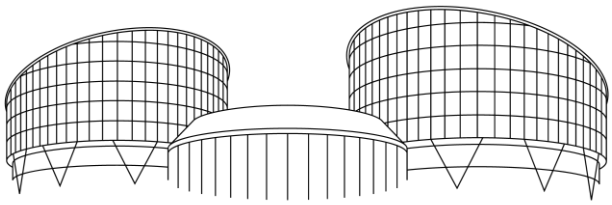

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VOLK v. SLOVENIA

(Application no. 62120/09)

JUDGMENT

STRASBOURG

13 December 2012

FINAL

13/03/2013

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

In the case of Volk v. Slovenia,

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

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 62120/09) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Ms Milena Volk ("the applicant"), on 18 November 2009.

2. She was represented before the Court by Mr F. Matoz, a lawyer practising in Divača, and by Mrs M. Mavsar, a lawyer practising in Portorož. The Slovenian Government ("the Government") were represented by their Agent, Mrs N. Aleš Verdin, State Attorney.

3. The applicant complained, in particular, that there had been a violation of Articles 2 of the Convention on account of the domestic authorities' failure to protect her son's right to life and to conduct an effective investigation into the circumstances of his death.

4. On 5 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Prem. She is the mother of Simon Volk, who was born in 1983.

6. On 14 January 2008 the applicant's son was convicted of rape, grievous bodily harm and deprivation of liberty. He was sentenced to three

years and four months in prison. On 11 November 2008 he started serving his prison sentence in Dob Prison.

7. The applicant's son had been dependent on drugs since 2001. As a part of his medical treatment in prison he received substitutes for opiates, such as Suboxon, Sanval, which is a hypnotic, Serguel, which is an antipsychotic drug, and Zoloft, which is an anti-depressant. Before beginning his sentence, the applicant's son made an appointment at a drug dependency treatment centre at a psychiatric hospital. Its report, dated 7 October 2008, shows that he had stated that he wished to be hospitalised, but had failed to meet the conditions, namely abstinence. On 6 November 2008 the applicant's son was examined privately by a psychiatrist, who noted that he had no sign of abstinence and was referred to his general practitioner for treatment for drug dependency.

A. The conditions in Dob prison

8. As regards the facilities available to the applicant's son in the cells and common areas in Dob Prison, as well as the health care regime in the prison and the conditions imposed on him regarding activities outside the cells and contact with the outside world, see the Court's decision in the case of *Lalić and Others v. Slovenia* (dec.), no. 5711/10 etc., 27 September 2011.

9. As regards drug users, the prison offers medical (including methadone substitution) treatment and therapeutic help in accordance with a specialised drug treatment programme. Prisoners who successfully undergo methadone substitution treatment are able to undergo detoxification, which normally takes three to four weeks. Further rehabilitation of previous drug users is provided in the drug-free sections of the prison, to which only those prisoners who are no longer dependent on drugs and who are no longer undergoing opiate replacement therapy may be assigned.

B. The particular circumstances of the applicant's son's detention

10. When he arrived in Dob Prison, the applicant's son underwent an admission interview, conducted by a social worker, which, apart from his dependency problem, did not show anything giving rise to particular concern. On 12 November 2008 he was examined by a doctor, who prescribed him substitution therapy for drug dependency. On the same day he was seen by a drug abuse therapist.

11. The applicant's son was initially placed in a seven-square-metre cell, which he shared with another prisoner. Between 17 November 2008 and 12 February 2009 he was accommodated in cell 1, Block 2. The cell, in which fifteen prisoners were held, measured about 60 square metres.

12. On 20 November 2008 the applicant's son developed an infection in his right arm and underwent surgery on 24 November 2008. Between

25 November and 2 December 2008 his wound was cleaned and dressed daily.

13. On 12 and 26 November 2008 the applicant asked the Dob Prison authorities to move her son to Koper Prison. She stated that the latter prison was closer to their home and had better living conditions. She also stated that her son was often ill and was in hospital at the time of the request. Her request was rejected on the grounds that proper medical assistance could also be provided in Dob Prison.

14. In the meantime, the prison psychologist saw the applicant's son on 25 November 2008. He noted, *inter alia*, that no serious mental difficulties or suicidal tendencies could be observed. On 5 December 2008 a prison social worker N.B., held a meeting with the applicant, her son and his sister. The applicant inquired about the prison regime and repeated her requests for a transfer for her son.

15. On 1 December 2008 the applicant told the drug abuse therapist that he was in crisis with his drug dependency and that he had stopped taking his substitution medication. The therapist informed him of the possible treatments for his drug dependency in the prison. On 8 December 2008 the applicant had a consultation with the psychologist. On 9 December 2008 the general practitioner noted in the report that the applicant had stopped taking the substitution medication.

16. On 10 December 2008 a "personal plan" (*osebni načrt*) was set up for the applicant's son. Referring to the judgment by which he had been convicted and the report from the drug abuse therapist, the plan noted that the applicant's son's substitution therapy should be monitored and that he should be encouraged to deal with his drug dependency. It was envisaged that a urine test be regularly taken; that he have special psychological therapy with regard to the criminal offence he had committed; and that he be given the opportunity to continue his primary education. It was also noted that social worker N.B. was the officer responsible for his case.

17. On 11 December 2008 the applicant's son had a consultation with the drug abuse therapist. On the same day he was also introduced to leisure activities provided by the prison. It was agreed that he would attend such activities for three hours every Wednesday. However, he attended only three times and after 7 January 2009 he gave up the enrolment.

18. On 22 December 2008 a meeting was held with the applicant's son. The report prepared by the head of Block 2 following the meeting does not reveal anything untoward.

19. On 15 January 2009 the applicant's son told the psychiatrist that he had started taking heroin again. He told the drug abuse therapist, whom he saw the same month, the same thing. During January 2009 the applicant's son also had two consultations with the psychologist.

20. On 5 February 2009 the applicant's son was seen by a social worker, following an "urgent request" in which he complained about extortion by

his co-inmate, S.B., from other inmates, including himself. The applicant's son gave a statement on the record in which he alleged that S.B. had taken money from him, as well as clothes and slippers. On 6 February 2009 S.B. was moved to Block 1 (high-security regime).

21. In the evening of 9 February 2009, two guards entered the cell and found the applicant's son using a wet towel to cool his face. He told them that he had been attacked by D.M. because of a dispute over a USB network key. The operative head of the prison then talked to both prisoners, who reached agreement. After the incident, the applicant's son's personal belongings were searched. It was discovered that his computer was connected to the internet and drugs were found in his cupboard. The computer and the drugs were seized. Following the search, the applicant's son repeatedly said that he would cut or hang himself and that he would not survive the night. The applicant's son was then transferred to a special cell with video surveillance, where he remained from 10.55 p.m. On 10 February 2009 a report noting these events was prepared by the prison guard who was on duty that evening.

22. At 10.55 a.m. on 10 February 2009 the applicant's son was returned to an ordinary regime. Before this transfer he was seen by the head of Block 2. According to the report prepared by the head, the applicant's son had said that he had had no intention of committing suicide and that he had calmed down. It was also noted that he had refused to be examined by a doctor, as he had not sustained any injuries. Lastly, the report noted that the psychologist had talked to the applicant's son and that the prison guards had been informed that they needed to pay special attention to him.

23. On 11 February 2009 the head of Block 2 and the prison psychologist held a meeting with the applicant, her son and his sister. The report of the meeting notes that the applicant alleged that her son was in danger and that it was no surprise that he was on drugs. They also discussed the incident of 9 February 2009 and the applicant's transfer request. As regards the latter, the prison officers explained to the applicant that her son could not simply be moved to Block 3 or 4, and informed her that the prisoner who had extorted money from the applicant (presumably S.B.) was now being held in a high-security block (i.e. Block 1). The next day, 12 February 2009, the applicant was transferred to Block 1. The decision referred to his drug problem, refusal to give urine samples and possession of illegal items. His transfer to Block 1 implied that he could only have two hours of outdoor exercise and was not allowed to spend time in the recreation room. He was allowed to receive visits of an hour's duration, and to use the telephone in accordance with the daily schedule. When leaving the cell he was accompanied by a guard and he could spend time outdoors only in the Block 1 yard. Two prisoners were allowed to be in the same area of the yard, under supervision. the applicant's son was held in cells 32, 21 and 41.

24. On 18 February and 4 March 2009 social worker N.B. invited the applicant's son for a consultation, but he refused. He also refused to have a consultation with the drug abuse therapist on 25 March and 15 April 2009. However, in February 2009 the applicant's son had one consultation with the drug abuse therapist and three with the psychologist. In March 2009 he saw the drug abuse therapist once and the psychologist twice. Moreover, between 19 January and 23 March 2009 the applicant' son had six consultations with the psychiatrist, in which they discussed his drug dependency and substitution therapy.

25. The applicant made further requests for a transfer for her son, which were refused on 18 March 2009.

26. On 23 March the team of officers dealing with the applicant's son's case decided that he should be moved to Block 3.

27. On 25, 27 and 31 March 2009 social worker N.B. held meetings with the applicant's son. They discussed transferring him to an ordinary regime, where he would be able to participate in a drug treatment group and attend school as well as take part in leisure activities. They also discussed his problem with debt. The applicant's son said that he had a debt of 200 euros (EUR) but he did not fear the person to whom he owed the money. He had more concern about a certain I.N., to whom he owed EUR 130 and whom he might meet on the yard if transferred. He added that he would not provoke I.N. When reminded, on 31 March 2009, that it was planned to transfer him to Block 3, the applicant's son requested that this be delayed for at least a month. He said he did not feel strong enough to reject drugs if they were offered to him. He was reminded that he was continuing to refuse to give urine samples, which was an indication that he was taking drugs while in Block 1.

28. Following the meeting with social worker N.B. on 31 March 2009 (see paragraph 27 above), at which he had opposed the idea of being transferred to an ordinary regime, a decision was taken that he should stay in Block 1.

29. Following unsuccessful attempts to reach the Head of the Administration for the Execution of Prison Sentences ("the Administration") by email or telephone, the applicant sent him a letter on 26 March 2009. She complained about the refusal of her request for transfer, stating that it was clear from the documentation available to the prison authorities that her son had lodged a complaint against S.B. and that she had asked for him to be transferred out of the cell following the attack by D.M. She also complained that the applicant's son had previously been in a cell with sixteen prisoners, although the statutory limit was eight prisoners, and that, unlike in Koper Prison, in Dob Prison he was not provided with the opportunity to study or work. She also stated that of 510 prisoners 470 were taking drugs and that one psychiatrist was employed for less than six hours a day and was not sufficiently accessible. This letter was treated as an

appeal and rejected by the Administration on 16 April 2009. The latter reiterated that Koper Prison did not provide any special psychological treatment targeted at her son's drug abuse and the offence he had committed, and that Dob Prison had sufficient means at its disposal to ensure his safety.

30. It would appear that on 8 April 2009 the governor of Dob Prison requested, of his own motion, that the applicant's son be transferred to Koper Prison, stating that this would have a positive effect on his motivation for realisation of his "personal plan".

31. On 6, 14 and 16 April 2009 the applicant's son saw the psychologist.

32. On 15 April 2009 it was ordered that the applicant's visits to her son should be held behind a glass partition. The decision referred to the fact that following visits from his sister and the applicant on 4 and 15 April 2009 he was found to be in possession of a presumably illegal substance.

33. On 16 April 2009, during a conversation with a psychiatrist, the applicant's son became very upset and threatened to harm himself. The prison governor ordered that he be placed in a single cell under supervision and afterwards remain in Block 1.

34. On 20 April 2009 the psychiatrist had a discussion with the applicant about her son's situation. The applicant's son was also examined by the psychiatrist. At that examination he said that he wished to reduce substitution therapy. He also confirmed that he had had suicidal thoughts twice before. The physiatrist prescribed him substitute therapy and anti-stress medication. The applicant's son saw the psychologist the same day.

35. On 24 April and 6 May 2009 social worker N.B. invited the applicant's son for a consultation, but he refused to attend.

36. On 12 May 2009 social worker N.B. and the prison governor held a meeting with the applicant and her son. The applicant stressed that her son was in danger and referred to her requests that he be transferred.

37. In the meantime, on 4 May 2009 the applicant's son reported to the prison authorities that he had been attacked by an inmate from the same cell and asked to be transferred to another cell.

38. On 11 May 2009 the Head of the Administration issued a decision refusing the request by the governor of Dob Prison on the grounds already given in the previous decisions (see paragraphs 13 and 29 above), but ordered of his own motion a temporary placement of the applicant's son in Koper Prison for the period between 20 May and 20 November 2009.

39. On 14 May 2009 a report was sent to Koper Prison, which noted the applicant's son's addiction problem and his fear of fellow inmates to whom he owed money. It was also mentioned in the report that officers from Dob Prison had noticed that a certain prisoner was putting pressure on the applicant and was demanding that he return money.

40. On 22 and 27 May 2009 the applicant's son was examined by a general practitioner in Koper Prison, who noted that he had not been taking substitution medication.

41. On 5 July 2009, after a visit from his mother and sister, the applicant's son was found to be in possession of a bag containing forty-nine tablets, which had been hidden in a shampoo bottle. Because of this incident, as well as because of his lack of interest in education and drug rehabilitation, the applicant's son was returned to Dob Prison on 20 July 2009.

42. Following his return to Dob Prison, the applicant's son was interviewed by a prison officer, who noted in a special questionnaire that he had a history of drug abuse and attempted suicide. The doctor who examined him noted that his medical condition remained unchanged. The applicant's son was placed in a single cell 20 (7.4 square metres) in Block 1. The electric light in this cell was not functioning.

43. On 23 July 2009 the drug abuse therapist held a consultation with the applicant's son. The latter said that he wished to discontinue the substitution therapy, but did not want to participate in drug therapy or give urine samples. He also alleged that he had intended to use the tablets he had been found to possess in Koper Prison to "clean himself".

44. On 7 August 2009 the psychologist discussed a "personal plan" with the applicant's son.

45. On 9 August 2009 the applicant's son lodged a request to be given leave to bring into his cell certain objects, such as an electric extension cable, a USB key and so on, which was granted on 10 August 2009.

46. On 13 August 2009 the applicant was transferred to single cell 21 in Block 1, which was identical to cell 20 but had functioning electricity.

47. During his stay in Dob Prison the applicant's son sent thirty-seven letters and received nineteen packages. He had telephone contact with his father, his sister and the applicant. He was visited regularly by the applicant and by his sister. He was allowed to bring in his computer, radio, headphones, boxing equipment and so on. In the period between 15 December and 23 March 2009 the applicant's son participated in the "Bridge to education" programme. He attended forty-eight hours of this course.

C. The immediate circumstances of the applicant's son's death

48. On 14 August 2009, the technical facilities in the cell were inspected and the applicant's son was given a DVD player, a night light and some other items for personal use brought in by his mother. Between 11.40 a.m. and midday the applicant telephoned his mother. Beforehand, while waiting for the telephone in the corridor, he was attacked by prisoner S.B. The security camera footage from the staircase area at the time of the attack,

which was submitted to the Court, show that S.B. and the applicant's son met at the stairs and that the former swung his hand towards the latter and grabbed or attempted to grab him, possibly around the neck. S.B. is then seen leaving, being followed by the guard who was rushing after him. These events took fourteen seconds.

49. At 6.50 p.m., in the context of regular supervision when the guard changed, two guards on day duty entered cell no. 20 and saw the applicant's son sitting smoking. They later said that the applicant's son looked at them and greeted them and that he seemed normal, as he had earlier in the day. At 7.25 p.m. two guards from the night shift opened cell 20 for a nurse to deliver the prescribed medication. They found the applicant's son hanging from a water pipe by his bed sheet. The nurse examined him and concluded that he was dead. At 7.40 p.m. a doctor arrived. Officers from a local police station arrived at the scene at around 8 p.m. The investigating judge on duty was informed of the incident but declined to attend. According to a report dated 15 August 2009 the doctor found that the applicant's son had died as a result of suicide, that there were no signs of violence and that the cause of suicide was a depressive syndrome and drug addiction. The remains were taken to a hospital, where an autopsy was carried out.

50. Immediately after the death of her son, the applicant requested the police to seize the applicant's son's personal file kept in the prison, which they did.

D. Investigation by prison authorities

51. Following the death of the applicant's son, one report was prepared by M., head of security at Dob Prison, and another by a three-member commission formed within the Administration.

52. The first report, which is dated 15 August 2009, concluded:

> "We regret the incident. The prisoner was a known drug addict when he started serving his sentence. Due to his drug addiction, the enforcement of the prison sentence was very difficult ... Due to his drug addiction, [the applicant's son] soon got into trouble with other inmates and suffered mental difficulties.
>
> It is our assessment that the treatment of the prisoner was lawful, respectful and professional ...
>
> We believe that the prisoner's suicide could not have been prevented, due to the complexity of his problems."

53. On 17 August 2008 the Head of the Administration appointed a three-member commission to investigate the circumstances of the applicant's son's death. The commission held interviews with the two prison guards who were on duty on the day of the suicide, the prison psychologist, certain prisoners, the nurse who was present at the scene of the suicide, the governor, and the Head of Unit 1, S.Ž,, and examined

documents which remained available after the seizure. It issued a report on 28 August 2009. According to the report, the prison doctor and S.Ž. stated that the applicant's son had not shown any suicidal tendencies. It noted that the applicant's son had not reported the conflict he had with S.B. on the day of his death, which was only observed when the video recordings were inspected after the suicide. The commission concluded:

> "According to the assessment made by the commission, the treatment [of the applicant's son] was lawful, respectful and professional. However, by his conduct and actions the prisoner contributed to several conflict situations, which the authorities could not entirely prevent. The fact that the prisoner was often transferred within the establishment as well as to Koper Prison demonstrates that efforts were made to ensure his safety....The commission also notes that the deceased never reported maltreatment by or conflicts with the prison staff. It was also denied by the prisoners heard by the commission that the deceased was maltreated, threatened or intimidated by prison staff.
>
> On the basis of the established facts, the commission concludes that the [authorities of] Dob Prison could not have prevented the suicide of the deceased."

54. On 22 September 2009 the governor of Dob Prison sent the Administration an additional report, focusing on the conflict between the applicant's son and S.B. It noted that the contact between the applicant's son and S.B. took six seconds. Having regard to the statements of prison staff and a prisoner who were near the staircase at the time in question and did not observe or hear anything, as well as to the fact that the applicant's son sustained no injuries, it was unlikely that S.B. had hit the applicant. The report also noted that the prison staff was of the opinion that there had been much more conflict going on than had actually been observed by them, and that some inmates claimed that the applicant's son had debts amounting to a total of around EUR 5,000. According to the report, the telephone booths were situated near the staircase and inmates often encountered each other there. This was a known problem, and efforts to change the system were under way. The report suggested that it would have been easier for the applicant's son to serve a sentence in a smaller prison and that a systemic solution to cases such as his would have been isolation from other inmates, which was legally and practically impossible at the material time.

E. Criminal investigation concerning the applicant's son's treatment and death

55. Previously, on 23 March 2009, the applicant had lodged a criminal complaint against the prisoners who had allegedly intimidated and beaten her son on several occasions. Her statement given to the police read, as far as relevant, as follows:

> "Simon started serving his sentence in 2008. He was placed in Building 2. There, he was intimidated by a prisoner called ... [S.B.], who would take his things (money and

other things) and beat him (for example, every day he would wait for him outside the bathroom, slap him and demand that Simon give him everything he had). This was confirmed by another prisoner ... who shared a cell with Simon. [Further to complaints from Simon and another prisoner]... [S.B.] was transferred to Building 1 ... Simon was then beaten by a prisoner ... [D.M] on 9 February 2009 ... Immediately after that attack, Simon reported the incident to the prison guards and told them that he would cut his throat (this is what the administration told me). For that reason, Simon was put under video surveillance for twelve hours in a special room ... On 12 February 2009 Simon was moved to Building 1 and since then he has been afraid to leave the room ... He is afraid of ... [S.B and D.M.], who were also moved to this building ... so that now all three of them are there ...

I asked for a transfer for my son ... but was unsuccessful on the grounds that I failed to bring evidence showing that Simon was in danger.

I am very afraid for the safety of my son ... Simon is also very very afraid. I wish they would transfer him anywhere, just away from here, as he still has eighteen months to serve ..."

56. The police forwarded the above criminal complaint to the Novo Mesto District Prosecutor ("the Prosecutor"). On 6 April 2009 the Prosecutor requested the police to collect evidence and requested that the case be examined as a priority. Subsequently, the police forwarded to him a report which included a statement by the applicant's son. The latter told the officers that he had no interest in pursing the proceedings and that it was his father who had started them. On 14 August 2009 the Prosecutor again requested the police to collect evidence, in particular as regards the allegations concerning D.M. and a certain I.N., who was also mentioned by the applicant at some point. He instructed them to question the suspects as well as prison staff, and also to investigate what measures were being taken by the prison staff to monitor the applicant's son and what the prison authorities' findings were as regards the applicant's son's endangerment and debts.

57. Following the applicant's son's death, on 14 August 2009 the police secured the evidence at the scene and ordered an autopsy. They took statement from, *inter alia*, the inmates who had had contact with the applicant's son and seized the video recordings of his contact with S.B. on the day of the suicide. On 15 August 2009 the police interviewed the applicant. On the same day a hospital autopsy report was issued. It stated that there were no signs of violence on the applicant's son's body and found that the death had been caused by hanging.

58. On 15 August 2009 the applicant complained to Trebnje Police Station about the conditions of her son's detention, and alleged that she had not been taken seriously by prison officers, in particular the governor, J.P.

59. On 17 August 2009 the applicant told Novo Mesto Police that a prisoner from Dob Prison had called her the previous day to tell her that her son had been attacked by another prisoner shortly before his suicide and that the prison officers had done nothing to stop the attack. She also alleged that

her son had died in suspicious circumstances and that the head of Block 1, S.Ž., had intimidated her son. She further alleged that the authorities had not adequately responded to her warnings about the fragile mental state of her son and his risk of suicide. On the same day the applicant also went to Trebnje Police Station, where she alleged that her son had been beaten up prior to his death, that the head of Block 1, S.Ž., had threatened her son and had moved him to a cell with no amenities on 13 August 2009. She also alleged that governor J.P. performed his duties in a negligent manner. On the same day the investigating judge on duty ordered a new autopsy to be carried out by the Institute for Forensic Medicine to establish the exact cause of death, whether there were injuries on the body, and whether prompt help could have prevented the death.

60. An autopsy report was prepared by the Institute for Forensic Medicine on 28 August 2009. It showed no injuries on the body which could have been caused by the use of violence; it noted suicide as the certain cause of death. It also noted that the applicant's son was not under the influence of drugs and that the death could have been prevented only if he had been found no more than five minutes after the hanging.

61. On 14 September 2009 the applicant alleged at the Novo Mesto District Prosecutor's office that her son's suicide had been caused by the extortion by S.B. and his attack on the day of her son's death. She also alleged that the prison guards should be held responsible for the attack, which they could have prevented.

62. On 15 September 2009 the Prosecutor ordered the police to collect evidence concerning the suspects referred to by the applicant, to conduct interviews with the prison guards and relevant inmates and to prepare a report concerning the video recordings.

63. On 23 September 2009 the applicant reported to Ilirska Bistrica Police her suspicion that her son had been murdered in the prison. She said that her son took a large number of tablets, then lost consciousness and was hanged by the prison guards.

64. On 8 October 2009 the Prosecutor sent a letter to police urging them to collect evidence, as previously requested by him. He emphasised the need for an extensive and thorough investigation of the allegations made by the applicant. He also stated that the investigation should be based on direct taking of evidence by police, and gave them certain instructions in this regard.

65. On 23 October 2009 a forensic report was issued. It found that the fingerprints at the scene of the suicide were those of the applicant's son.

66. On 2 November 2009 the police submitted their report concerning the applicant's allegations. It transpires from the report that the police had questioned, among others, the head of Block 1 S.Ž., the social worker N.B. and nine inmates. The report referred also to the findings of autopsy reports,

the toxicological report, the applicant's son's prison file and his diary. It noted that the time of death was sometime between 6.50 p.m. and 7.25 p.m.

67. On 19 November 2009 the Prosecutor requested that a criminal investigation be opened against S.B. concerning the criminal offence of extortion. His request was upheld by the investigating judge. A number of witnesses, including prisoners who knew the applicant's son and the applicant, were heard. S.B. stated in those proceedings that the applicant's son had sold everything he had for drugs and had borrowed money from co-inmates, but not from him. According to S.B., the applicant's son, in order to get more money from his family, falsely reported to authorities that he and D.M. had been extorting money from him. This had had consequences for S.B. as he had been moved to Block 1 for eleven months. S.B. also admitted that he had met the applicant's son at the staircase on the day of his death. He said that the applicant's son had greeted him and that he in response had pushed him, saying that he did not have the right to greet him as he had been the reason for his transfer to Block 1. As there was insufficient evidence that S.B. had extorted money from the applicant's son, and in particular there was insufficient proof that the applicant's son had owed anything to S.B., the prosecutor eventually discontinued the proceedings (on 24 March 2010). The applicant subsequently took them over in her capacity as a subsidiary prosecutor. The proceedings are currently pending trial.

68. On 19 November 2009 the Prosecutor requested the police to take further measures to investigate the allegations concerning the alleged lack of protection of the applicant's son by prison staff and ill-treatment by fellow inmates, in particular I.N. and D.M. He also requested that the role of the prison governor J.P. be explored.

69. On 16 December 2010 the police obtained a forensic report which indicated that the handwriting on the letter found next to the body was that of the applicant's son.

70. On 30 December 2009 and 1 and 25 February 2010 the applicant lodged further criminal complaints against named prisoners and prison officials, including the governor J.P. and the head of Block 1, S.Ž. She alleged, *inter alia*, that they had committed the criminal offence of negligence by denying her son access to psychiatric care. The Prosecutor subsequently requested the police to question the relevant prison staff with regard to these allegations.

71. On 20 May 2010 the Prosecutor rejected the applicant's criminal complaints concerning the criminal offences of extortion, endangering the security of a person, murder, abuse of office, violation of human dignity by abuse of power, and theft allegedly committed against the applicant's son by fellow inmates or prison staff. The written reasons given for the Prosecutor's decision, which is eighteen pages long, refer to, *inter alia*, statements by prisoners. While most of them did not indicate anything

which would attract particular attention, two of them testified that the applicant's son prior to his death had mentioned to them that he was unhappy about not having a television, and that he had said he did not feel well, but did not mention suicide. One also said that the applicant's son had told him that he wanted to sue the Head of Block 1, S.Ž. Prisoner I.N. said that the applicant's son had been addicted to heroin and spent EUR 40 to 50 on drugs per day. I.N. said that he had lent him EUR 470, and had taken his jacket as EUR 200 of it. The decision further refers to the analysis of the video recordings and to the limited contact between the applicant's son and S.B. It also notes that S.B. was sanctioned in disciplinary proceedings for an attack on the applicant's son. The decision moreover refers to statements by S.Ž., who said during questioning by the police that he had been in daily contact with the applicant's son in the days preceding his death. After his return from Koper Prison, S.Ž. had not noticed any changes in his behaviour which would indicate that he was a suicide risk. According to S.Ž., the applicant's son wished to stay in a single cell and the fact that there was no light in cell 20 did not appear to bother him. Moreover, he seemed content on 13 August 2009, after being moved to a new cell. S.Ž. also said that the applicant called the prison authorities on an almost daily basis, in particular before the applicant's son's transfer to Koper Prison, requesting her son's transfer and claiming that he felt unsafe. On the basis of the evidence in the file, the Prosecutor concluded that S.B.'s behaviour had not caused the applicant's son's suicide. The Prosecutor also found that there was not the slightest indication that the applicant's son had been murdered. Furthermore, he noted that his accommodation had been determined in the standard procedure and not at the discretion of S.Ž., that the prison staff had acted within their competences, and that S.Ž. and J.P. had tried to make the applicant's son's accommodation as comfortable as possible in the circumstances. He established that the applicant's son had never been denied medical or psychiatric assistance. There was also no evidence of other acts alleged by the applicant, including the alleged extortion by I.N.

72. The applicant, in the capacity of a subsidiary prosecutor, subsequently took over the prosecution in the above cases and lodged an indictment. The proceedings appear still to be pending.

73. On 17 December 2010, the Prosecutor also rejected the applicant's remaining criminal complaints (see paragraph 70 above), in particular those concerning alleged negligence at work aimed at certain prison personnel.

II. RELEVANT DOMESTIC LAW AND PRACTICE

74. For the relevant domestic law and practice see paragraphs 33-35 and 38-47 of the Court's judgment in the case of *Štrucl and Others v. Slovenia* (nos. 5903/10, 6003/10 and 6544/10, 27 September 2011), paragraphs 34-36 of *Mandić and Jović v. Slovenia* (nos. 5774/10

and 5985/10, 27 September 2011), and *Lalić and Others*, cited above, as well as paragraphs 42-46 of *Butolen v. Slovenia* (no. 41356/08, 3 April 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

75. The applicant complained under Article 2 of the Convention that the prison authorities had failed to protect her son's right to life by taking the necessary measures, in particular by protecting him from attacks by other prisoners, as well as from the danger he posed to himself. She submitted that the prison staff had been aware of the applicant's son's suicidal tendencies and that she had also warned them regularly about his worsening mental state. In addition, the applicant complained that no investigative measures had been taken as regards the responsibility of the prison staff for the death of her son.

Article 2 reads, in so far as relevant, 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

76. The Government objected that the domestic remedies had not been exhausted. Firstly, they observed that the applicant had lodged a claim against the State with the Ljubljana District Court on 14 January 2010, in which she sought, *inter alia*, compensation for non-pecuniary damage for her son's death. Those proceedings were still pending. In support of their argument that a civil claim should be considered an effective remedy, they submitted a copy of the Supreme Court's judgment by which the State and Ljubljana Hospital were found responsible for failing to take standard measures and prevent the suicide of a soldier who was a patient there. Secondly, the Government argued that certain proceedings in which the applicant was acting as a subsidiary prosecutor were still pending, while in others, which had been terminated by the public prosecutor's dismissal of the criminal complaint, she was in a position to continue prosecution.

77. The applicant disputed the above arguments. As regards the exhaustion of domestic remedies, she maintained that a civil claim should not have been considered an effective remedy, as it was impossible for it to lead to a finding of a violation of the applicant's son's rights: it could only affect the rights of the applicant.

78. The Court considers that the applicant can claim to be a victim, within the meaning of Article 34 of the Convention, on account of her son's death (see, among others, *Renolde v. France*, no. 5608/05, § 69, ECHR 2008 (extracts), and *Çelikbilek v. Turkey* (dec.), no. 27693/95, 22 June 1999). As regards the Government's objection concerning exhaustion of domestic remedies, it notes that the Government, apart from the reference to a judgment which concerned medical negligence, did not provide any information or jurisprudence which would demonstrate that the civil compensation claim could be considered an effective remedy in a situation such as the present one. Furthermore, the Court would state that when a positive obligation to safeguard the life of those in custody is at stake, the system required by Article 2 must provide for an independent and impartial official investigation, which must be, *inter alia*, carried out promptly and of the authorities' own motion (see paragraph 98 below). The civil proceedings or the applicant's subsidiary prosecution on which the Government relied do not appear to be avenues capable of satisfying the aforementioned requirement (see, *mutatis mutandis*, *Stojnšek v. Slovenia*, no. 1926/03, §§ 79 and 80, 23 June 2009).

It follows that the Government's objection of non-exhaustion of domestic remedies should be rejected.

79. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Positive obligation to protect life

(a) The parties' submissions

80. The applicant argued that in view of the fact that her son had twice threatened to commit suicide, the authorities should have been aware of the risk that he would actually do so. She also argued that her son should have been protected from having any contact with S.B., since his previous suicide threats related to S.B.'s behaviour, and he should have been admitted to a psychiatric hospital.

81. The Government argued that the applicant's son had never been diagnosed with a mental illness or disorder. His difficulties during the detention were related to his drug dependency. The latter was however not a reason which would absolve him from serving his sentence in prison. He had twice threatened suicide, to which the authorities had responded properly, but had never attempted it. He made no further threats after 16 April 2009. The prison guards, therapists and doctors noticed no signs of suicide risk prior to his death. Neither did his fellow inmates report any

such indications. The Government maintained that this case could be compared to *Trubnikov v. Russia*, no. 49790/99, 5 July 2005 and that it could not be considered that the authorities knew, or ought to have known, that the applicant's son posed a serious and imminent risk to his own life.

82. As regards the measures taken to protect the applicant's son from attacks by fellow inmates, attacks which the applicant alleged had led to his suicide, the Government submitted that the applicant's son was in Block 2 in the same cell as S.B. until 6 February 2009, when the latter was transferred to Block 1. D.M. and the applicant's son were never accommodated in the same cell, but were both in Block 2 until the latter was transferred to Block 1 on 12 February 2009. D.M. was also transferred to Block 1 on 19 February 2009, and from then on all three of them were held in the same block. However, according to the Government, they were in separate cells, which they could only leave if accompanied by a prison guard. The Government maintained that this did not mean that no verbal communication between them was possible. However, physical conflicts, except for the unfortunate incident on 14 August 2009, were prevented.

(b) The Court's assessment

(i) General principles

83. The Court reiterates that the first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The Court further reiterates that Article 2 may imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual from another individual or, in particular circumstances, from himself (see *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

84. However, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. 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 (see *Keenan*, cited above, §§ 89 and 92).

85. The Court has recognised that the prison authorities must discharge their duties in a manner compatible with the rights and freedoms of the

individual concerned. There are general measures and precautions which will be available to diminish the opportunities for self-harm without infringing personal autonomy. Whether any more stringent measures are necessary in respect of a prisoner and whether it is reasonable to apply them will depend on the circumstances of the case (see *Keenan*, cited above, § 92; *Younger v. the United Kingdom* (dec.), no. 57420/00 , 7 January 2003, and *Trubnikov*, cited above, § 70).

(ii) Application of these principles to the present case

86. The Court observes at the outset that the applicant's son had never been diagnosed as suffering from any psychiatric condition, neither does it appear from the information concerning his medical condition that there was any omission on the part of medical staff or prison personnel in spotting such a condition (see, by contrast, *Shumkova v. Russia*, no. 9296/06, § 93, 14 February 2012; *Renolde v. France*, no. 5608/05, § 122, ECHR 2008 (extracts); and *Keenan*, cited above, § 94). The Court further notes that during his time in prison the applicant's son had twice expressed the intention to kill or harm himself. The first time, he had said that he would cut or hang himself on 9 February 2009. That day, he had had a conflict with another inmate, D.M., but expressed that intention only after his cell had been searched and certain presumably illegal items discovered (see paragraph 21 above). The second time, he had threatened to harm himself during the conversation with the psychiatrist on 16 April 2009, which was a day after a decision had been taken to restrict his visits due to the discovery of presumably illegal substances brought in by his visitors (see paragraph 32 and 33 above).

87. Having said the above, it cannot be ignored that the applicant's son was under particular strain while in prison, which appears to have been predominantly related to his continuing drug dependency. The Court would note in this connection that despite the measures taken by the prison authorities, which included drug testing, use of glass partitions during visits for the inmates who were found in possession of drugs and placement of problematic inmates under high-security regime, the applicant's son nevertheless managed to obtain drugs. For that purpose he also borrowed money from fellow inmates and consequently got into conflicts, which further aggravated his situation.

88. The Court, however, observes that the domestic authorities, being aware of the applicant's son's difficulties, took different measures to protect his well-being and to diminish opportunities for self-harm throughout his imprisonment. They responded to his allegations of threats by fellow inmates by, *inter alia*, reducing the chance of contact between them (see, for example, paragraphs 20, 21, 37-39, and 82). They furthermore provided him with regular psychological assistance, including programmes aimed at rehabilitation from drug abuse, as well as psychiatric and medical care.

Regular meetings and consultations, where the applicant's son's situation was discussed, were held between the prison staff and the applicant's son as well as occasionally the applicant. Moreover, following each of the incidents when he had threatened to self-harm, he was placed under temporary surveillance and was eventually accommodated in Block 1 under a high-security regime, an option which he said he preferred (see paragraphs 21, 23, 27 and 28 above). In addition, on 20 May 2009 the authorities moved the applicant's son to Koper Prison, with a view to providing him with a more favourable environment (see paragraphs 30, 38 and 39). He was returned from there for non-compliance with prison rules. After he was returned to Dob Prison, he was again placed in Block 1, where he was accommodated in a single cell.

89. The Court finds that the above described measures taken by the prison authorities as well as the medical and psychological care he received were adequate and represented a reasonable response to the applicant's son's condition.

90. As regards the period preceding his suicide on 14 August 2009, the Court finds it regrettable that the cell in which he was held between 20 July and 13 August 2009 had no electric light. However this fact does not appear to have played any role in the applicant's son's suicide, in particular as the latter took place after he had been moved to a new cell. The Court further notes that four months had passed from the last occasion on which he had threatened with self-harm. During this period he had spent some time in Koper Prison and then in a single cell in Block 1 in Dob Prison. There do not appear to have been any reports of abuse or attacks by fellow inmates after he was placed in a single cell, apart from the brief encounter with S.B. on the day of his suicide. S.B. appeared to behave violently towards the applicant's son, although no injuries were sustained by the latter. The authorities were unaware of this incident. It was not reported by the applicant's son, who also showed no obvious signs of distress afterwards. The incident was observed on video recordings only after the suicide. The Court regrets that contact between the applicant's son and S.B., who had a previous history of conflicts, was made possible and that the incident of 14 August 2009 had not been immediately reported by the guards to the prison administration. The Court is also struck by the fact that drugs were circulating in the prison and were relatively easy to access for prisoners. However, it does not find these oversights sufficient to vest the domestic authorities with responsibility for the applicant's son's death.

91. For these reasons the Court does not find that, in the circumstances, the authorities could have reasonably foreseen the applicant's son's decision to commit suicide. Nor does the Court find any manifest omission which would have prevented them from making a correct assessment of the situation.

92. In particular, the Court is of the opinion that the present case should be distinguished from the case of *Ketreb v. France* (no. 38447/09, §§ 75-99, 19 July 2012), where it found a violation of the State's positive obligations to protect life under Article 2 of the Convention. According to official records, Mr Ketreb was suffering from a personality disorder known as "borderline status" and from anxiety dysphasia, had twice tried to kill himself by hanging and had been involved in serious violent incidents including self-inflicted wounds which showed a worrying aggravation of his mental state. He had openly and unequivocally threatened to commit suicide and he had recently learned about his conviction to five years' imprisonment. Mr Ketreb was therefore in need of strict surveillance in order to protect him from suicidal attempts; however, the psychiatric service had not been consulted before placing him in a disciplinary cell and the latter had not been searched in order to confiscate objects (in particular, a belt) which the prisoner could have used to commit suicide. By contrast, the applicant's son had not been diagnosed as suffering from any psychiatric condition, had not attempted to kill or harm himself and had not been placed in a disciplinary cell. His suicidal tendencies had been expressed only once, on 9 February 2009 (see paragraphs 21 and 86 above), which is more than six months before the date of his death. Following his statement, he was transferred to a cell with video surveillance and the day after he declared that he had no intention of committing suicide and that he had calmed down (see paragraphs 21 and 22 above). No similar need for strict surveillance can therefore be found in the case of the applicant's son.

93. Having regard to the above, the Court does not find that in the circumstances of the present case the authorities failed to prevent a real and immediate risk of suicide, or that they otherwise acted in a way incompatible with their positive obligations to guarantee the right to life.

94. Accordingly, there has been no violation of Article 2 of the Convention in this respect.

2. Procedural obligation to carry out an effective investigation

(a) The parties' submissions

95. The applicant alleged that the proceedings concerning the circumstances of and the responsibility for the applicant's son's death had been ineffective.

96. The Government argued that the investigation was prompt and exceptionally thorough. The police arrived at the scene immediately after the applicant's son's body was discovered. The circumstances of his death, including any possible omission on the part of the prison staff, were investigated by the police and the Prosecutor. A number of forensic reports were obtained in order for all aspects of the case to be explored. The applicant was involved in the proceedings and was notified of the actions

taken during the investigation. She was also given access to the file at the Prosecutor's office and was able to copy documents from it. The State therefore fully complied with their procedural obligation under Article 2 of the Convention.

(b) The Court's assessment

(i) General principles

97. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are curtailed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-..., and, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 54, ECHR 2002-II).

98. It further reiterates that where a positive obligation to safeguard the life of those in custody is at stake, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness (see *Trubnikov*, cited above, § 88). Thereby, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations which would be capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system, and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (ibid. and see also *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, 4 May 2001; *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III; *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII; and *McKerr v. the United Kingdom*, no. 28883/95, § 148, ECHR 2001-III).

(ii) Application of these principles to the present case

99. The Court finds that a procedural obligation arose to investigate the circumstances of the applicant's son's death. He was a prisoner under the care and responsibility of the authorities when he died as a result of what appeared to be suicide. The investigation was necessary, firstly, to establish the cause of death and rule out an accident or manslaughter and, secondly, once suicide had been established as the cause of death, to examine whether the authorities were in any way responsible for failing to prevent the suicide attempt.

100. The Court notes that before the applicant's son's death, an inquiry into a criminal complaint lodged by the applicant concerning alleged violence and threats from his fellow inmates was under way. On 14 August 2009 the Prosecutor instructed the police to investigate also what measures

had been taken with a view to monitor the applicant's son by the prison authorities. Following the applicant's son's death, the investigation was extended to cover the applicant's subsequent criminal complaints.

101. The Court observes that there were two inquiries into the circumstances of the applicant's son's death, one by the Administration and another one by the Prosecutor. While the first inquiry did not satisfy the requirement of independence (see *Shumkova*, cited above, § 116), the second inquiry was conducted by bodies independent of the prison administration, namely the public prosecutor and police. Their independence was indeed not put into question in the present case. The Court will proceed to examine whether the latter inquiry also satisfied the other requirements of Article 2, set out above.

102. The Court notes that after the applicant's son's body was discovered on 14 August 2009 at 19.25, police were immediately called to the scene, where they secured evidence. An autopsy was ordered by the doctor on the same day. Following the applicant's accusations, which included allegations of omissions on the part of prison staff in preventing her son's death and that they had used violence and threats against him, a new autopsy report was ordered on 17 August 2009 (see paragraph 59 above). It confirmed that the death had been caused by hanging and that there were no signs of violence on the body (see paragraph 60 above). On 15 September 2009, following a new accusation from the applicant, the Prosecutor ordered the police to collect all relevant evidence, by *inter alia*, questioning inmates and prison staff. The first police report was prepared on 2 November 2009. However, following the Prosecutor's order, further evidence was collected.

103. The Court observes from the case file that the Prosecutor was intensively involved in the investigation and gave regular instructions to the police as regards the evidence taking. There are no indications that the applicant would not have been taken seriously by the Prosecutor or the police. Quite to the contrary, the Prosecutor had responded to each of her numerous accusations and had ordered measures to be taken by police to investigate them (see paragraphs 62, 64, 68 and 70 above). The scope of the investigation therefore covered a possible murder, abuse of power by the prison authorities, and ill-treatment, as well as allegations of negligence by prison staff in preventing the suicide.

104. The Court notes that all prison officers, medical and social workers who had responsibilities towards the applicant's son during his stay in prison, as well as the inmates accused of extorting money from the applicant's son, were identified during the investigation. The applicant and a number of witnesses were heard by the police. Two autopsy and two other forensic reports, as well as a toxicological report, were obtained during the proceedings. The applicant's son's prison file, his diary and the video recordings of the encounter between the applicant's son and S.B. were also

examined. On 20 May 2010 the Prosecutor issued a reasoned decision dismissing the applicant's accusations.

105. Having regard to the amount of evidence taken during the investigation and to the activity of the police and the Prosecutor, the Court finds that the authorities acted with the diligence and promptness required under the procedural limb of Article 2. It also notes that there is no indication that the applicant was not sufficiently involved in the investigation.

106. The Court therefore finds that there was no violation of Article 2 as regards the State's obligation to conduct an effective investigation of the circumstances surrounding the suicide of the applicant's son.

B. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

107. The applicant complained that her son suffered a violation of Article 3 of the Convention between 11 November 2008 and 14 August 2009 due to inadequate, in particular overcrowded, living conditions of his detention, lack of measures taken to ensure his safety and lack of medical care. Article 3 of the Convention reads as follows:

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

108. The Government argued that this part of the application should be rejected because of non-compliance with the six-month rule or, alternatively, because the applicant had failed to exhaust domestic remedies.

109. The Government further argued that the conditions of the applicant's son's detention were adequate. His vulnerability as a drug addict was taken into account and the prison staff had made constant efforts to provide him with a safe environment, by removing those who were allegedly threatening him or by placing him in Block 1 where he had in principle always been accompanied by prison guards when outside his cell. His wishes as regards his accommodation were taken into account as much as possible and he had received complete medical and psychiatric care and had never been denied any assistance.

110. The applicant submitted that her son had received insufficient medical, in particular psychiatric, attention. She also submitted that her son's living conditions were exacerbated by the fact that he was confined to his cell most of the time as he was afraid to move around the wing.

111. The Court does not find it necessary to examine the Government's objections concerning the issue of exhaustion of domestic remedies and compliance with the six-month rule, as this part of the application should in any event be declared inadmissible, for the reasons set out below. The Court will proceed on the assumption that the complaint is compatible *ratione personae* with the provisions of the Convention

112. As regards the measures taken to ensure the applicant's son's safety and those taken in response to his difficulties in integrating, the Court refers to its above findings under Article 2 (see paragraphs 86 to 94 above) and finds that no issue arises in this respect under Article 3 of the Convention. As to allegations of lack of medical or psychiatric care, the Court notes that there is no indication in the case file that the care provided to the applicant's son was not appropriate or adequate. The applicant did not point to any unanswered requests for assistance or any relevant omission on the part of the authorities. As regards her complaint concerning overcrowding in prison, the Court refers to its findings in *Lalić and Others*, cited above, in which it found the general conditions of detention in the closed wing of Dob Prison to be adequate *vis-à-vis* Convention standards. The Court also notes that there is no indication that the applicant's son had insufficient space in the cells in which he had been held. Moreover, his placement in Block 1, in which his movement was restricted, was in accordance with his own wishes.

113. Having regard to the foregoing, the Court finds that the complaint under Article 3 is unsubstantiated and should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 2 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention as regards the positive obligation to protect life;

3. *Holds* that there has been no violation of Article 2 of the Convention as regards procedural obligation to carry out an effective investigation.

Done in English, and notified in writing on 13 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

M.V.
C.W.

CONCURRING OPINION OF JUDGE POWER-FORDE

It was with some hesitation that I voted with the majority in this case. Both the Convention and the rules of procedure are silent as to the standard of proof this Court should adopt in determining complaints made thereto. In respect of alleged violations of Articles 2 and 3 of the Convention, the former Commission adopted the criminal standard of 'proof beyond reasonable doubt' in the *Greek* case.[1] That standard was subsequently applied by the Court over thirty years ago in *Ireland v the United Kingdom*[2] and it has continued as a 'constant' within the Court's case law ever since. Some commentators have argued, robustly, that the common-law standard of proof beyond reasonable doubt adopted in criminal trials has no place in the scrutiny of the human rights' responsibilities of states conducted by an international court of non-criminal jurisdiction.[3] This Court is not a criminal court trying individuals charged with criminal offences and expecting victims of serious violations to prove their allegations 'beyond a reasonable doubt' places upon them an onerous and unfair burden.[4] Compelling as such arguments are, I find myself bound to apply the standard of proof which this Court has consistently required. Consequently, although I have considerable misgivings about the care afforded to the applicant's son whilst a vulnerable detainee in the custody of the respondent State, I cannot conclude beyond a reasonable doubt that it was responsible for his death.

That said, however, one would hope that the authorities will take cognizance of important lessons that can be learned from this case. Firstly, although distinguishable from the deceased in *Keenan v. the United Kingdom*[5] or *Ketreb v. France*[6] in that the applicant's son was not diagnosed with a specific psychiatric condition, he was, nevertheless, a vulnerable person with a chemical dependency whose condition required particular care on the part of the authorities. Having threatened to commit suicide after altercations with two other prisoners, he should not have been transferred to the same block in which they were detained or, at the very least, he should not have been exposed to defenceless encounters with them. One would hope that, henceforth, where a vulnerable prisoner threatens to commit suicide following conflict with other detainees, the authorities will take

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[1] *Yearbook of the Convention*, 1969, p. 196, § 30.
[2] 18 January, 1978, A 25, § 161.
[3] See, for example, *Loucaides, L. G. Standards of Proof in Proceedings under the European Convention on Human Rights* in Essays on the Developing Law of Human Rights, (Matrinus Nijhoff, 1995, pp 157-169).
[4] Bonello, G. *Evidentiary Rules of the ECHR in Proceedings Relating to Articles 2, 3 and 14—A Critique*, in Inter-American and European Human Rights Journal Vol. 2, No 1 – 2, 2009, pp. 66 -80.
[5] Application no. 27229/95, ECHR 2001-III.
[6] Application no. 38447/09, 19 July 2012.

particular care to ensure that unsupervised contact between such prisoners is not made possible.

Secondly, if such contact does occur, the authorities should have in place standard operating procedures whereby such incidents are reported and recorded and appropriate follow-up monitoring is ensured. The authorities' failure in this case to have such procedures in place was a significant omission on their part.

Thirdly, if a decision is taken to change a vulnerable prisoner's placement because his safety and well-being so require, that decision should not be reversed solely as a form of punishment for a breach of prison rules. A clear distinction, in principle, between the purpose of 'placement' and 'punishment' needs to in place.

Finally, the prison administration in the respondent State can no longer 'turn a blind eye' to the prevalence of drugs in Dob prison. It is evident from the judgment that narcotics are, relatively, easily accessible to prisoners within that facility. With that knowledge, the prison authorities cannot wash their hands of the adverse consequences that flow from their "toleration" of the problem. Vulnerable individuals with chemical dependency will continue to feed their addiction (rejecting, as did the applicant's son, alternative methadone programmes) and drug pushers will, in their characteristic way, continue to exploit such persons. This entire scenario cannot but have contributed to the overall desperate situation in which the applicant's son found himself. Whilst I cannot, beyond reasonable doubt, fix the respondent's state with responsibility for his death, I can hope that it will address the obvious deficiencies in the existing regime in the light of the events in this case.