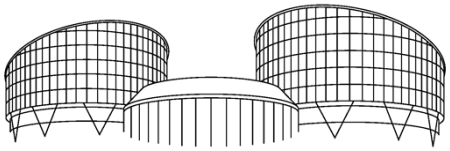

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PRIZRENI v. ALBANIA

(Application no. 29309/16)

JUDGMENT

STRASBOURG

11 June 2019

FINAL

11/09/2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Prizreni v. Albania,

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

Robert Spano, *President,*
Marko Bošnjak,
Işıl Karakaş,
Julia Laffranque,
Valeriu Griţco,
Arnfinn Bårdsen,
Darian Pavli, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 21 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 29309/16) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Mr Fatos Prizreni ("the applicant"), on 16 May 2016.

2. The applicant was represented by Ms E. Skendaj, of the Albanian Helsinki Committee. The Albanian Government ("the Government") were represented by their then Agent, Ms Alma Hicka of the State Advocate's Office.

3. The applicant complained of the lack of an effective investigation into the death of his brother while he was serving a prison sentence, contrary to Article 2 of the Convention. He also complained of the inhuman and degrading treatment of his brother as a result of the lack of medical treatment and of the fact that his brother had been handcuffed while in hospital, contrary to Article 3 of the Convention.

4. On 4 October 2016 the Government were given notice of the complaints concerning the alleged lack of an effective investigation into the death of the applicant's brother while he was serving a prison sentence and the alleged inhuman and degrading treatment as a result of the lack of medical treatment and the fact that he had been handcuffed while in hospital. The remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Elbasan, Albania. He is the brother of Sh.P., born in 1973. Sh.P. died on 22 February 2011.

A. Death of the applicant's brother

6. On 29 March 2010 the Shkodër District Court sentenced Sh.P. to four years' imprisonment for attempted murder. The trial was held *in absentia*. On 2 December 2010 the Shkodër Court of Appeal upheld the Shkodër District Court's decision. On 3 February 2011 the latter decision was executed and Sh.P. was sent to serve his prison sentence in the Lezhë detention facility.

7. It appears from the case file that Sh.P. was diagnosed by the doctor of the Lezhë detention facility as suffering from psoriasis, *parapanesis inferior* (partial paralysis of both legs) and elephantiasis. On 9 February 2011 Sh.P. was urgently transferred to Tirana Prison Hospital (*Qendra Spitalore e Burgjeve*) because according to the doctor of the Lezhë detention facility, he could not be properly treated in an ordinary prison setting. On 17 February 2011 he was transferred to Tirana University Hospital Centre (*Qendra Spitalore Universitare Tiranë*). It appears from the hospital file of 17 February 2011 that the applicant's brother had been diagnosed with elephantiasis, morbid obesity and multi-organ insufficiency, and was prescribed medication.

8. It appears that on 22 February 2011 Sh.P. died in the intensive care unit of Tirana University Hospital.

B. Investigative actions

9. On 22 February 2011 a group composed of a judicial police officer, a criminalist and a forensic medical expert carried out an on-site investigation *(kqyrjen e vendit të ngjarjes)* at Tirana University Hospital Centre and an external examination of the corpse *(kqyrjen e kufomës)* of Sh.P, and took photographs at the scene. On the same day, the judicial police officer seized Sh.P's medical file *(sekuestroi kartelën klinike)* kept at Tirana University Hospital Centre.

10. On 22 February 2011 the judicial police officer in charge of the case ordered a forensic examination of Sh.P. and put the following questions to the forensic medical experts:

> "1. What kind of injuries were noticeable on the deceased?
>
> 2. What caused them?

3. What was the cause of his death?

4. Was he subjected to negligent medical treatment?"

11. On 22 February 2011 the applicant was questioned as a person with knowledge of the event. He stated that his family members had informed him that his brother was being sent to Lezhë detention facility. On 17 February 2011 his mother had told him that his brother had fallen ill and was being transferred to the hospital in Tirana. When he had arrived at the hospital he had found his brother unconscious and tied to the bed with the sheets. He had noticed that the mattress and the blankets were wet and that the area around the bed was very dirty. At approximately 6 a.m. on 22 February 2011, his sister had called him to say that their brother's condition had deteriorated. When he had arrived at the hospital, he had found his brother dead. He added that he wanted to know the cause of his brother's death.

12. On 25 February 2011 the judicial police officer in charge looked at the admissions register of Tirana Prison Hospital, where it was recorded that Sh.P. had been transferred to that facility on 9 February 2011.

13. On 9 March 2011 and again on 25 March 2011 the Tirana prosecutor's office requested Sh.P.'s file from the Lezhë detention facility. On 21 March 2011 the Lezhë detention facility replied by letter stating that the applicant had been suffering from dyspnea, his lower limbs had both had oedemas, and that he had therefore been urgently transferred to Tirana Prison Hospital. In addition, they attached Sh.P.'s prison file.

14. On 10 March 2011, the prosecutor in charge of the case ordered a series of investigative actions to be carried out by a judicial police officer:

> "(1) to contact forensic experts who would carry out a forensic examination to find out the cause of death of the deceased; (2) to seize the criminal and medical files of Sh.P. from the prison facilities, as well as from the hospital; (3) to search the registers of the Tirana Prison Hospital, Tirana University Hospital and Shkodër civilian hospital in order to find out when he had been hospitalised, what the diagnosis had been, how long he had stayed, etc.; the pages of the register relevant to the search would have to be attached to the report; (4) to question Tirana prison employees, medical staff who had taken care of Sh.P., and his family members about his medical history, his treatment, when he had last been hospitalised, etc.; and (5) to carry out any other action which might be deemed necessary before 29 March 2011."

15. On 25 March 2011 I.O., one of the doctors who had been taking care of the applicant's brother in the hospital, when questioned by the judicial police officer, stated that while under their supervision Sh.P. had been manifesting respiratory and hepatic insufficiency. According to him, Sh.P. had been diagnosed with multi-organ insufficiency and morbid obesity. Sh.P. had been treated like any other patient and the treatment prescribed had been administered in accordance with the rules.

16. On 25 March 2011 P.D., one of the doctors who had been taking care of the applicant's brother in the hospital, when questioned by the

judicial police officer, stated that Sh.P. had been transferred to Tirana Prison Hospital from Lezhë prison hospital. He had been treated like any other patient and the treatment prescribed had been administered in accordance with the rules.

17. On 30 March 2011 a group of forensic experts carried out an examination of Sh.P. The forensic medical report stated, *inter alia*:

> "...1. Two ecchymoses were noticed on both forearms. Oedemas on the lower extremities. Psoriasis. ...
>
> 2. ... Ecchymosis caused by blunt objects (*sende të mbrehëta*). Rest of the lesions are a consequence of the other illnesses of the deceased ...
>
> 3. ... No traces of medication or narcotic or psychotropic substances could be detected in Sh.P.'s blood. ...
>
> 4. ... The death of Sh.P. was a result of acute cardio-respiratory insufficiency due to complications of the generalised metabolic illness of the deceased ...
>
> 5. With regard to the question whether Sh.P. underwent a negligent medical treatment, this would be the subject of an inquiry by another forensic medical commission once they had the investigative file at their disposal ..."

C. First set of proceedings

18. On 24 February 2011 the police reported Sh.P.'s death to the Tirana prosecutor's office, which registered it in a criminal file. After having carried out some investigative actions, on 13 April 2011 the Tirana prosecutor's office decided not to institute criminal proceedings *(mosfillimin e procedimit penal*) and to give notice of that decision to the interested parties. The decision was based on the medical report of 30 March 2011, which had found that the death of Sh.P. had been the result of acute respiratory and cardiac insufficiency and other diseases. Furthermore, the decision stated that there was no fact, evidence or indication that a criminal offence could have been committed. On 13 May 2011 the applicant was notified of the Tirana prosecutor's decision.

19. On 17 May 2011, the applicant lodged a complaint with the Tirana District Court against the decision of the Tirana prosecutor's office. On 20 October 2011 the Tirana District Court rejected the applicant's complaint on the grounds that he did not have legal standing to complain against the impugned decision, because he had only been notified of it as a family member of the deceased. The first-instance court also stated that under Article 291 of the Criminal Procedural Code, only the persons who had reported an offence could complain against a decision not to institute criminal proceedings.

20. On 20 April 2012 the Tirana Court of Appeal upheld the Tirana District Court's decision of 20 October 2011. On 23 January 2014 the Supreme Court rejected an appeal lodged by the applicant. On 17 November 2015 the Constitutional Court rejected the applicant's

complaints against the ordinary domestic courts' decisions, with the argument that the statutory denial of standing to challenge the prosecutor's decision did not violate the essence of the applicant's right of access to a court.

D. Second set of proceedings

21. On 16 February 2015 the applicant reported the death of his brother to the Tirana prosecutor's office. On 27 March 2015 the Tirana prosecutor's office decided not to institute criminal proceedings based on the applicant's report. On an unspecified date the applicant lodged a complaint with the Tirana District Court about the above-mentioned decision. On 18 November 2015, the Tirana District Court, making reference to the first set of proceedings and evidence used in those proceedings, decided without hearing the applicant to reject his complaint.

II. RELEVANT DOMESTIC LAW

A. Constitution of Albania

22. Article 21 of the Constitution provides that everyone's life is protected by law. Article 25 provides that no one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

B. Code of Criminal Procedure (CCP)

23. The relevant provisions of the CCP provided, at the relevant time, as follows:

Article 58
Rights of the person injured by the criminal offence

"1. The injured party of a criminal offence or his heir has the right to request the prosecution of the perpetrator and to claim damages.

2. The injured party who has no legal capacity to act may exercise his rights recognised by law through his legal representative.

3. The injured party has the right to present his claims to the prosecuting authority and require the obtaining of evidence. If the claim is not accepted by the prosecutor, he has the right to appeal to a court within five days of receiving notice."

Article 59
The accusing injured party

1. The person injured by the criminal offences provided for in Articles 90, 91, 92, 112 § 1, 119,119/b, 120, 121, 122, 125, 127, 148, 149 and 254 of the Criminal Code

may apply to a court to participate as a party in the trial in order to confirm the indictment and to claim damages.

2. The prosecutor participates in the trial of such cases and, as the case may be, requests either the conviction or acquittal of the defendant.

3. If the accusing injured party or his/her defence lawyer fails to appear at the hearing without reasonable grounds, the court shall dismiss the case.

Article 290
Circumstances that do not permit the initiation of proceedings

"1. Criminal proceedings may not commence or, if they have commenced, shall be terminated at any stage if:

a) the accused person has died;

b) the accused person lacks criminal responsibility or has not reached the age of criminal liability;

c) the complaint of the injured person is missing or has been withdrawn;

ç) the law does not define the act as a criminal offence or it has been clearly proven that the offence was not committed;

d) the criminal offence has ceased [to exist];

dh) an amnesty has been issued;

e) in all other cases provided for by law."

Article 291
Decision not to institute proceedings (mosfillimin e procedimit)

"1. Where circumstances preventing the initiation of proceedings exist, the prosecutor shall issue a reasoned decision not to institute proceedings.

2. Notice of the decision shall be served forthwith to those who have lodged a criminal report or a complaint; they may appeal against the decision to a court within five days of being served notice of the decision."

Article 329
Appeal against a decision dismissing the case

"1. The injured party and the defendant are entitled to appeal to a district court against a decision to dismiss the charge or the case.

2. If the court finds the injured party's complaint well founded, it shall decide that the investigation should be continued, whereas if it accepts the defendant's complaint, the court shall change the decision to terminate the proceedings into a more favourable formulation for the defendant.

3. The decision of the court is amenable to appeal by the prosecutor, the injured party and the defendant."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

Exhaustion of domestic remedies and six-month rule

1. The Government's submissions

24. The Government submitted that the applicant had not exhausted domestic remedies because the legal avenue that he had chosen to follow was the wrong one. Even assuming that he had exhausted the domestic remedies available to him, in the Government's view, he had lodged his application with the Court outside the six-month time-limit, in view of the Supreme Court's decision of 23 January 2014 and the fact that he was not required to exhaust the appeal to the Constitutional Court.

25. According to the Government, with regard to the first set of proceedings, the applicant had remained passive and had never reported the case to the prosecutor's office. All the domestic courts had duly reasoned that under Article 291 of the Criminal Procedure Code, he could not be a party to those proceedings as they had not been initiated by him. There were other available remedies in the domestic system which he could have made use of. Article 58 of the Criminal Procedure Code enabled injured parties or their heirs to ask that criminal proceedings be instituted against the perpetrator and to claim compensation.

26. With regard to the second set of proceedings (see paragraph 21 above), although they were initiated on the basis of the applicant's fresh complaint to the prosecutor's office and led to an appeal filed with the Tirana District Court, he had not pursued the matter any further than the first-instance court. For this reason, the Government submitted, the applicant's complaints should be rejected as inadmissible for not having exhausted domestic remedies.

2. The applicant's submissions

27. The applicant submitted that he had exhausted the domestic remedies available to him and that he had lodged the complaint with the Court within the time-limit set by Article 35 § 1. He made reference to the Court's case-law in this regard, with particular emphasis on the Court's approach to applying the rule of exhaustion of domestic remedies with some degree of flexibility and without excessive formalism. The applicant submitted that he had officially asked the judicial police officer in charge of investigating his brother's death to carry out an investigation with a view to clarifying the circumstances of his brother's death. This had constituted a formal request to bring charges under Article 59 of the Criminal Procedure Code. In addition, the mere fact that his brother had died, had given rise

ipso facto to an obligation on the part of the authorities under Article 2 of the Convention to carry out an effective investigation.

28. With regard to the second set of proceedings, the applicant stated that he had decided not to lodge an appeal with the Court of Appeal or the Supreme Court because it would have had no prospects of success given that the court would only have considered the file as it had emerged from the first set of proceedings.

3. The Court's assessment

29. The Court will first address the Government's objection that the application was submitted outside of the six-month time-limit. The Court has already held that, in cases concerning an investigation into ill-treatment, as in those concerning an investigation into the suspicious death of a relative, applicants are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 263 ECHR 2014 (extracts).

30. In the present case, the Court notes that the applicant challenged the prosecutor's decision not to initiate a formal criminal inquiry into his brother's death all the way to the Constitutional Court, thus playing an active role in the process. A petition to the Albanian Constitutional Court on alleged fair trial violations is a remedy that normally should be exhausted (see *Xheraj v. Albania*, no. 37959/02, § 43, 29 July 2008; *Beshiri and Others v. Albania*, no. 7352/03, § 32, 22 August 2006 and *Balliu v. Albania* (dec), no. 74727/01, 16 June 2005). The applicant's petition, grounded on domestic constitutional guarantees of due process and access to a court, was deemed admissible and reviewed by the Constitutional Court on its merits.

31. The applicant lodged the application with the Court on 16 May 2016, that is 5 months and 29 days after the decision of the Constitutional Court. The Court therefore rejects the Government's objection that the complaint was submitted out of time.

32. With regard to the second objection, concerning the exhaustion of the domestic remedies, the Court notes that the applicant requested the judicial police officer in charge of his brother's case to investigate the circumstances of the latter's death (see paragraph 11 above). Furthermore, he challenged the Tirana prosecutor's decision not to institute criminal proceedings up to Constitutional Court level (see paragraphs 18-20).

33. The question of whether the applicant should have been required to bring a separate criminal complaint regarding the circumstances of his brother's death is closely tied to the merits of his Article 2 and Article 3 complaints. That being so, the Court is of the view that this objection should be examined jointly with the merits of that complaint (see paragraphs 44-45 below).

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

34. The applicant complained that the authorities had not conducted an effective investigation into the death of his brother, as provided for in Article 2 of the Convention, which 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.

Whether the authorities carried out an effective investigation

1. The parties' submissions

35. The applicant submitted that the investigation carried out by the authorities had failed to provide satisfactory information about the circumstances surrounding his brother's death. It had not excluded beyond any reasonable doubt that the health damage described in the medical report had not been caused due to ill-treatment of his brother and/or lack of appropriate medical care. The forensic medical experts who had carried out the medical examination had not addressed the judicial police officer's question as to whether the medical treatment of the applicant's brother had been inappropriate. On the contrary, they had maintained that that remained to be verified by yet another commission. Furthermore, the investigative actions carried out had not provided a convincing explanation for the absence of any trace of medication in the applicant's blood and that it was not attributable to inadequate treatment.

36. In addition, the applicant made reference to the principles stemming from the Court's case-law regarding the protection afforded by Article 2 of the Convention to persons in custody and in a vulnerable position. According to the applicant, given the particular circumstances of this case, a thorough forensic examination had been crucial in order to determine the cause of death and also to verify whether there had been any signs of ill-treatment.

37. The Government submitted that the authorities had carried out an effective investigation into Sh.P.'s death. The prosecutor had ordered a series of investigative actions to be carried out (see paragraph 14 above). In particular, the Government drew the Court's attention to the conclusions of the forensic medical report, which found that the death of Sh.P. had been caused by respiratory and cardiac insufficiency as a result of his medical history.

38. The Government further submitted that the medical staff had kept Sh.P. under constant supervision. This was proved by the medical files seized during the investigative actions. Therefore, the domestic authorities had taken all the necessary measures to safeguard the life of Sh.P. His death had come about due to circumstances beyond the authorities' control.

2. The Court's assessment

(a) General principles

39. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. In the light of the importance of the protection afforded by Article 2, the Court must subject to the most careful scrutiny complaints about deprivation of life (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47 Series A no. 324, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2005-VII).

40. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *Nachova and Others v. Bulgaria* [GC], cited above). The Court has further stated that whenever a detainee dies in suspicious circumstances, Article 2 requires the authorities to conduct an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness (see *Trubnikov v. Russia*, no. 49790/99, §§ 87-88, 5 July 2005).

41. Furthermore, in the context of health care, the Court has interpreted the procedural obligation of Article 2 as requiring States to set up an effective and 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 *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 214, 19 December 2017; and *Šilih v. Slovenia* [GC], no. 71463/01, § 192, 9 April 2009).

42. An investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. Although it is not an obligation of result but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible, will risk falling foul of the required standard of effectiveness (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 166, ECHR 2011). The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005-VII). In all cases, the victim's next of kin must be involved in

the procedure to the extent necessary to safeguard his or her legitimate interests (see *Mustafayev v. Azerbaijan*, no. 47095/09, § 72, 4 May 2017).

43. A requirement of promptness and reasonable expedition is implicit in this context (see *Sıdıka İmren v. Turkey*, no. 47384/11, § 59, 13 September 2016). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Merkulova v. Ukraine*, no. 21454/04, § 50, 3 March 2011, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 237, 30 March 2016).

(b) Application of the above principles to the instant case

44. The Court will first address the Government's submission, which it has joined to the merits of the case, that the applicant adopted a passive attitude, failing to report the case to the prosecutor's office (see paragraph 25 and paragraph 33 above).

45. As has been pointed out above the authorities must act of their own motion once a matter has come to their attention (see paragraph 40 above). Consequently, it is immaterial whether the applicant himself took an active role in involving the investigating authorities.

46. As regards the details of the investigation actually carried out, the Court notes that the investigation into the death of Sh.P. commenced promptly, on the very day of his death, with an on-site visit, an external examination of the corpse and the seizure of the medical file (see paragraph 9 above). Furthermore, on 10 March 2011 the Tirana prosecutor's office ordered a series of investigative actions (see paragraph 14 above).

47. The Court further notes that the forensic medical examination of Sh.P. carried out on 30 March 2011 found that he had died as a result of acute respiratory and cardiac insufficiency due to complications of his generalised metabolic disease. It further found that there were no traces of medication in his blood. Sh.P.'s medical file, on the other hand, indicated that a series of drugs had been administered to him, as prescribed by the medical staff (see paragraph 7 above).

48. The Court, nonetheless, observes some particular shortcomings in the investigative actions carried out by the domestic authorities.

49. First, there is an inconsistency between the information recorded in the medical file indicating that the applicant's brother had been prescribed medication and the forensic medical examination of 30 March 2011 in respect of Sh.P.'s medical treatment. The investigative actions carried out did not establish whether Sh.P. had been under medication before his death and, if so, whether that had been the proper treatment, given his medical history (see paragraph 17 above). The Court is therefore not satisfied that it

has been established beyond any reasonable doubt that Sh.P.'s death came about as a result of his disease and not because of inadequate treatment and care. In addition, the investigation did not address the allegations of handcuffing of the applicant's brother while hospitalised, and whether such a measure had contributed to the latter's death, given in particular the nature of his medical conditions.

50. Secondly, the Court notes that the decision of the prosecutor's office of 13 April 2011 not to open an investigation was taken primarily on the basis of the same medical examination. Having established that the medical examination failed to answer some crucial questions, namely, whether there had been adequate medical treatment and whether the applicant's conditions in hospital had contributed to his death, the Court is not satisfied that the decision taken by the Tirana prosecutor's office not to bring charges, or even formally open a criminal inquiry, is in line with the procedural obligation enshrined in Article 2 of the Convention.

51. Thirdly, the Court notes that despite the applicant's efforts to challenge that decision, his complaints were rejected by the domestic courts (see paragraphs 18-21 above). The Court once again reiterates that the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Mustafayev v. Azerbaijan, cited above,* § 72). The Court has stressed on many occasions that the involvement of the next of kin serves to ensure the public accountability of the authorities and public scrutiny of their actions in the conduct of the investigation. The right of the family of the deceased whose death is under investigation to participate in the proceedings, requires that the procedures adopted ensure the requisite protection of their interest, which may be in direct conflict with those of the police or security forces implicated in the event (see *Anusca v. Moldova*, no. 24034/07, § 44, 18 May 2010). The statutory impossibility in the present case, for the applicant to effectively challenge the prosecutor's decision not to institute criminal proceedings is inconsistent with the State's obligation to conduct an effective investigation.

52. Accordingly, the Court dismisses the Government's preliminary objection. The deficiencies described above lead the Court to the conclusion that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's brother. There has therefore been a breach of the State's procedural obligation under Article 2 to protect the right to life.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained that while in custody his brother had been subjected to a form of treatment contrary to Article 3 of the Convention, which reads as follows:

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

54. The applicant also claimed that he had found his brother tied to his hospital bed with sheets while unconscious, and that the marks on his brother's wrists raised serious suspicions that he had been handcuffed while at the hospital. Furthermore, the result of the forensic medical examination showing a lack of medication in his blood raised serious doubts as to whether he had received appropriate medical care. No further investigations had been conducted in this respect, despite an indication in the forensic medical examination report that the matter should be further investigated.

55. The Government disputed the applicant's submission. They argued that the investigative file showed that all the measures required to carry out a thorough investigation into whether the applicant's brother had been subjected to ill-treatment had been taken into consideration. Evidence showed that he had been kept under constant medical supervision. With regard to the applicant's claim that his brother had been handcuffed, the Government submitted that this was not supported by the evidence.

56. The Court has found above that the authorities failed to establish conclusively the cause of Sh.P.'s death. Moreover, the authorities failed to provide any plausible explanation regarding the two bruises found on Sh.P.'s wrists and there is no indication that prison police or hospital personnel were questioned on this issue. The applicant's statements to the police, coupled with the findings of the forensic report on the bruises found on his brother's body, amounted to an arguable claim that the applicant's brother might have been subjected to treatment contrary to Article 3 while hospitalised, triggering the obligation of the authorities to investigate the matter (*Bouyid v. Belgium* [GC], no. 23380/09, § 92, ECHR 2015).

57. The Court reiterates that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, whether there is a danger that the person concerned might abscond or cause injury or damage (see *Tarariyeva v. Russia*, no. 4353/03, § 109, ECHR 2006-XV (extracts). In the present case, the forensic medical report merely mentioned the existence of signs and the fact that they had been caused by impact of a blunt object *(mbrehtës)* on the applicant's brother's body. However, the authorities did not carry out any further examination to establish whether the applicant's brother had been subjected to any form of ill-treatment (see paragraph 17 above). Furthermore, no further investigations were conducted in this respect. Hence, the Court finds that the domestic authorities did not undertake sufficient investigative measures to establish beyond any reasonable doubt if the bruises on the applicant's brother's wrists were caused by treatment contrary to Article 3 of the Convention. In these

circumstances, the Court is unable to conclude that there has been a substantive violation of Article 3.

58. In the final analysis, the Court considers that the authorities failed to carry out an effective investigation to establish whether the applicant's brother had been subjected to ill-treatment while in custody. There has therefore been a violation of Article 3 of the Convention under its procedural limb in that respect.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

59. The applicant further complained that there was no effective remedy in the domestic system for his complaints under Articles 2 and 3 of the Convention. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

60. The applicant claimed that although he had lodged a complaint against the decision of the Tirana prosecutor's office not to institute criminal proceedings, the Tirana District Court had rejected it. He had pursued this path up to the Constitutional Court, but to no avail. This was an indication that the remedies he had used were not effective and that there were no other available remedies he could have made use of.

61. The Government contested that argument. They claimed that the applicant had had effective remedies available to him but he had chosen to follow the wrong procedural avenue (see paragraphs 19-21 above).

62. The Court observes that this complaint concerns the same issues as those examined under Articles 2 and 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusions above under Articles 2 and 3 of the Convention, the Court considers it unnecessary to examine these issues separately under Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. Article 41 of the Convention provides:

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

A. Damage

64. The applicant claimed 30,000 euros (EUR) in respect of the non-pecuniary damage suffered by himself and his brother.

65. The Government submitted that the applicant's claims were unsubstantiated, given that he had not submitted any evidence.

66. The Court reiterates that it has found that the authorities failed to carry out an effective investigation, contrary to the procedural obligation under Articles 2 and 3 of the Convention. Having regard to the finding of violations and making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

67. The applicant also claimed EUR 10,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. This included a lump sum for his legal representation before the Constitutional Court and before the Court by six legal representatives. He submitted a general invoice and service contracts for the legal representatives.

68. The Government submitted that these claims were exorbitant and unsubstantiated.

69. The Court finds that the applicant must have incurred some costs and expenses in the proceedings. Accordingly, in the present case, regard being had to the information in its possession, the Court considers it reasonable to award the applicant the sum of EUR 1,450 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the preliminary objection concerning non-exhaustion of domestic remedies to the merits and dismisses it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention, in its procedural limb;

4. *Holds* that there has been no violation of Article 3 of the Convention, in its substantive limb;

5. *Holds* that there has been a violation of Article 3 of the Convention, in its procedural limb;

6. *Holds* that it is unnecessary to examine whether there has been a violation of Article 13 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts;

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 1,450 (one thousand four hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 11 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Robert Spano President