

CASE OF ESNULEVI IUS v. LITHUANIA - Application no._13462/06 (2012)

In the Chamber's judgment in the case **esnulevi ius v. Lithuania**, the European Court of Human Rights held, unanimously, that there had been:

- Two violations of Article 2 (right to life and lack of effective investigation) of the European Convention on Human Rights;

I. Principal Facts

The applicant, Petras esnulevi ius, is a Lithuanian national. The case concerned the death of Mr esnulevi ius' 22-year old son in August 2000 in Pravienišk s Prison following repeated attacks by other inmates.

On 4, 5 and then on 6 August, A. was beaten by other inmates. On the last occasion he was taken to the prison nurse who, unable to stop the bleeding from a deep stab wound to one of his knees, then took him to the Prison Hospital in Vilnius where he was operated on. His condition deteriorated and the following day he was transferred to Vilnius University Hospital. He died half an hour after arriving. The ensuing autopsy report concluded that A. had died from multiple injuries, notably blows to his head, neck, back, stomach, hands and legs. According to the experts, all those injuries occurred one to three days before his death. A subsequent report by the State Medical Audit Inspectorate further concluded that A. had died of traumatic shock which the doctors on duty both at the prison and at the prison hospital had not managed to diagnose. The report also noted that the prison hospital doctor on duty did not have a licence to perform surgery and therefore had not had the right to operate.

On 8 August 2000 the prosecuting authorities launched criminal proceedings on murder charges. During the ensuing investigation four anonymous witnesses identified 11 possible suspects. The proceedings were suspended in total on five occasions by the district prosecutor because the suspects could not be identified. On each occasion they were then reopened by the regional prosecutor with instructions for proper forensic examinations to be carried out and for the case against the 11 suspects to be pursued further by questioning them in more detail.

II. Complaints and Procedure

Relying on Article 2 (right to life), Mr esnulevi ius complained that the Lithuanian authorities had failed to protect the life of his son while he was in prison and that the ensuing investigation into his death had been inadequate, letting those responsible go unpunished.

III. Decision of the Court

The Court considered that the Pravieniškis prison authorities had to have been aware right from the first incident on 4 August 2000 that A. had been in clear and real danger. The fact that he refused to disclose the identities of his attackers could be explained by both the code of silence between prisoners and the fact that he did not feel safe.

The Court was not persuaded by the prison governor's explanation that A. refused to be placed in isolation for his own safety. Nor did the Court find the Government's argument convincing that the second beating had only come to light after A. 's death. It would seem suspect that the nurse who had seen A. after the second beating and who had testified to bandaging his leg had accepted without question his version of a football injury and, without making any record in the medical file, only disclosed the incident when the institution where she worked had been under investigation. Moreover, the Court had reservations about her testifying to having only observed minor injuries on 6 August 2000 when only a few days later the autopsy report had recorded blows all over A. 's body which had been sustained one to three days before death. There had also been deficiencies in the medical care A. had received for traumatic shock.

The Court was particularly struck by the fact that he had been treated at the prison hospital by a doctor who did not even possess a medical licence. Despite the serious risk to A. 's well-being, the prison authorities had not ensured a safe environment for him. They had failed to detect, prevent and monitor violence from other inmates and, once aware of it, had further failed to respond to it with prompt, diligent and effective coordination between security staff, medical practitioners and prison management. The Court therefore concluded that the authorities had failed to protect the right to life of Mr esnulevi ius' son in prison, in violation of Article 2.

The investigation, although launched promptly, had been plagued by shortcomings. Notably, it had been suspended and reopened five times due to failure to carry out basic investigative actions so as to assemble a case, even though 11 suspects had been identified. The Court understood the anonymous witnesses' unwillingness to testify against other inmates, but stressed that there were technical means available to question witnesses without revealing their identity. Moreover, and as suggested by the regional prosecutor, those witnesses could have been questioned once they had finished serving their sentences, a situation which was more than probable given that 11 years has now elapsed since A. 's death. In any case, anonymous witnesses were not the only source of evidence. A metal bar and masks had been found at the crime scene. Lastly, no criminal, administrative or disciplinary proceedings have apparently ever been brought against the prison wardens or officers. The Court therefore concluded that the investigation into the death of Mr esnulevi ius' son had been ineffective, in further violation of Article 2.

IV. Just satisfaction

The Court held that Lithuania was to pay to the applicant 30,000 (EUR) in respect of non-pecuniary damage, 2,015 (EUR) in respect of pecuniary damage and 770 (EUR) for costs and expenses.