have been caused when he was in the noose and his back came into contact with the frame of the bunk bed during his convulsions. As to the injuries to M.P.'s wrists, which the applicant alleged had been inflicted during handcuffing, the experts had explained that those had appeared after the first autopsy when M.P.'s hands had been bound during preparation of his body for burial, which was the usual practice. On the basis of the documentary evidence – photographs of M.P.'s corpse from the scene, the bailiff's statements of 16 April 2008 (see paragraph 15 above) and the additional autopsy report (see paragraph 14 above) – the experts also categorically and officially stated that there had been no bruising around M.P.'s eyes, unlike what had been claimed by the applicant.

44. By a decision of 19 December 2014 the prosecutor again discontinued the pre-trial investigation. He relied on the entirety of the evidence which he cross-referenced – including that obtained after the last resumption of the criminal investigation – and held that no crime had been committed, holding that M.P. had died as a result of suicide. For the prosecutor, suicide as the cause of death was also corroborated by the statements of M.P.'s lawyer, who stated that on 14 April 2008 M.P. had been acting calmly, had been responsive, had not complained about anything and had not been agitated (see paragraph 8 *in fine* above). Among other things, the prosecutor also noted that an empty box of matches had been found in M.P.'s cell, and that the cell had had a toilet and burned matches could have been disposed of there (see paragraphs 11, 21 and 26 above). Although the blanket which had been given to the forensic expert on 15 April 2008 (see paragraph 13 above) had not been found during the later stages of the pre-trial investigation, there was sufficient data to confirm that M.P. had put his neck into a noose made from a blanket, and there was no evidence that someone had forced him to do that or that someone had hanged him.

45. The applicant appealed against the prosecutor's decision, asserting that the criminal investigation had not proven that her son had committed suicide. She still insisted that the evidence which had been gathered during the pre-trial investigation had been contradictory and had raised doubts. The applicant still considered that her son could have been a victim of police violence.

46. The criminal proceedings in respect of M.P.'s death were ultimately terminated by a ruling of the Panevėžys Regional Court on 27 April 2015, dismissing an appeal by the applicant. The court noted that numerous pieces of evidence had been collected and examined. It also emphasised that two of the applicant's main criticisms had been answered. Firstly, after the last re-opening of the pre-trial investigation an examination of the video recordings

was performed by a forensic expert, who had disproved the applicant's allegation that the video recordings from Biržai police station had been tampered with (see paragraph 42 above). Secondly, report no. EKM 52/14(01) (see paragraph 43 above), as well as earlier medical reports (see paragraphs 13 and 14 above), had reached the same conclusions – that M.P. had died as a result of being strangled in a noose. The court noted that those medical reports had explained that M.P. could have died in the manner which had been demonstrated in the second reconstruction, and also noted that there had been no signs of injuries on M.P.'s body which he could not have inflicted himself. The applicant's allegation that M.P.'s death could have been caused by someone else had been examined throughout the criminal investigation but no evidence of that had been found. The court also noted that the prosecutor had reached reasoned conclusions after having performed a comprehensive analysis of the gathered evidence. Although the applicant had expressed doubts in respect of the evidence gathered, in her appeal she had not presented any new arguments regarding what particular pre-trial investigation actions had not been performed, what data had not been evaluated, or what investigative actions, had they been performed, would have clarified any important circumstances in this case. Lastly, the court concluded that during the pre-trial investigation all actions provided by law had been used to obtain evidence. Even so, there was "no unquestionable data (*neabejotini duomenys*)" that a crime had been committed.

B. Internal investigation into the incident at Biržai police station

47. After M.P.'s death, the police also conducted an internal investigation. It was led by a senior investigator at the Panevėžys city police. On 30 May 2008 the internal investigator produced report no. 50-1-IS-42, which was approved by the chief of the Panevėžys city police.

48. Having examined the available material, which included both the criminal case-file regarding the theft and the material of the criminal case-file concerning the circumstances of M.P.'s death, the internal investigator concluded that there was no information which could lead to a conclusion of any kind of abuse of M.P. by the police officers.

49. Within the course of the internal investigation, the safeguarding of M.P. while in police custody was also examined. On the basis of video recordings from the police station the internal investigation established that during his shift the guard D.M. had patrolled his area only a few times and had stopped only briefly at the doors of the cells. He had also only twice slowly walked the corridor along his post and only once, while patrolling his area, had he looked inside cell no. 1, where M.P. had been held. The investigator concluded that D.M. had thus failed to perform his duties in accordance with the internal instruction on ensuring constant supervision of

detainees, and had thus committed a disciplinary offence. Lastly, the investigator noted that by making a statement during the internal investigation that he had ensured constant supervision of the detainees, D.M. had given false testimony. Afterwards D.M. was given a reprimand.

50. As to the other guard – R.S. – the internal investigation established that he had monitored the situation at his post via video cameras, which he considered a possible way of carrying out his duties. The internal investigator admitted that such a method of carrying out his duties could not be seen as unreasonable, even if there had been certain technical errors in how his functions had been assigned. As a result, no disciplinary sanctions were imposed on R.S.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. The relevant domestic law and practice as to the protection of the right to life and effective investigation is set out in *Česnulevičius v. Lithuania* (no. 13462/06, §§ 47-50, 10 January 2012).

52. The Criminal Code provides:

Article 229. Failure to Perform Official Duties

> "A civil servant or a person equivalent thereto who fails to perform his or her duties through negligence or performs them inappropriately, where this results in significant damage to the State or to a legal or a natural person, shall be punished by deprivation of the right to be employed in certain positions or to engage in certain types of activity or by a fine or by arrest or by imprisonment for a term of up to two years."

53. The Instruction on Ensuring Safety and Supervision in Territorial Police Detention Stations (*Teritorinių policijos įstaigų areštinių apsaugos ir priežiūros instrukcija*), approved by the Police Commissioner General on 29 May 2007, stipulated that special enhanced supervision measures had to be taken with regard to persons held in police custody who were considered as having suicidal tendencies. The grounds to include a person on such a list were the following: documents in the person's file, prior convictions, verbal information received by officers, the person's behaviour or letters or other sources of information as well as any actual attempts to self-harm or to commit suicide. The instruction also provided that persons with prior convictions were to be held separately from those with no criminal record.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

54. The applicant made a twofold complaint. She contended firstly that the State authorities had been responsible for her son's death whilst the latter had been held at Biržai police station. Secondly, the applicant argued that they had failed in their obligation to conduct a proper investigation into the circumstances surrounding his death.

55. The applicant invoked Articles 2, 3 and 6 of the Convention. However, since it is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers that the applicant's complaints should be examined only under Article 2 of the Convention.

In so far as relevant, this provision reads 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 ..."

A. Admissibility

1. Substantive limb of Article 2

(a) The parties' submissions

56. The Government firstly submitted that the applicant had failed to exhaust the available domestic remedies since she had not lodged a civil claim for damages due for the authorities' alleged failure to protect her son's life. In the Government's view, such a claim could have been lodged either in civil or in criminal proceedings, given that in a case of non-intentional loss of life the Convention does not necessarily require criminal liability.

57. The applicant did not specifically address the Government's arguments about the failure to exhaust the domestic remedies. Nevertheless, she contended that her son had been tortured and killed by police officers while in detention at the police station (also see paragraph 66 below).

(b) The Court's assessment

58. The general principles concerning exhaustion of domestic remedies are resumed in *Vučković and Others v. Serbia* ([GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

59. Turning to the circumstances of the present case, the Court accepts the Government's argument that the applicant did not pursue any civil

remedies in connection with her son's death. Indeed, as is apparent from the material provided by the parties, the applicant did not even ask to be recognised as a civil plaintiff during the criminal proceedings, instead concentrating on the possible causes of her son's death. In this context the Court also cannot but note that the applicant considered that not only had her son's life not been protected at Biržai police station, but she went as far as to accuse the police officers of having tortured and murdered him. The applicant maintained that view until the very end of the criminal proceedings regarding the circumstances of her son's death (see paragraphs 24 and 45 above). This, for the Court, was an argument about intentional loss of life, the opposite to what has been suggested by the Government in their objection (see paragraph 56 above). The Court also observes that the applicant continued to challenge, until the end, the prosecutor's decisions not to start a criminal case against Police Officers D.M. and R.S. for failure to carry out official duties (see paragraph 32 above), which appears to have been her alternative theory for the cause of her son's death. In the light of these arguments and taking into account the matters voiced overall by the applicant, the Court finds it sufficient that the applicant pursued the criminal-law avenue in order to provide the domestic authorities with an opportunity to put right the alleged violation. The Government's objection as to the applicant's failure to use the available domestic remedies must therefore be dismissed.

2. Procedural limb of Article 2

(a) The parties' submissions

60. The Government considered that the applicant, if she had considered that the State authorities had acted inefficiently or had failed to properly examine her pleas during the criminal proceedings, could have instituted civil proceedings for damages. In this context the Government also relied on the Supreme Court's case-law to the effect that the State had been bound to compensate damage caused by the actions or failure to act of the pre-trial investigation institutions. Similarly, the Supreme Court had also held that the civil courts had not been bound by the fact that certain actions had not been acknowledged as unlawful during criminal proceedings – the latter fact not precluding them from declaring something unlawful under the civil procedure.

61. In this context the Government also referred to the Supreme Court's decision in a civil case where a claimant had been successful in obtaining damages when a criminal case concerning the circumstances of the deaths of his son and brother had been terminated as time-barred. It was noteworthy for the Government that in that case the Supreme Court had directly applied Article 2 of the Convention and had emphasised the State's

positive obligation to adequately investigate the circumstances of suspicious deaths.

62. The applicant also did not specifically comment on the Government's objections. Nevertheless, she noted that the investigation had been suspended and restarted on numerous occasions, and, upon seeing that the investigation had neither been promptly nor thoroughly conducted, over seven years of criminal proceedings she had submitted thirty-two complaints. It had been on her initiative that the investigation had been resumed several times. During those years she had repeatedly visited the prosecutor's office and the courts, and had experienced lots of stress and worries.

(b) The Court's assessment

63. The Court reiterates that the applicant pursued, until the end, the criminal proceedings as to the causes of her son's death (see paragraph 45 above). It finds it noteworthy that all six times the prosecutor discontinued the investigation it was reopened following appeals by the applicant (see paragraphs 18, 24, 26, 33, 37, 40 and 41 above). The applicant went as far as asking that a pre-trial investigation be opened against the prosecutors for purportedly having failed to conduct the criminal investigation diligently (see paragraph 29 above). Furthermore, and unlike in the Supreme Court's judgment relied on by the Government (see paragraph 61 above), the criminal investigation in the instant case did not end as being time-barred. Thus the applicant was not deprived of the benefit of having a final court decision on the merits of her complaint that the criminal investigation had not been effective (see paragraph 46 above). Consequently, on the facts of the case the Court cannot see how a civil claim for damages alleging an ineffective criminal investigation, that is to say the same issue which the applicant had already raised before the criminal courts for seven years, might have reasonably led to a different outcome. The Court recalls in this respect that where more than one potentially effective remedy is available, an applicant is only required to have used one remedy of his or her choice (see, among many other authorities, *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014, with further references, and *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 37, 17 January 2017).

64. It follows that, contrary to the Government's assertions, the applicant was not required to exhaust civil-law remedies by bringing a complaint before the civil courts. Accordingly, the Government's objection has to be rejected.

3. The Court's conclusion

65. The Court further finds that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the

Convention. It also considers that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Substantive limb of Article 2

(a) The parties' submissions

(i) The applicant

66. The applicant asserted that her son had been killed in police custody by the police officers, who had tortured him by putting a gas mask on his face, blocking the breathing hole and beating him on his back. It was likely that the officers had underestimated how long a person could survive breathless. Afterwards he had been hanged from the bunk bed using a blanket sheet. The applicant also pointed to the results of the internal police investigation, wherein it had been established that Officer D.M. had lied (see paragraph 49 above). In her view, this lie was aimed at disguising a murder at the police station.

(ii) The Government

67. The Government emphasised that within domestic criminal proceedings there had been "no strong evidence" to support the applicant's version that her son had not committed suicide but instead had been killed by the police. To the contrary, the evidence in the case supported the theory that suicide had been the cause of death, as noted in the prosecutor's decision of 19 December 2014 (see paragraph 44 above).

68. As to the State's positive obligation to protect M.P.'s life, the authorities had been neither aware not should they have been conscious that the applicant's son had been a suicide risk. He had not had a history of mental health problems or suicidal tendencies; neither had he showed any signs of suicidal tendencies whilst in police custody. M.P. was not to be considered more vulnerable than any other detainee and there had been no indications that special measures should be applied to him. The Government also pointed out that M.P. had been kept alone in his cell, because the other detainees held at Biržai police station had had prior convictions, whereas M.P. had had no criminal history.

69. Once M.P.'s body had been found in the cell, an ambulance had been called without undue delay and the paramedics arrived within a couple of minutes. However, owing to obvious signs of death, resuscitation had no longer been appropriate and thus had not been attempted.

(b) The Court's assessment

(i) General principles

70. The general principles as to the protection of right to life and, in particular, as to the protection of prisoners from the risk of suicide are set out in *Volk v. Slovenia* (no. 62120/09, §§ 83-85, 13 December 2012). The Court notably recalls that for a positive obligation to arise regarding a prisoner with suicidal tendencies, it must be 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 and, if so, that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (ibid., § 84).

(ii) Application of these principles to the present case

71. The Court firstly turns to the applicant's allegation that her son had been tortured and murdered by the police officers. It notes that when pursuing the criminal investigation regarding the reasons for M.P.'s death the authorities examined all possible causes of death, including, at the applicant's request, murder (see paragraphs 33 and 41 above). Nevertheless, as established by the prosecutors and the courts, there was no evidence of violence against M.P. to corroborate the applicant's hypothesis of a violent crime (see paragraph 34 above). The speculative nature of the applicant's suggestions was also pointed out by the medical expert (see paragraph 30 above). The signs which the applicant attributed to proof of violence, such as signs of strangulation or marks on M.P.'s wrists or bruising on his back, or alleged black eyes, had been examined by the forensic experts who had given plausible explanations for their presence or, alternatively, had categorically noted their absence (see paragraphs 10, 14 and 43 *in fine* above). Those explanations had been found credible not only by the prosecutors but also by the domestic court, which observed that there had been no marks on M.P.'s body which he could not have inflicted on himself (see paragraph 46 above). The Court finds no reasons to hold otherwise.

72. As to whether the officers at Biržai police station had displayed adequate diligence in protecting M.P., in so far as they knew or ought to have known about the risk of his self-harming (see the case-law quoted in paragraph 70 above), the Court observes the existence of a domestic legal framework designated to safeguard detainees through enhanced supervision if an individual is considered a suicide risk or as having a tendency to self-harm (see paragraph 53 above). That being so, as established during the pre-trial investigation, no circumstances triggering such a duty on the part of the authorities' were present in the instant case. In particular, as affirmed by M.P.'s lawyer, on 14 April 2008 his client communicated in a calm manner, he was not agitated and he had no complaints (see paragraph 8 above). No signs of calamity at Biržai police station at the time of M.P.'s death were

reported by the other detainees at that station (see paragraph 34 above). The fact that M.P. had had no history of attempted suicide was also confirmed by the applicant in her statement to the prosecutor (see paragraph 12 above). Nor did the applicant assert that her son was a particularly vulnerable individual, which would have put the onus on the authorities to monitor him particularly closely (see, *mutatis mutandis*, *Volk*, cited above, §§ 86-94, and, *a contrario*, *Ketreb v. France*, no. 38447/09, §§ 75-99, 19 July 2012). The Court also observes that the paramedics arrived at the scene within minutes, but no resuscitation was possible because M.P. had already been dead for several hours (see paragraph 10 above; compare and contrast *Česnulevicius v. Lithuania*, no. 13462/06, § 88, 10 January 2012). Accordingly, the State may not be held liable for lack of coordination between the security staff, facility management and medical practitioners either (on this issue, see *Premininy v. Russia*, no. 44973/04, § 87, 10 February 2011).

73. Lastly, the Court does not overlook the fact that disciplinary proceedings were opened, which resulted in a reprimand being imposed on one of the two police officers (see paragraphs 47-50 above). That being so, the Court also notes that the results of that internal investigation were taken into account by both the prosecutor and the Panevėžys Regional Court, which held that there had been no causal link between the deficiencies in performance of the duties by the police officers at issue and M.P.'s death, which had been sudden (see paragraphs 31 and 32 above). The Court sees no reasons to reach a different conclusion on this point.

74. Accordingly, there has been no violation of the substantive limb of Article 2 of the Convention.

2. Procedural limb of Article 2

(a) The parties' submissions

(i) The applicant

75. The applicant argued that the authorities had neglected to properly investigate the circumstances of her son's death. The criminal investigation had been delayed for seven years. The fact that the pre-trial investigation had been re-opened six times only proved that there had been flaws and that the investigating authorities had buried the facts proving her son's murder at Biržai police station. During that period the officers had audaciously told lies, had falsified video recordings and documents, and, during the pre-trial investigation, had hid the murder weapon. The applicant also fervently challenged the results of the medical expert examinations of the circumstances of her son's death, asserting that M.P.'s corpse had not been examined in an objective manner. The applicant pointed to the absence of burnt matches in M.P.'s cell which had led her to conclude that he had been forced to write the suicide note by the Biržai police officers.

(ii) The Government

76. The Government considered that the all the procedural requirements – promptness, independence, reasonable time, capacity to establish facts and applicant's ability to effectively take part in the criminal investigation – had been met in this case. Throughout the proceedings there had always been an active investigation conducted, only with certain exceptions when it had been necessary to wait for specialists and experts to report.

77. The conducted investigation had been able to establish all the relevant factual circumstances. As a result, convincing arguments had been provided with regard to disputed injuries allegedly sustained by the applicant's son, and ruling out the possibility that a crime had been committed against him. Even if some of the decisions by the prosecutor to discontinue the pre-trial investigation had been quashed, this had not been because they had been totally unsubstantiated or arbitrary – as they had been to a large extent based on the expert conclusions and the suicide note – but because further investigative actions had had to be carried out. The six re-openings of the investigations had to a major extent been caused by the actions of the applicant, who had raised new complaints or asked that new aspects be investigated after a significant lapse of time. When conducting additional investigative measures no essential evidence had been revealed. By allowing most of the applicant's appeals the domestic authorities had demonstrated particular sensitivity and readiness to investigate her claims. Given that M.P.'s death had been an exceptional case as it had occurred in a police station, it had been necessary to take not only reasonable but also all possible investigative actions in order to comprehensively investigate it. The Government relied on the Court's judgment in *Keller v. Russia* (no. 26824/04, 17 October 2013), where the Court, having taken into account the authorities' ability to eventually address and correct the raised and identified shortcomings, had not found a procedural violation of Article 2 of the Convention despite nine rounds of investigation.

(b) The Court's assessment

(i) Applicable principles

78. The relevant principles as to effective investigation in the context of Article 2 complaint are set out in *Keller*, cited above, §§ 92-95.

The Court also underlines that the obligation of effective investigation is not an obligation of result, but of means (see, among other authorities, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II) and that Article 2 does not entail the right to have others prosecuted or sentenced for an offence, or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII).

(ii) Application to the instant case

79. The Court finds it paramount that the applicant's son had died at a police station, whilst being in an apparently controlled environment which, in addition, he was not free to leave. In such circumstances the Court can only concur with the Panevėžys Regional Court that such a death had to be particularly thoroughly examined (see paragraph 41 above). The Court also reiterates that when death occurs in a State run detention institution, the State is in a better position to investigate the causes of death (see *Česnulevičius*, cited above, § 94).

80. It is clear to the Court that the initial reaction of the relevant authorities was prompt. To establish the circumstances of M.P.'s death the criminal proceedings were opened right after the body was found, and a number of investigative actions, such as the inspection of the scene, questioning immediate witnesses, two autopsies – the second one at the request of the applicant – were performed on that and the following days (see paragraphs 12-15 above). The entire criminal investigation was conducted by the prosecutor's office, an authority which was institutionally independent from the police officers involved in the relevant events, and the prosecutors' decisions had been scrutinised by the courts. The prosecutors' capacity to establish the truth was also noted by the courts, which dismissed the applicant's argument that the prosecutors lacked competence to uncover alleged crime (see paragraphs 29 and 36 above).

81. On the facts of the case the Court cannot but note that at certain stages the criminal investigation to an extent was crippled by an apparent lack of effort to establish and properly examine certain pieces of evidence, such as the instrument used to write the suicide note, the alleged injuries on M.P.'s body, the authenticity of the video recordings or the mechanism of M.P.'s death (see paragraphs 18, 26, 37 and 41 above). Be that as it may, and despite these delays in the proceedings, the Court observes that the prosecutor and also the courts entertained the applicant's requests and eventually addressed, corrected or explained those shortcomings (see paragraphs 14, 20, 24, 26, 28-30, 33, 34, 37, 38, 41 and 44 above; see also *Keller*, cited above, § 100). In that vein it also notes that measures such as a court order to obtain evidence from the applicant had been taken (see paragraph 20 above). The Court also points out that four medical examinations by experts from different institutions, an examination by the bailiff and two reconstructions regarding the causes of M.P.'s death in the light of the applicant's assertion of ill-treatment at the hands of the police officers had been performed, some of them at the applicant's request (see paragraphs 13, 14, 27, 30 and 43 above). In the course of the criminal investigation and subsequent court proceedings, the authorities identified all of the actors who could give evidence in respect of the circumstances of M.P.'s death and conducted multiple interviews with these people, as well as a confrontation between the applicant and the police interrogator, with a

view to establishing the exact circumstances of the incident (see paragraphs 12, 33 and 34 above).

82. Having lasted for exactly seven years, the criminal investigation resulted in the prosecutor's decision of 19 December 2014, which concluded that no crime had been committed and that M.P.'s had died as a result of suicide, which the police officers could not have foreseen (see paragraph 44 above). The reasonableness and lawfulness of the conclusions reached by the prosecutor and the measures taken in the course of the criminal investigation were subsequently examined and accepted by the Panevėžys Regional Court, which also excluded any suspicion of coercion or ill-treatment of M.P. preceding his death. As pointed out by that court, everything possible had been done to establish the circumstances of the death. It is true that the blanket used by M.P. for hanging himself and which was found in his cell (see paragraph 13 above) apparently went lost during the later stages of criminal proceedings. However, the Court does not consider that, albeit regrettable, this fact, as such, is capable of undermining the efficiency of the investigation because, in any case, there was sufficient data to confirm that M.P. had put his neck into a noose made from a blanket (see paragraphs 44 and 46 above; see also, *mutatis mutandis* and in relation to the loss or destruction of evidence in criminal cases examined by the Court under Article 6 of the Convention, *Sangiorgi v. Italy* (dec.), no. 70981/01, 5 September 2002, and *Sofri and Others v. Italy* (dec.), no. 37235/97, ECHR 2003-VIII). Furthermore, as observed by the Panevėžys Regional Court, in her last appeal the applicant had not indicated what particular pre-trial investigation actions, capable of clarifying any important circumstances in the case, had not been performed and/or what data had not been evaluated (see paragraph 46 above).

83. Lastly, the Court reiterates that disciplinary proceedings by the internal-investigation division of the Panevėžys city police, a body independent from Biržai police station, had been instituted against two Biržai police officers in order to elucidate the truth (see paragraphs 47-50 above, contrast *Česnulevičius*, cited above, § 100).

84. 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 M.P. 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.

85. There has accordingly been no violation of Article 2 of the Convention under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 29 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President