

Statement of the Facts

1. The applicant's son ("R.A."), born on 27.12.1990, a Macedonian national of Roma ethnicity, died while serving a sentence in the Gevgelija Prison ("the Prison"). He was 19 years old in the time of his death. (Annex 3)
2. On 29.07.2010 R.A. was arrested and held overnight in Kavadarci Police Station (Annex 14) to be escorted the following day to the Prison pursuant to Kavadarci First Instance Court decision K 79/10 (Annex 15), sentencing him to three months in prison.
3. On 30.07.2010 R.A. was admitted to Gevgelija Prison ("the Prison") between 13.00 and 15.00 hours; different times appear in officials records and witness statements.
4. As R.A. stated to the prison staff that he was a drug user, he was escorted the same day by two prison officers to the Centre for the Prevention and Treatment of Substance Abuse with the Psychiatric Ward at the Gevgelija General Hospital ("CPTSA"), to be given treatment in accordance with the procedures for admitting drug users.
5. At the CPTSA R.A. was examined by Dr. Sasko Cvetkovik who issued a Medical Certificate (Потврда) (Annex 8) indicating the following: R.A. had been addicted to heroin for two years; he had started using methadone during the last months prior to his admission to prison; the last time R.A. had used methadone was on 28.07.2010. He displayed withdrawal symptoms (aches and pains in the joints and the spinal column, intermittent waves of heat and cold, slight tremor and tension, as well as minor anxiety). The report provides details on R.A.'s outer appearance and about his thorax, heart (including his pulse), abdomen, liver and kidneys, all of which were functioning normally. R.A.'s breathing was assessed as "eupneic" (normal breathing), and he was "afebrile" (without a fever) and actively moving.
6. The Medical Certificate does not contain any information on scratches or wounds on R.A.'s forehead. Later, on 1.08.2010, the admitting prison officer, Atanas Delev, would state on, that at the time of admission R.A. presented with a scratch on his forehead that looked almost healed. (Annex 4)
7. R.A. did not have any other medical examination upon admission or during his stay in the Prison, despite the requirements of Macedonian law (see below). R.A. did not have his medical record opened at the prison.
8. The Prison did not employ a full-time doctor or any other medical staff, having instead concluded a service contract with Dr. Sretko Jovanov, who also acted as operating director of the Gevgelija General Hospital. To date, Dr. Jovanov continues to perform both functions. The service contract (Annex 9) provides that the doctor shall take all necessary measures relating to the health of the prisoners, including performing examinations once a week and being available at all times. The contract did not explicitly require the doctor to perform medical examinations upon the admission of prisoners. The director of the Prison had asked the Ministry of Justice on several occasions to allow them to employ a full-time medical professional, but the Ministry never responded (Annex 17).
9. According to the prison director, R.A. was not seen by Dr. Jovanov either on admission or during his stay, as it was Friday and Saturday and the doctor was on a business trip to Skopje (Annex 29). According to the admitting officer, the doctor was not called to examine R.A. (Annex 27).

10. At the CPTSA R.A. was given 4 ml of methadone due to his chronic drug abuse. The therapy for the following three non-working days (the weekend and Monday, which was a holiday) was handed over to the two prison officers accompanying R.A. At the Prison the prescribed doses of the methadone therapy, as well as the other medical supplies, were kept in a locked cabinet in a closed room to which only prison staff had access (Annexes 11, 27).
11. According to a prison officer, on 31.07.2010 R.A. was given the recommended 4 ml of methadone dose between 08.30-09.00 hours by the day-shift officers, at the same time as other prisoners on methadone.
12. R.A. was placed in isolation, in the closed ward of the Prison. He was accommodated alone in a six-bed room. During the day (31.07.2010), R.A. did not show signs that his health was deteriorating. (Annexes 27, 29)
13. According to Vlatko Krajcev, a prison officer, on the night of 31.07.2010 by the time he switched off the lights at 23.00 hours he had checked on R.A. who was asleep (Annex 6). According to another prison officer, Miki Jovanov, when he switched off the lights at 23.00 hours he chatted to R.A. and did not notice anything (Annex 27).
14. On 01.08.2010 at 07.00 hours Miki Jovanov found R.A. sleeping and breathing with difficulty, and failed to wake him up after several attempts. The Emergency Medical Service was called and, upon their arrival, the paramedics decided that R.A. needed to be transferred to Gevgelija General Hospital ("Gevgelija hospital").
15. R.A. was admitted to Gevgelija hospital (at 07.00) by a specialist in internal medicine Dr. Ilija Asikov. R.A. was in a comatose state, breathing irregularly. Two lacerated bruises were found on his forehead. As his condition worsened, R.A. was intubated and sent to the Emergency Clinical Centre in Skopje (the "Skopje hospital") around 09.00 hours.
16. The Gevgelija hospital issued Discharge letter No. 2120 of 01.08.2010, signed by Dr. Ilija Asikov and Dr. Jovanov (see § 8 above). It does not mention the treatment administered to R.A. (Annex 1).
17. R.A. was admitted at the Skopje hospital, where was pronounced dead at 12.30 hours. The clinical diagnosis recorded in the Cause of Death Report issued by the Skopje hospital (Annex 2) was : come cerebri, VLC Regio frontalis (a head wound) and cardiac arrest. According to the report, R.A. was in a non-responsive coma when he arrived, he was not able to breathe on his own and had been intubated, and his blood pressure was undetectable. Resuscitation was attempted, but with no success.
18. On the morning of 01.08.2010, around 08.00 hours, the applicant, R.A.'s father, together with his other son, his daughter-in-law, R.A.'s friend and friend's girlfriend (in total five of them) went to the Prison to visit R.A. When they arrived, they were told that R.A. was not in good health and had been taken to Skopje. The applicant immediately returned to Kavadarci to get money and travel to Skopje. When he arrived to Kavadarci, he received a phone call from Gevgelija Prison stating that R.A. had died on the way to Skopje hospital. The applicant was therefore surprised later to learn that his son was declared dead in hospital at 12.30 hours.
19. The Autopsy Report SP No. 14699/201-10 of 02.08.2010 (the "Autopsy") found that the lungs of the deceased showed distress (tissue oedema, stasis, bleeding and bronchopneumonia). (Annex 7)

20. The Autopsy revealed a high level of methadone and barbiturates in R.A.'s urine – concentration of methadone 1435,37 ng/ml (compared to a reference concentration of 200 ng/ml). According to the Autopsy lung inflammation, aggravated by high levels of methadone and barbiturates which had depressed R.A.'s breathing, had led to organ failure.
21. The Autopsy also certifies that from the centre of the forehead towards the right side there was a wound 2 cm by 0.2 cm on the surface of the skin and a cut 0.5 cm deep. Above it there was a reddish bruise, 1.3 by 0.2 cm. In addition, in the central area of the forehead there was a dark-red blood hematoma 1 cm in diameter.

PROCEEDINGS INITIATED BY STATE AUTHORITIES

22. On 02.08.2010, the Veles Basic Public Prosecutor's Office (Veles BPPO) asked the Investigative Judge at the Veles First Instance Court (FIC) to take investigative measures, in particular an autopsy (Annex 15). The autopsy was performed allegedly the same day, on 02.08.2010. However, it was only received by the Veles BPPO on 14.12.2010, according to the stamp with file code RO 149/10. The applicant is not aware of any explanation for the delay. (Annex 7)
23. On 03.08.2010 the CPTSA issued a Medical Certificate (Потврда) (Annex 8) bearing the hospital stamp and the stamp of Dr. Sasko Cvetkovik, although it does not contain his signature. The Medical Certificate (Потврда) does not specify the time when R.A. was admitted for treatment. It does not indicate to whom it is addressed and for what reason. The applicant is not convinced that the document was produced on the data indicated.
24. On 22.12.2010 (one week after receiving the Autopsy) the Veles PPO issued Decision No. 149/10 concluding that the legally prescribed conditions for an ex officio prosecution were not fulfilled, as R.A. had died of natural causes, due to lung inflammation. The family was informed the same day, without being given a copy of the decision or being informed of any remedy against it. It appears that the prosecutor did not hear any witnesses and only relied on written statements of prison officers dating from 01.08.2010 (Annexes 4,5,6), apparently before the investigation had even started.
25. In its reports of March 2011 on its visit to Macedonia between 21.09-01.10.2010 (Annex 14), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) highlighted that: "At the time of the visit, the CPT's delegation was informed of four recent deaths in custody, none of which had been the subject of an investigation...[t]he circumstances surrounding the death of the inmate at Gevgelija Prison, which occurred in August 2010, were more obscure." Regarding R.A.'s death the CPT noted a number of outstanding issues that remained to be answered, including (a) why was R.A. not medically screened during the two days he was held in Gevgelija Prison; (b) how R.A. suffered the wounds on his forehead. The CPT stated "the Committee would like to receive, in due course, the outcome of any inquiry (including the autopsy report)".
26. Following the CPT recommendations, the Veles BPPO pursued an additional investigation collecting, inter alia, two new written statements by the prison guards (Annexes 11, 12).
27. On 22.06.2011, the Veles PPO submitted to the Investigative Judge in Veles a proposal for instituting an investigative procedure, suggesting that the Institute of Forensic Medicine,

Criminology and Medical Deontology in Skopje (IFMCME) perform an expert investigation into (1) whether R.A. had been given adequate medical treatment, (2) whether the amount of barbiturates and methadone found in his body during the autopsy corresponded to the (methadone) treatment he received according to the documentation, (3) whether the methadone therapy was part of the cause of death and (4) whether R.A. would have died even if he had not received methadone.

28. On 31.01.2012 the IFMCME issued an expert medical opinion concluding that R.A.'s treatment at Gevgelija hospital was adequate. The report notes that R.A.'s death was caused by pneumonia and that the methadone and barbiturates found in his body had contributed to his death. The report does not address the question of whether the methadone levels found in R.A.'s body were consistent with the doses prescribed by the CPTSA nor if R.A. would have died even if he was not on methadone (Annex 13). The report was included in the criminal case file not specifically sent to the applicant. The applicant has no information on the current status of the investigation.
29. Responding to requests by the applicant's lawyer the CPTSA specified on 12.11.2012 that R.A. had been admitted at 13.00 hours, but also that two doses of methadone had been returned to the CPTSA by the Prison and no official records were kept (Annex 16). The Prison replied on 16.11.2012 (Annex 17) that they had no full-time doctor (despite requests they had made), that the methadone was in a locked cabinet and that there was no specific report about who administered the treatment. The Prison also indicated that there had been no disciplinary proceedings following R.A.'s death.

CRIMINAL PROCEEDINGS AGAINST PRISON INITIATED BY APPLICANT

30. On 05.07.2013 the applicant's attorney filed a criminal complaint against the Prison, represented by its director Pavle Nikov, with the Veles BPPO for failure to provide due supervision, in accordance with Article 353-v (Член 353-в) paragraph 2 in relation to Article 28-a of the Criminal Code (Annex 18). The case was communicated to the Gevgelija BPPO as the complaint fell within its jurisdiction.
31. Responding to the Gevgelija BPPO's additional inquiries, the CPTSA clarified on 31.07.2013 (Annex 19) that prescribed dosage of methadone could not have resulted in the levels of methadone found in R.A.'s body during the autopsy.
32. On 15.10.2013 the applicant's attorney received the decision of Gevgelija BPPO dated 10.09.2013 (KO No. 194/13) to dismiss the criminal complaint as unfounded (Annex 20) because the criminal offence against the Prison would not be prosecuted ex officio and there were no elements pointing to criminal liability of the prison director. The decision was not communicated to the applicant's attorney until it was presented in the compensation case as evidence. It appears the decision was dispatched directly to the applicant but he never received it.
33. Referencing the 31.01.2012 medical expert report which noted that methadone contributed to R.A.'s death, the prosecutor nonetheless noted that it was not clear when R.A. had obtained access to additional methadone and who helped him to do so.

34. On 22.10.2013 the applicant filed a subsidiary indictment (i.e. a private prosecution) with the Gevgelija Basic Court (Annex 21) and supplement document (Annex 22). This private prosecution was rejected in the first instance by a decision K-286/13 of 22.11.2013 (received on 07.12.2013; Annex 23). The applicant appealed this decision on 10.12.2013 (Annex 24).

OTHER PROCEEDINGS INITIATED BY THE APPLICANT

35. The applicant has also filed a compensation claim in the civil court on 18.07.2013 (Annex 25). The minutes of these hearings are at Annexes 27-29. The claim was rejected in the first-instance on 27.01.2014 (P4 No. 38/13, received on 04.02.2014; Annex 30). The applicant has lodged an appeal. (Annex 31)

36. On 05.07.2013, the applicant also filed a criminal complaint against unknown persons for torture. The complaint concerned the wounds on R.A.'s forehead. These proceedings are still pending. (Annex 32)

Statement of Alleged Violations of the Convention and / or Protocols and relevant arguments

Article 2 (substantive limb)

The applicant claims that the authorities are responsible for his son's death by failing (1) to diagnose and treat R.A.'s pneumonia and (2) to ensure he ingested only the prescribed amount of methadone. In cases involving deaths in custody, the burden of proof is on the authorities to provide a "satisfactory and convincing" explanation for the events leading to the detained person's death. See, e.g., *Salman v Turkey* (2010), § 100. The investigation has not produced a convincing explanation for R.A.'s death. Indeed, the prosecutor, whilst acknowledging that methadone contributed to R.A.'s death, had serious doubts about how R.A. ingested enough to kill him. When people suffering from illness (including addiction) are detained, the obligation to provide a convincing explanation is 'particularly stringent'. *Mojsiejew v Poland* (2009), § 63. Indeed, the authorities are required to provide adequate care and supervision for detainees who require medical care. See *Taïs v France* (2006), § 98. Although he had a medical check-up, the report of the initial (and only) medical examination is inconsistent with the pulmonary distress and other symptoms revealed after R.A.'s death. There was no doctor at the prison to examine prisoners on admission, as required by law and by the prison rules (see Annex 33). The purpose of the examination at the CPTSA was solely to prescribe methadone treatment and was wholly inadequate to assess R.A.'s physical condition and needs in prison; evidence in the pending compensation claim indicates that the CPTSA does not examine patients' lungs, for example, to detect pneumonia (See Annex 27). R.A. was then detained without adequate access to a medical doctor. The applicant emphasises that the prison reported it was understaffed and had requested the Ministry of Justice to provide a full-time doctor. It is notable that no one on staff detected that R.A. was suffering from what would prove to be fatal pneumonia. R.A. was left alone, it seems, for eight hours, during which his health deteriorated significantly. Cf. *Taïs*, § 102. It is also unclear why R.A. was placed in isolation which increased the risk that any deterioration in his health would not be detected.

Article 2 (procedural limb)

The investigation into the applicant's death was wholly inadequate. The applicant notes that no witnesses were ever heard; the prosecutor merely examined statements produced by prison guards themselves and other documents. See *Borbála Kiss v Hungary* (2012), § 37. Although an autopsy was conducted immediately, it was not communicated to the prosecutor's office for another four months (after the CPT's visit). The record-keeping appears to have been inadequate, with various documents stamped but not signed and others materialising long after the date on which they were allegedly drafted. The CPT concluded that there was no investigation of this particular case. The prosecutor was aware that there were at least four unanswered questions: (1) whether the level of methadone in R.A.'s body was consistent with the dose (a question asked by the prosecutor and although addressed by the CPTSA, never answered by the forensic experts at the IFMCME); (2) if not, how R.A. got access to extra methadone; (3) how is it that R.A. died of such a serious case of pneumonia which went undetected during a medical examination 42 hours earlier (with no investigation into the medical supervision in prison); (4) what the source of the lacerated bruises on R.A.'s forehead was and whether there was any connection with his death. See, *mutatis mutandis*, *Eugenia Lazar v Romania* (2010), § 80 (on the obligations of forensic institutions in criminal investigations).

Article 13

The applicant claims that, in the event the Court finds it appropriate to consider the matter separately, he was a victim of a violation of Article 13 because of the lack of a remedy capable of reversing the decision of the prosecutor to dismiss the criminal complaint.

Compliance with Admissibility

Article 2 (substantive limb)

The applicant's lawyer filed a criminal complaint against the Director of the prison on 5 July 2013 for failure to provide due supervision of R.A. whilst in custody. On 10 September 2013, the criminal complaint was dismissed as unfounded and the applicant's lawyer received this on 15 October 2013 (Annex 20). It is not possible as a matter of Macedonian law to challenge such a decision in the domestic courts. The only option open to the applicant was to pursue a private prosecution, which he did. However, the applicant is not convinced that a private prosecution constitutes an effective remedy, in the light of the Court's case law that a private prosecution in such circumstances is not an effective remedy. *Borbála Kiss v Hungary* (2012). The applicant submits, in the light of the *Borbála Kiss* judgment, that his private prosecution is no more likely to succeed than his criminal complaint. He therefore considers that the final decision in this matter was, at the earliest, 15 October 2013. The applicant notes that he pursuing a compensation claim against the prison. However, 'an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful'. *Aquilina v Malta* (1999), § 39. See also, *Sulejmanov v Macedonia* (decision, 2006) (ruling admissible a complaint where the investigation was still pending before the prosecutor); and *Jašar v Macedonia* (decision, 2006) (same).

Article 2 (procedural limb)

The applicant re-iterates what is set out above in relation to the exhaustion of domestic proceedings. The applicant became aware that the investigation was not effective on 15 October 2013, when the criminal complaint was dismissed as unfounded. In these circumstances, the applicant respectfully submits that he has complied with the six-month rule.

Article 13

The applicant submits that the same principles set out above apply to his complaint under Article 13, taken with Article 2.