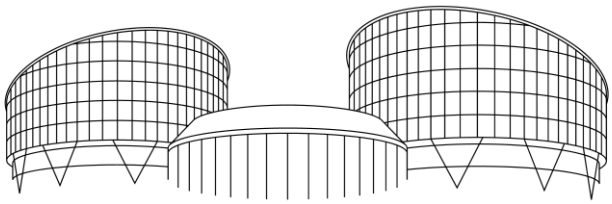

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 14730/09
Andrzej KARPISIEWICZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 11 December 2012 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 13 March 2009,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andrzej Karpisiewicz, is a Polish national, who was born in 1968 and lives in Koźminek. He was represented before the Court by Ms M. Żelewska, a lawyer practising in Gdańsk. The Polish Government ("the Government") were represented by their Agent, first Mr J. Wołąsiewicz and, subsequently, Ms J. Chrzanowska, both of the Ministry of Foreign Affairs.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicant's brother's stay in the Kalisz Hospital

3. On 26 August 2007 the applicant's brother, K.K. was taken by his wife A.K. to the Kalisz emergency service. He was examined by a doctor and administered an injection. He felt better afterwards and was sent home.

4. On 27 August 2007 the applicant's brother continued to feel unwell and went to see his GP. After the examination, the GP ordered an ambulance to transfer K.K. to a hospital in Kalisz, suspecting that he could be suffering from acute pancreatitis (inflammation of the pancreas). He was admitted to the surgical ward and diagnosed with acute pancreatitis; however, his condition was considered to be relatively stable. He underwent blood and urine tests on the same day.

5. On 28 August 2007 the doctors noticed that the applicant's brother started to behave strangely. He was agitated, walked aimlessly around the ward, kicked the doors, disturbed other patients, was aggressive and talked to himself. This behaviour was noted in his medical notes. He was administered tranquilisers. The doctor on duty suggested that the applicant's brother's behaviour could be related to alcoholism or pesticide poisoning. In the evening of that day he again became agitated. He walked down the corridor, kicked the doors, was aggressive and disturbed other patients.

6. Despite another dose of tranquilisers his condition did not improve. The doctor on duty decided to tie the applicant's brother's arms to his bed. As the applicant's brother managed to free one of his arms, it was decided to tie also his legs to the bed. Nonetheless, after midnight he managed to free himself from the belts. He hit one of the nurses in the face and hit a window and the walls with a chair. The nurses called for the assistance of male nurses from the emergency service. At about 1 a.m. K.K. opened a window and jumped out from the seventh floor of the hospital building. He landed on a roof located on the fifth floor and was taken to the intensive care unit. There the doctors established that he had suffered a serious injury to his head and a multiple fracture of his leg. He was operated on immediately.

7. During the night of 28 to 29 August 2007 the wife of K.K. was informed by the hospital that her husband had jumped out of the window and was undergoing a trepanation (surgery to his head). The applicant was informed by the doctor on duty that before the jump his brother had shown the symptoms of an alcoholic who had stopped drinking. The same information was given to police officers who arrived at the hospital.

8. The applicant submitted that the director of the hospital had read out to him the police report concerning the incident. According to the applicant,

the police report was based exclusively on the statements from the nurses who had been taking care of the applicant's brother. They stated that they had tied him to his bed with security belts. However, he managed to free himself and then jumped out of the window.

9. The applicant did not believe the version of events as presented by the nurses. The police officers did not hear the patient who shared the room with the applicant's brother and who was the only eyewitness to the incident. The applicant spoke to that patient. According to him, the applicant's brother had called the nurses for something to drink. He managed to free himself and then struggled for quite some time to open the window in the room. The applicant submitted that the hospital staff had not reacted to the cries of the fellow patient and the noise made by the applicant's brother.

10. On 29 August 2007 the applicant met the heads of the surgical and intensive care wards and the director of the hospital to hear the explanations for the accident. He was told that his brother had jumped out of the window as a result of an intense psychosis caused by the pancreatitis and that the hospital bore no responsibility for the accident. The applicant was surprised, since this explanation contradicted the previous explanation related to his brother's alleged alcoholism.

11. On 18 September 2007 the applicant's brother died.

2. The criminal proceedings

12. On 29 August 2007 at 2.40 a.m. police officers arrived at the hospital and heard the doctor and the nurse on duty. They also carried out an inspection of the hospital room where the applicant's brother had been placed as well as of the window he had jumped through and the place where he had fallen.

13. On 6 September 2007 the Kalisz District Prosecutor instituted *ex officio* a formal investigation following K.K.'s fall from the window. It initially concerned the crime of aiding and abetting suicide specified in Article 151 of the Criminal Code. The prosecutor secured all the medical notes concerning K.K. Subsequently, the prosecutor extended the scope of the investigation. He examined the case from the angle of the hospital staff's failure to render adequate assistance to K.K. by having failed to make a correct diagnosis and the failure to immobilise him properly, which led to his suicide and the subsequent death. The prosecutor classified those offences as unintentional homicide (Article 155 of the Criminal Code) and failure to render assistance to a person in a life-threatening situation (Article 162 § 2).

14. On 19 September 2007 a postmortem examination was carried out. In a report submitted to the Kalisz District Prosecutor on 24 September 2007 a specialist in forensic medicine stated that K.K. had died as a result of acute haemorrhagic pancreatitis.

15. On 19 September 2007 the applicant filed a criminal complaint with the Kalisz District Prosecutor. He alleged that the hospital staff had not provided adequate care to his brother and, in particular, had allowed him to make an attempt on his life. Furthermore, the injuries which resulted from the fall had limited the treatment of the pancreatitis and led to his death.

16. In the course of the investigation the prosecutor heard the applicant, the wife of his deceased brother, the doctors, nurses and patients (including a certain G.K. who was placed in the room next to the applicant's brother and shared a bathroom with him) who had been present on the night of 28 to 29 August 2007. The prosecutor did not hear the patient who shared the room with the applicant's brother since he had died on 12 September 2007.

17. On 5 November 2007 the prosecutor ordered that the Forensic Medicine Department of the Poznań Medical Academy prepare an opinion for the purposes of the investigation. The experts were asked to consider (1) whether the treatment of the applicant's brother in the hospital had been adequate, (2) whether the injuries sustained as a result of the fall had hampered the effective treatment of the pancreatitis, and (3) the cause of the psychotic symptoms shown by the applicant's brother and whether the pancreatitis had been caused by pesticides used by him in his greenhouse.

18. The experts first summarised the condition of the applicant's brother and the treatment he received at the hospital, relying on the statements given to the prosecutor by the doctors, nurses, the fellow patient and family members. It transpired from their opinion that following the application of the restraining belts, the applicant's brother had been checked by a nurse every ten minutes. They further analysed all of the medical notes on the applicant's brother. It transpired that following the fall the applicant's brother had been treated both for the related injuries and for the acute pancreatitis. He had undergone three operations to his pancreas (on 3, 7 and 10 September 2007).

The experts excluded any link between the pesticides and the sudden occurrence of the pancreatitis. They found that the behaviour of the applicant's brother at the hospital had been related to alcoholism or to complications related to the pancreatitis. Clinical experience showed that acute pancreatitis could cause psychological disorders, although that issue had not been fully explored in medical science. The experts concluded that the applicant's brother had been adequately treated at all times and that the injuries sustained as a result of the fall from the window had had no impact on the treatment of the acute pancreatitis and thus had had no bearing on his death.

19. On 14 July 2008 the Kalisz District Prosecutor discontinued the investigation, finding that no offence had been committed. He established the facts concerning K.K.'s admission to the hospital and his treatment there as stated above (paragraphs 3-6 above).

20. The prosecutor relied on the results of the postmortem examination which established that the applicant's brother had died as a result of acute haemorrhagic pancreatitis. He further had regard to the conclusions of the expert opinion and evidence given by the witnesses. The prosecutor considered that the expert opinion had been comprehensive and coherent.

21. The prosecutor further considered the issue of the use of restraining measures by the hospital staff. He established that the use of the belts had been justified and complied with the conditions set out in the Law on the Protection of Mental Health of 19 August 1994 as it had been authorised by a doctor. Those measures could be applied in respect of persons with mental disorders who, *inter alia*, presented a danger to their health or the health of another person. The prosecutor noted that the fact that the applicant's brother had been able to free himself from the belts seemed to indicate that the belts had not been correctly applied. However, in the prosecutor's view, there was no causal link between the incorrect immobilisation of the applicant's brother and the suicide attempt and his subsequent death. The applicant's brother had not shown any signs which could have given the impression that he would have attempted to commit suicide.

22. The prosecutor found no evidence that anyone had aided and abetted the suicide. He considered that there was no causal link between the negligent immobilisation by belts and the fact that the applicant's brother jumped out of the window. In the prosecutor's view the attempted suicide was the act of K.K. alone. Further, there was no evidence of any medical negligence which could have led to the death of the applicant's brother.

23. On 23 July 2008 the applicant appealed. He argued that the prosecutor should have examined the case under Article 160 § 2 of the Criminal Code (exposing a person to an immediate danger of loss of life or to a serious impairment of health) since his brother had been in the care of the hospital and his behaviour prior to the accident had clearly indicated that the lack of appropriate care could expose him to the danger of loss of life or a serious impairment to his health. The applicant submitted that the doctors, having regard to his brother's behaviour and the risk of psychotic disorders related to acute pancreatitis, should have provided him with the level of care necessary to prevent the suicide attempt. In his view, the lack of adequate care resulted in the serious impairment of his brother's health and then led to his death.

24. On 26 August 2008 the applicant supplemented his appeal. He submitted that the prosecutor had wrongly rejected his request to obtain additional evidence in relation to the standard of care provided to his brother, in particular as to whether his brother had been correctly immobilised and the circumstances of his fall from a narrow window. He also argued that the prosecutor had failed to examine whether the injuries sustained by his brother had limited the possibilities of properly treating the pancreatitis, which only exceptionally could be fatal, and subsequently led

to his death. In this respect, the expert opinion simply stated that "the injuries sustained at the time of the fall had no impact on the treatment of the acute pancreatitis" but did not specify any reasons in support of that finding. In addition, the opinion had been prepared by doctors from the same regional chamber of doctors which called into question their impartiality.

25. On 15 September 2008 the Kalisz District Court upheld the District Prosecutor's decision. It found that the evidence obtained in the course of the investigation had been sufficient and the conclusions drawn from it had been correct.

26. The court rejected the applicant's argument as to the erroneous legal classification of the alleged offence. It pointed out that the results of the postmortem examination and the expert opinion had indicated that the applicant's brother had died as a result of acute pancreatitis. The court confirmed that K.K.'s treatment had been adequate and the injuries sustained as a result of the fall had had no impact on the treatment of the pancreatitis. Thus, the prosecutor had correctly found that there had been no causal link between the death of the applicant's brother and the alleged negligence of the hospital staff in relation to the immobilisation by belts. In the court's view, there were no grounds to consider that the hospital staff could have predicted the behaviour of the applicant's brother and his jump from the window, and that their actions had exposed him to the danger of loss of life or a serious impairment to his health.

27. As regards the expert opinion, the court considered it comprehensive, thorough and clear. Further, it noted that it had been prepared not by one expert but by a panel of three experts and found no grounds to sustain the applicant's allegation as to their lack of impartiality. The court further considered that the applicant's request to obtain additional evidence was irrelevant to the outcome of the case. The witnesses heard during the investigation (the hospital staff and the fellow patients) had confirmed that the applicant's brother had been immobilised by belts. The evidence obtained in the case indicated that the belts may not have been properly used, but this circumstance was not causally connected with the death of the applicant's brother.

B. Relevant domestic law

28. The relevant provisions of the Criminal Code provide as follows:

Article 155

"Anyone who unintentionally causes the death of a human being shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years."

Article 160

"1. Anyone who exposes a human being to an immediate danger of loss of life, serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to 3 years.

2. If the perpetrator has a duty to take care of the person exposed to danger, he shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years."

COMPLAINTS

29. The applicant complained under Article 2 of the Convention that the investigation carried out into his brother's death had been perfunctory, had lacked impartiality and had been aimed at its discontinuation. He alleged, in particular, that the police officers who had arrived at the hospital following the suicide attempt had not heard the only eyewitness to the fall from the window (the patient who shared the room with the applicant's brother). Similarly, the prosecutor had failed to hear that witness following the institution of the investigation on 6 September 2007 since he died on 12 September 2007.

The applicant further complained that in respect of the key question concerning the treatment of the pancreatitis following the fall, the expert opinion had been limited to the bare statement that "the injuries sustained had no bearing on the treatment" without providing any further explanation. Further the experts lacked impartiality since their opinion had concerned doctors from the same regional chamber who had been interested in the discontinuation of the investigation.

30. The applicant also complained under Article 6 of the Convention that the hospital staff had not provided an adequate level of care to his brother which had resulted in the attempt on his own life, which in consequence had prevented or limited the effective treatment of his condition. The applicant also complained that all his requests to obtain additional evidence had been rejected. He further alleged that the outcome of the criminal proceedings had prevented him effectively from pursuing civil claims in connection with his brother's death.

THE LAW

Alleged breach of Article 2

1. The Government's submissions

31. The Government, referring to the Court's jurisprudence under Article 2 in the sphere of medical negligence (*Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009 with further references), argued that the applicant had not exhausted domestic remedies. He had not availed himself of the possibility to seek redress under Articles 417 § 1 (the State's liability in tort), 444 § 1 (liability for damage to a person) and 445 § 1 and § 3 of the Civil Code. In their view, a civil action could have covered all issues related to the treatment of his brother at the hospital. In civil proceedings the applicant could have sought redress from the hospital as a legal entity and not just the individuals as was the case in the criminal proceedings. In support of their argument, the Government referred to the judgment of the Poznań Court of Appeal of 28 June 1995 (case no. I Acr 39/95). That court held that "in several cases of infliction of harm by the patient to himself, legal doctrine as well as jurisprudence confirmed the civil liability of the medical staff taking care of that patient, finding that the cause of the damage in situations like this is the omission of steps that could prevent the patient from committing or attempting to commit suicide".

32. In addition, contrary to the applicant's assertion, the institution of civil proceedings did not depend on the outcome of the criminal proceedings as criminal and the civil proceedings could take place independently of each other. The applicant had been aware that he could lodge a civil action irrespective of the criminal proceedings since he had been informed about it by the prosecutor in his decision of 14 July 2008. The Government pointed to the decision of *Trzepałko v. Poland* (no. 25124/09, 13 September 2011) where the Court found that a civil action in negligence against the hospital and/or the doctors was the most suitable avenue for seeking to establish whether the applicant's daughter death had been attributable to shortcomings in her medical care. Finally, the Government stressed that the applicant had not sought to institute disciplinary proceedings against the doctors and nurses who had taken care of his brother.

33. With regard to the alleged failure of the State to protect the right to life of K.K., the Government agreed that the hospital had been responsible for his safety. However, there was no indication that he had been treated improperly at the hospital or that the security measures applied had not been adequate in the circumstances. It transpired from the testimonies of witnesses heard during the investigation (the hospital staff and the fellow

patients) that the belts had been used to immobilise the applicant's brother and that this procedure had been applied in accordance with the Law on the Protection of Mental Health. The medical staff could not foresee that a patient would be able to release himself and jump out of the window, which was not a typical reaction. The Government emphasised that when the applicant's brother had released himself from the belts the additional medical staff from the emergency unit had been called to apply a straitjacket; however, they had no time to use it.

34. In his decision of 14 July 2008, the prosecutor noted that the fact that K.K. had been able to free himself from the belts indicated that the belts might not have been correctly applied. However, there had been no causal link between the incorrect immobilisation and the suicide attempt and the subsequent death as a result of acute pancreatitis. The applicant's brother had not given any earlier signs which could have given reason to believe that he would have attempted to commit suicide. Furthermore, there had been no evidence of any medical negligence which could have resulted in the death of K.K. The prosecutor's findings were confirmed by the Kalisz District Court.

35. With regard to the effectiveness of the criminal investigation in the present case, the Government argued that the authorities had complied with their procedural obligations under Article 2 of the Convention. They maintained that the mere fact of the discontinuation of the criminal proceedings did not render them ineffective. The prosecutor had examined the circumstances of K.K.'s death *ex officio*, examining the issues of the alleged failure to render adequate assistance to K.K. and the alleged failure to immobilise him correctly which led to his attempted suicide and subsequent death. The decision to discontinue the investigation had been based on a considerable amount of evidence, namely the testimonies of witnesses, the results of the postmortem examination and the experts' conclusions. The Government averred that the postmortem examination had not established that the injuries sustained as a result of the fall had had an impact on the treatment of K.K's acute pancreatitis. The findings of the postmortem examination and of the experts were consistent in this respect. Both of those documents had been comprehensively reasoned and had provided an unambiguous medical explanation of the cause of K.K.'s death. The police officers and the prosecutor had taken prompt procedural actions during the investigation.

36. According to the Government, the applicant when giving evidence to the prosecutor had not stated, as he did in the application to the Court, that a patient who had shared the room with the applicant's brother had recalled that on the night in question K.K. had been calling the nurses on duty for something to drink and had been making noises next to the window. The applicant stated to the prosecutor that he did not know whether the patient had called for help.

37. Lastly, in order to clarify any doubts the Government stressed one sentence from the reasoning of the prosecutor's decision to discontinue the investigation, i.e. "The serious condition after the fall hampered the treatment of his pancreatitis and his transfer to another hospital" (*"Ciężki stan zdrowia po upadku ograniczał leczenia trzustki i transport do innej placówki medycznej"*). For the Government such wording had to be an obvious clerical error on the part of the prosecutor since the fact of hampering the treatment had been excluded by the experts and had not been supported by any other item of evidence obtained during the investigation, in particular there had been no such statement in the postmortem examination. Finally, there was a grammatical error in the Polish wording of the sentence which might confirm that it had been a clerical error.

2. The applicant's submissions

38. The applicant contended that he had exhausted domestic remedies in the criminal proceedings and that the civil action referred to by the Government had not been a relevant remedy in the present case.

39. The applicant claimed that his brother had not been properly supervised at the hospital. He was able to release himself from the belts and to try to commit suicide. The hospital personnel had not taken adequate care of his brother in order to prevent him from jumping out of the window.

40. In the applicant's opinion, the facts established in the investigation indicated that the nurse and the doctor had not been interested in helping his brother and had not checked on him. The applicant's brother had been tied to his bed and left alone without any assistance. If the nurse had come to check on the patient, he would not have had enough time to release himself from the belts. The applicant argued that his brother's life was in danger because none of the medical staff had noticed two facts: firstly, that he could release himself from the belts which meant that they had been improperly applied and, secondly, that he had been preparing to jump out of the window. For the applicant, it meant that his brother had not been properly supervised and that fact had been completely ignored in the investigation. He maintained that in the case of mentally ill persons regard had to be had to their particular vulnerability (cf. *Aerts v. Belgium*, 30 July 1998, § 66, *Reports* 1998-V; *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III; and *Rivière v. France*, no. 33834/03, § 63, 11 July 2006). The applicant maintained that his brother had had problems with his pancreatitis and that those problems had explained his behaviour. This aspect should have been taken into consideration by the doctors from the moment his brother had been admitted to the hospital. He denied that his brother had suffered from alcoholism.

41. The applicant averred that the investigation had not been properly conducted since a number of factual issues had not been elucidated. He submitted that the prosecutor had not established, for example, at what time

the applicant's brother had been tied to his bed, how often the nurse had checked his condition, how he managed to release himself from the belts, how easy had it been to open the window and what was the type of window, how much time it usually took for the nurse to attend to a patient, why the applicant's brother had called the nurse and what had happened immediately after he had hit the window and the walls with a chair.

42. He noted that the police officers who had arrived at the hospital had not questioned the only eyewitness to the incident, i.e. the patient who had shared the room with his brother. They had only questioned medical personnel who had not witnessed the incident. The only eyewitness had died on 12 September 207 and was never questioned by the authorities. The investigation was only instituted eight days after the accident (6 September 2007). The applicant further argued that none of the testimonies relied on by the prosecutor had been given by eyewitnesses. In his opinion, the medical personnel had had enough time to "complete" documents and to reflect on how to answer the prosecutor's questions.

43. With regard to the expert opinion, the applicant stated that the experts had suggested that his brother's behaviour could have resulted from alcoholism although there had been no evidence that he had suffered from such a condition and his family had denied this. This fact and other shortcomings in the opinion necessitated that the first opinion be verified by another opinion.

44. The applicant questioned the reliability and impartiality of the postmortem examination and the expert opinion since they had been prepared by doctors from the same regional chamber of doctors as the doctors who had treated his brother. In his view, the expert opinion had not been diligent and had not answered all of the questions in the case. For example, he submitted that the experts had not examined whether the head injuries had influenced his brother's death. The applicant requested that a second expert opinion be prepared by doctors from another medical chamber; however his request was refused.

3. The Court's assessment

45. The Court notes that the applicant invoked Articles 2 and 6 of the Convention in respect of the complaints concerning the lack of adequate care of his brother and the deficiencies in the investigation. However, it considers it appropriate to examine these complaints under Article 2 of the Convention alone.

46. The Government argued that the applicant had not availed himself of a civil action for damages and accordingly failed to exhaust domestic remedies. The Court considers that it is not required to rule on this objection and will assume that the criminal proceedings were a relevant remedy in the circumstances of the case.

47. The Court will first examine the applicant's complaint in respect of the alleged negligent care of his brother. The applicant claimed that his brother had not been properly supervised by the medical personnel, which had enabled him to make an attempt on his life. He alleged that the injuries sustained as a result of the fall had prevented the effective treatment of his brother's pancreatitis. The applicant further suggested that his brother was a particularly vulnerable person who should have been treated with the same level of care as a mentally ill person.

48. The Court recalls that the acts and omissions of the authorities in the field of health care policy may in certain circumstances engage their responsibility under the positive limb of Article 2. However, where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients – which was not contested in the present case – it cannot accept that matters such as error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient, assuming such to have been established, are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; *Byrzykowski v. Poland*, no. 11562/05, § 104, 27 June 2006; *Trzepałko v. Poland* (dec.), no. 25124/09, 13 September 2011).

49. The Court notes that on 27 August 2007 the applicant's brother was admitted to the Kalisz hospital and diagnosed with acute pancreatitis. On admission his condition was considered to be generally satisfactory. On the following day the applicant's brother began manifesting unusual behaviour, such as anxiety, wandering around the ward aimlessly and disturbing other patients. His behaviour became gradually more and more disturbing and aggressive. The applicant's brother was first administered tranquilisers and when this proved unsuccessful, the hospital staff decided to apply restraining belts in accordance with the procedure provided for in the Law on the Protection of Mental Health. He managed to free himself from the belts and then jumped out of the window. He survived the fall but sustained serious injuries to his head and his leg. The applicant's brother died just under three weeks later.

50. The applicant alleged that the lack of sufficient supervision of his brother, the fall from the window and his subsequent death were all causally connected. However, the Court notes that according to the results of the postmortem examination and the conclusions of the experts, the cause of his death was acute haemorrhagic pancreatitis. It was specifically excluded that the injuries sustained as a result of the fall hampered the treatment of the acute pancreatitis (see paragraphs 14, 18 and 20 above). In those circumstances it would appear that the alleged lack of appropriate

supervision of the applicant's brother by the hospital staff did not lead to his death.

51. Assuming that there was a link between the fall from the window and the subsequent death, the Court needs to examine whether the applicant's brother was provided with an adequate level of care at the hospital. It notes in this connection that the medical personnel responded to the situation of the applicant's brother as it unfolded and progressively applied more and more restraining measures with a view to assuming control over his worsening behaviour. In addition, the relevant events unfolded within a very short period of time.

52. It may be accepted that following the application of the restraining belts on the ground that the applicant's brother presented a danger to his health or a risk that he would damage property, the hospital personnel assumed responsibility for his safety. However, the Court cannot agree that in the circumstances of the present case the situation of the applicant's brother was such that a duty arose to take reasonable steps to protect him from a real and immediate risk of suicide (compare and contrast, *Reynolds v. the United Kingdom*, no. 2694/08, § 61, 13 March 2012 in which the applicant's son, a voluntary psychiatric patient, with a history of schizophrenia and known to the health services committed suicide on the premises of a health establishment). It is important for the Court that the condition with which the applicant's brother was diagnosed (acute pancreatitis) is not synonymous with mental instability. Even assuming, as suggested by the expert opinion, that the risk of psychotic disorders could be related to acute pancreatitis, the Court cannot identify any deficiencies in the response of the medical staff to the situation at issue.

53. In this connection, the Court notes that contrary to what is asserted by the applicant, it appears that his brother did not have a history of mental illness. In addition, the hospital staff did not have any prior information which could point to any particular risks concerning his mental health. Thus, there is no indication that the hospital personnel knew or ought to have known that the applicant's brother posed a real and immediate risk of suicide (compare and contrast, *Keenan v. the United Kingdom*, no. 27229/95, § 93, ECHR 2001-III, which concerned the suicide of a prisoner suffering from mental illness). The Court notes that the applicant's brother did not exhibit any suicidal tendencies, as confirmed by the findings of the Kalisz District Prosecutor who established that the applicant's brother had not shown any signs which could have suggested a risk of suicide. It also appears that following the application of the restraining belts the applicant's brother was checked by nurses every ten minutes.

54. Accordingly, the hospital staff cannot be blamed for their response to the behaviour of the applicant's brother. The Court concludes this part of its analysis by finding that the authorities did not fail to protect the applicant's brother's right to life.

55. Next, the Court will examine the second part of the applicant's grievances, namely those which contest the effectiveness of the criminal investigation into the death of his brother. In this connection it recalls that the procedural obligation of Article 2 requires the States to set up an effective independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see, among other authorities, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, § 89, ECHR 2004-VIII; *Šilih v. Slovenia* [GC], no. 71463/01, § 192, 9 April 2009). The Court reiterates that this procedural obligation is not an obligation of result but of means only (*Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

56. Even if the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties, the Court has said many times that the effective judicial system required by Article 2 may, and under certain circumstances must, include recourse to the criminal law. However, if the infringement of the right to life or to personal integrity is not caused intentionally, the procedural obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and/or for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (*Calvelli and Ciglio*, § 51; *Vo*, § 90; *Šilih*, § 194, all cited above).

A requirement of promptness and reasonable expedition is implicit in this context (see *Šilih*, § 195, cited above). Furthermore, the State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see, among other authorities, *Byrzykowski*, § 117, cited above).

57. With regard to the effectiveness of the criminal investigation, the Court notes that the police arrived at the hospital shortly after the incident, inspected the relevant venues and questioned members of the medical staff. A few days after the accident, the prosecutor opened of his own initiative a criminal investigation into the case. First, he examined the alleged case of aiding and abetting suicide and subsequently extended the scope of the investigation to the alleged failure of the hospital staff to render adequate assistance to the applicant's brother. A day after the death of the applicant's brother an expert in forensic medicine conducted a postmortem examination. In his report to the prosecutor he concluded that the

applicant's brother had died of acute haemorrhagic pancreatitis. The prosecutor further relied on the findings of the panel of three experts from the Poznań Medical Academy. Those experts found that the applicant's brother had been adequately treated at all times and that the injuries sustained as a result of the fall had had no implications for the treatment of the acute pancreatitis. By a decision of 14 July 2008 the Kalisz District prosecutor discontinued the investigation, considering, in the light of all the evidence, that the medical staff concerned had no case to answer. The prosecutor's findings were subsequently fully endorsed by the Kalisz District Court on 15 September 2008.

58. The applicant criticised the conclusions of the experts, in particular with regard to the adequacy of the medical treatment provided to his brother after the fall. However, the Court does not share this criticism, noting that the experts' findings were based on a thorough assessment of relevant witness statements and all of the medical notes. It transpires from the latter that following his fall, the applicant's brother had three operations to his pancreas.

59. The applicant further contested the impartiality of the experts who had prepared the expert opinion on the ground that they were members of the same regional chamber of physicians as the doctors of the Kalisz hospital. The Court agrees that the requirement of independence is particularly important when obtaining medical reports from expert witnesses, who must have formal and *de facto* independence from those implicated in the events (see, *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009). However, it notes that the applicant did not put forward any arguments pointing to any links, hierarchical or other, between the Kalisz doctors who treated his brother and the doctors from the Poznań Medical Academy who prepared the expert opinion, save for their membership of the same regional chamber of physicians. The Court accepts that, as a general rule, in cases of alleged medical negligence medical experts should be designated from a chamber of physicians different from the one to which the defendant doctors are attached. However, in the instant case, there are no elements which could call into question either the independence of the experts appointed or the reliability of their medical opinion.

60. The prosecutor also relied on the evidence obtained from members of the medical staff of the Kalisz hospital (doctors and nurses) and some of the fellow patients of the applicant's brother. The applicant and the wife of his brother were also heard. The applicant reproached the authorities for their failure to hear the patient who shared the room with the applicant's brother and died on 12 September 2007. As to this alleged failure, the Court notes that on the basis of the case file it is not in a position to establish whether the police officers, who attended the scene of the incident, questioned this patient. That being said, it must be noted that the applicant

did not raise this issue in his appeal against the decision to discontinue the investigation. It was raised for the first time in the Convention proceedings. Moreover, the prosecutor heard relevant witnesses including patient GK (see paragraph 16 above). For the Court, there is no indication that even with the testimony of the patient who shared the room with the applicant's brother the outcome of the investigation would have been any different.

61. The Court considers that the investigation succeeded in elucidating all circumstances which were relevant for addressing the issue of the alleged criminal responsibility of the medical personnel for the death of the applicant's brother. It does not find any grounds to contest the findings of the investigation. The findings at issue were cogent and based on a comprehensive body of evidence. In these circumstances there was no need for additional evidence to be obtained. His argument to this effect was considered and rejected as irrelevant to the outcome of the case by the District Court. Furthermore, as the criminal proceedings lasted just 1 year and 10 days, it cannot be said that the authorities failed to respect the requirement of promptness and reasonable expedition. Lastly, the applicant was not prevented from pursuing civil claims in connection with his brother's death as a result of the discontinuation of the criminal proceedings. Under Polish law nothing prevents a victim of a criminal offence or his/her relatives from claiming damages before a civil court concurrently with the criminal case or after a decision has been given in such a case, regardless of its outcome (see, *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; and, *mutatis mutandis*, *Vakrilov v. Bulgaria* (dec.), no. 18698/06, 9 October 2012). It was open to the applicant to pursue relevant civil claims until the expiration of the applicable three-year limitation period from the date of his brother's death in accordance with Article 442^1 of the Civil Code.

62. In conclusion, the Court finds that the procedural obligation to carry out an effective investigation under Article 2 into the death of the applicant's brother was complied with in the present case.

63. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Ineta Ziemele
President