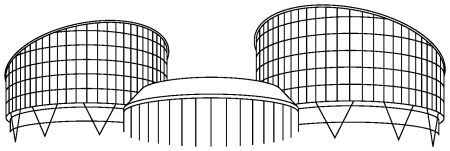

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF EMARS v. LATVIA

(Application no. 22412/08)

JUDGMENT

STRASBOURG

18 November 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Emars v. Latvia,

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

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

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 21 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 22412/08) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Maigonis Emars ("the applicant"), on 8 April 2008.

2. The applicant was born in 1934 and lives in Kuldīga parish. He was represented before the Court by Mr E. Embergs. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine, and subsequently by Mrs K. Līce.

3. On 5 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

1. The initial investigation

5. On 21 May 2004 at 08.15 two household workers ("M.R." and "I.B") discovered the body of the applicant's daughter ("S.J.") at her home in Ventspils. She had a rope around her neck, the other end of which was thrown over the top of a door and tied to the door handle on the other side.

6. At 08.20 M.R. and I.B. reported the incident to the Ventspils City and District Police Department of the State Police ("the Ventspils State Police"). Three police officers from the Ventspils State Police were dispatched to S.J.'s home. S.J.'s husband ("A.J."), who worked as a policeman-driver for the Ventspils State Police, arrived separately.

7. The Government have provided details of the investigation which followed. Their account has not been disputed by the applicant.

8. From 09.40 to 10.35 officers G.A. and A.G. from the Ventspils State Police examined S.J.'s home. They prepared the procedural record, photographed the scene and seized material evidence. Later that same day S.J.'s body was transported to the Ventspils City Morgue and A.G. requested an autopsy and forensic medical examination of the body. He also submitted an internal report to the Head of the Ventspils State Police which stated that he and G.A. had arrived at the scene, established that S.J. was dead, arranged for the transportation of the body, examined the scene, and took statements. In the report he noted that the persons transporting S.J.'s body to the morgue had removed the rope from around her neck.

9. In a letter dated 23 May 2005 a Prosecutor from the General Prosecutor's Office admitted to the applicant that the examination of the scene by A.G. had not been done "qualitatively" or in compliance with the requirements of the Criminal Procedure Law. He had been subjected to disciplinary action and prosecuted under Article 319(1) of the Criminal Law (Failure of a State Official to Perform His Duties) and under Article 327(19) (Forgery of a Document by a State Official). The second prosecution would appear to relate to the forgery of a Doctor's signature on a document purporting to set out an expert's conclusion. A.G. was later released from criminal liability.

10. In the same letter the Prosecutor from the General Prosecutor's Office informed the applicant that another officer from the Ventspils State Police ("A.M.") had been subjected to disciplinary action for violating the Criminal Procedure Law when verifying the fact of S.J.'s death. It is not clear whether or not the disciplinary action related to the examination of the scene on 21 May 2004.

11. On 24 May 2004 the police took statements from the applicant and S.J.'s sister ("B.L."), both of whom expressed the opinion that S.J. had no reason to commit suicide.

12. On 25 May 2004 a forensic expert, having examined S.J.'s body, concluded that she had died on 21 May 2004 and attributed the cause of death to mechanical asphyxiation. The report stated that there was no evident sign of violence, aside from the strangulation, although it noted that S.J. had bruises on her shoulder, hands and legs and three scratches on her right palm which could have been acquired up to three days prior to her death.

13. The following day the police obtained statements from a neighbour ("M.N.") and two of S.J.'s colleagues. M.N. recalled that between 22.00 and 22.15 on 20 May 2004 she had observed a red vehicle similar to the one driven by A.J. parked in the courtyard of the building where S.J. and A.J. lived. Another neighbour ("Ma.N.") subsequently recalled seeing such a vehicle in the courtyard from 22.00 to 22.30.

14. S.J.'s colleagues confirmed that she had finished her shift in the shop she worked in at 22.00 and headed to an office where she had a second job as a cleaner. Another witness later confirmed that she had arrived at the office at 22.15 and left at 22.45 - 22.50.

15. The Government submitted that on 27 May 2004 the Kurzeme Regional Division of the Organised Crime Combating Department ("the OCCD") requested a list of incoming and outgoing calls to S.J.'s mobile phone from her operator.

16. On 30 May 2004 the son of S.J. and A.J. ("Av.J.") made a statement. He said that A.J. had picked him up at home at 18.00 on 20 May 2004. He had remained with his father until 23.00, when his father returned to work and he went to the home of his sister ("D.J."). A colleague of A.J. later reported going with him to the cafeteria in the police station at 23.00 and the chief officer on duty that night confirmed that A.J. had remained with the squad until his shift ended at 07.00 on 21 May 2004. He also told the investigators that after midnight the police station was locked and the main gate closed, with the consequence that no person – or vehicle – could leave the premises without his permission.

17. On 1 June 2004 Officer A.M. performed a further examination of S.J.'s home. He examined marks and traces left by the rope on the door and seized several samples for forensic traceology examination.

18. On 8 July 2004 a household worker gave a statement to the police confirming that on 20 May 2004 A.J. had returned home at 18.00 to collect Av.J. On 20 July 2004 D.J. confirmed that A.J. and Av.J. had arrived at her home at 23.00 that night.

19. On 21 July 2004 the State Forensic Expertise Centre reported that the groove marks on the upper fragment of the door had been chafed into the wooden surface by the rope attached to S.J.'s neck. Those marks could only have been made by pulling the weight of S.J.'s body towards the door handle, to which the rope was subsequently tied.

2. The criminal investigation

20. On 23 July 2004 the OCCD initiated criminal proceedings to investigate the aggravated murder (murder with mercenary intent) of S.J. From this point onwards, Inspector V.L. of the OCCD was responsible for the investigation under the supervision of the General Prosecutor's Office. A.L. was the Prosecutor in charge and he reported to A.B., who was the supervising Prosecutor.

21. On 23 July 2004 A.J. was interrogated as a suspect and he was informed that he could not change his registered place of domicile. Av.J., D.J. and B.L. were questioned as witnesses.

22. A couple of days later, M.N. and Ma.N. were again interviewed about the red vehicle parked in the courtyard of S.J.'s home. Both indicated that they had believed the vehicle to be the one driven by A.J.

23. Throughout the following months witnesses were interviewed, including A.J. (who was questioned repeatedly), his relatives and acquaintances, S.J.'s relatives (including the applicant), the couple's neighbours, a number of police officers, S.J.'s employer and some of her colleagues, her household workers and her dentist. The General Prosecutor's Office also instructed the OCCD to order further forensic tests, although records indicate that many were in fact ordered by the Ventspils State Police.

24. Attempts were made to establish the exact time of death but on 11 August 2004 the forensic expert indicated that "considering that the forensic medical examination of S.J.'s body had been performed four days after it was found and that *livor mortis* appears within the first hour of death, a more precise time of death could not be established".

25. A.J.'s uniform and the seat covers of his service car were seized on 9 August 2004 and DNA samples were taken from him. On 9 September 2004 the expert reported that there were several different DNA samples on the rope used to hang S.J. but none belonged to A.J. The expert was unable to establish the gender identification of the samples. On 16 September 2004 an expert concluded that some fibres found on S.J.'s coat possibly came from A.J.'s car seat but the results were inconclusive.

26. Further tests were also carried out on S.J.'s body, but no injuries were found which would indicate a struggle or self-defence.

27. Furthermore, S.J.'s bank records were requested, as were details of all red vehicles matching the description of the one seen at the scene of the crime. S.J.'s family members were also questioned repeatedly about whether or not she had kept a personal diary. On 23 March 2005 the diary appears to have been handed over to the police and attached to the criminal file.

28. On 1 December 2006 a further forensic traceology report suggested that there was a "high probability" that if S.J. had committed suicide the grooves on the top of the door would not have appeared as they did.

29. On 21 March 2007 A.J. was again declared a suspect. Further DNA tests were performed on the rope and experiments were carried out to determine the driving time from Ventspils Police Station to S.J.'s home. The results of the latter test appeared to confirm A.J.'s alibi and on 13 November 2008 the decision to once again declare him a suspect was quashed.

30. On 11 January 2011 a new OCCD investigator ("A.Jo.) assumed jurisdiction over the case file.

3. Victim status

31. On 20 August 2007 the OCCD acknowledged D.J. (the applicant's granddaughter) as a victim in the criminal proceedings.

4. The applicant's complaints about the conduct of the investigation

32. On 26 May 2004 the applicant wrote to the Head of the OCCD alleging that S.J. had been murdered. The OCCD informed the applicant on 2 July 2004 that the circumstances of S.J.'s death were still being investigated.

33. The applicant subsequently submitted further complaints to the Prosecutor's Office concerning the conduct of the investigation. In the course of these complaints, he implied that A.J. was directly or indirectly implicated in S.J.'s murder and that his colleagues on the police force were deliberately obstructing the investigation.

34. On 22 December 2004 A.Mi., a senior Prosecutor of the Prosecutor's Office attached to the Kurzeme Regional Court, informed the applicant that an in-depth investigation was being carried out. It was being conducted in an impartial manner and there was no evidence of any deliberate obstruction by the police. A.Mi. noted that the investigation was complicated and was supervised by another prosecutor from the same office ("A.L.").

35. On 23 May 2005 a Prosecutor from the General Prosecutor's Office informed the applicant that the investigation was still ongoing and that the evidence which had been gathered was not sufficient to bring charges against any specific persons. The Prosecutor admitted that A.G. had not carried out the initial examination of the scene of S.J.'s death "qualitatively", that both A.G. and A.M. had violated the requirements of the laws on criminal procedure and that the two officers had received disciplinary penalties. In addition, criminal proceedings had been initiated against A.G. for criminal inaction of a State official (section 319 of the Criminal Law) and for the forgery of official documents (section 327 of the Criminal Law). However, on 14 March 2005 the Prosecutor's Office attached to the Kurzeme Regional Court had decided to release A.G. from criminal liability pursuant to Article 54 of the Code of Criminal Procedure.

36. On 17 July 2007 the applicant wrote to A.L., the supervising Prosecutor, and asked to see certain expert reports and other specific information concerning the investigation into S.J.'s death. More particularly, he asked for additional information concerning the violations committed by the police officers A.M. and A.G. He also enquired when the case would be sent to a court.

37. On 20 August 2007 the Prosecutor replied to the applicant. He informed him that the pre-trial investigation was still ongoing and a forensic biological analysis of DNA was being carried out. Further investigative steps would be planned after receiving the results of that analysis and it was therefore impossible to predict the date of the completion of the pre-trial investigation. The applicant was further informed that under the Law of Criminal Procedure he had no right to read the case file or to receive copies thereof. The only persons who had such a right were the accused and the victims, but only after the completion of the criminal proceedings. With regard to the violations committed by the police officers, the applicant was advised to contact the Ventspils State Police.

38. On 10 September 2007 the applicant submitted a complaint to the Prosecutor General concerning the Prosecutors' responses of, *inter alia*, 22 December 2004, 23 May 2005 and 20 August 2007. He principally complained that the investigation was being deliberately delayed in order to protect S.J.'s murderer(s).

39. The applicant's complaint was forwarded to the Prosecutor's Office attached to the Kurzeme Regional Court. On 1 October 2007 he received a response from A.Mi. informing him that the investigation and the gathering of evidence were continuing "in order to establish important facts". Unspecified expert reports had apparently been ordered and their results were expected no earlier than December. Finally, the applicant was informed that his "allegation that the investigator and the supervising Prosecutor were not sufficiently active and were uninterested in establishing the truth were unfounded".

40. On 26 October 2007 the applicant submitted a further complaint to the Prosecutor General. He criticised the Office of the General Prosecutor's decision to forward his complaint to the Prosecutor's Office attached to the Kurzeme Regional Court. He also denounced the response of 1 October 2007 as "passive and unfounded" and considered that the fact that it did not address the substance of his complaints demonstrated that A.Mi. was not interested in establishing the truth about S.J.'s murder.

41. On 13 November 2007 the Prosecutor General gave a final response to the applicant's complaint. In the relevant parts of the response the applicant was informed:

> "... [the senior prosecutor A.M.] in his response of 1 October [2007] informed you that the investigation of the criminal case ... was ongoing, that expert reports had been ordered, and that after receiving expert reports further investigative steps would be planned. While criminal proceedings are pending, the materials in the criminal case file are an investigative secret (section 375 of the Law of Criminal Procedure), which is why it is impossible to give you more specific information concerning the investigative steps that have been taken and will be taken. It might be for that reason that you have formed an incorrect opinion that the investigation is being intentionally delayed and not conducted with the aim of establishing the culprit; however, such an opinion does not find support in the steps actually taken in the criminal proceedings.

In the course of the pre-trial investigation of the criminal case ... a sufficient amount of investigative steps were carried out: more than 15 expert reports were ordered and received and the need to order [additional] expert reports and the planning of further investigative steps was determined by the [findings of the] expert reports already received. In addition, the preparation of expert reports took significant time; more than 40 witnesses were questioned and other investigative steps carried out. Unfortunately the pre-trial investigation to this date has not allowed us to establish the circumstances [of S.J.'s death] or the culprit."

II. RELEVANT DOMESTIC LAW

42. The Criminal Procedure Law (*Kriminālprocesa likums*), which entered into force on 1 October 2005, provides as follows:

"**Article 95 – Victim**

(1) A person or legal entity can be recognised as a victim in the criminal proceedings provided that he or she has sustained non-pecuniary damage, physical suffering or pecuniary damage as a result of the criminal offence"

... ...

Article 96 – Recognition of Victim Status

(1) A person shall be recognised as a victim by a decision of an investigator, a public prosecutor, or a member of an investigative group ....

(2) ... a person shall be informed promptly of his or her right to be recognised as a victim in criminal proceedings.

(3) A person may only be recognised as a victim with his or her written consent.

... ...

Article 98 – Victims' Rights During the Investigation Stage of Criminal Proceedings

(1) A victim shall have the following rights during the investigation stage of criminal proceedings:

i. to consult the Criminal Proceedings Register and to request the discharge of officials entered therein;

... ...

iii. to submit applications regarding the performance of investigative and other operations;

iv. to familiarise himself or herself with a decision on determination of an expert examination before its transferral for execution and to request the amendment of said decision, providing that the expert examination was conducted

on the basis of his or her application;

... ...

vi. to submit complaints in accordance with the procedures specified by law regarding the actions of an official authorised to conduct criminal proceedings;

vii. to appeal against procedural decisions adopted during the investigation stage of criminal proceedings;

viii. following the completion of the investigation stage of the criminal proceedings, to receive copies of the materials in the criminal case file which directly concern the criminal offence by which the harm has been caused to the victim;

... ...

Article 375 – Access to the Criminal Case File

(1) During the course of criminal proceedings, the materials contained within the criminal case file shall be considered to be an "investigative secret"; officials responsible for the criminal proceedings, as well as persons to whom officials have provided the relevant materials pursuant to the provisions of this Law, shall be granted access to these materials."

43. Article 98(1) (v) and (ix) were subsequently removed on 1 February 2006.

44. The Criminal Procedure Code (*Latvijas Kriminālprocesa Kodekss*) from the date of the crime until 1 October 2005 provided as follows:

"**Article 100 – Victim**

A person or legal entity can be recognised as a victim provided that he or she has sustained non-pecuniary damage, physical suffering or pecuniary damage as a result of the criminal offence.

A citizen shall be recognised as a victim by a decision of an investigator, a public prosecutor, a judge, or a court.

A citizen who has been recognized as a victim has a right to testify. A victim and his or her representative have the following rights: to submit evidence; to submit requests; as of the moment of completion of the pre-trial investigation to consult all the materials of the case, as well as to copy by hand the necessary information or to make copies by technical means of the necessary materials of the case; to take part in the hearings; to submit recusals; to submit complaints about the actions of the investigator, the public prosecutor, or the court, as well as to lodge complaints against the court's judgment or decision and the decisions of the judge...

... ...

Article 130 – Prohibition to disclose the data acquired during the pre-trial investigation

The data acquired during the pre-trial investigation can only be revealed with the permission of and to the extent considered appropriate by the head of the investigating institution or by the prosecutor.

... ...

Article 202 – Presentation of the materials of the case to the victims ...

When the prosecutor deems the acquired evidence sufficient for bringing charges he has to inform the victims and their representatives ... thereof, simultaneously explaining of their right to consult the materials of the case.

If the aforementioned persons request it orally or in writing, the prosecutor presents the materials of the case to the victims and their representatives..."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION CONCERNING THE ALLEGED ABUSE OF THE RIGHT OF INDIVIDUAL PETITION

45. The Government submitted that the application was an abuse of the right to petition in view of the incorrect and unjustifiably abusive language used by the applicants' representative in his observations to the Court. In particular, the Government referred to passages in which the representative suggested that the Agent of the Government had deceived and misled the Court and was a discredit to the Foreign Office.

46. The Court recalls that an application may only be rejected as abusive in extraordinary circumstances, for instance if it was knowingly based on untrue facts (see, for example, *Akdivar and Others v. Turkey*, 16 September 1996, Reports of Judgments and Decisions 1996-IV, §§ 53-54; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; and *Popov v. Moldova*, no. 74153/01, § 49, 18 January 2005). Therefore, whilst the use of offensive language in proceedings before the Court is undoubtedly inappropriate, it would only be in certain exceptional cases that the persistent use of insulting or provocative language by an applicant against the respondent Government could be considered an abuse of the right of petition within the meaning of Article 35 § 3 of the Convention (see *Duringer and Grunge v. France* (dec.), nos. 61164/00 and 18589/02, ECHR 2003-II, and *Chernitsyn v. Russia*, no. 5964/02, § 25, 6 April 2006).

47. Although the Court considers that some of the present applicant's representative's statements were inappropriate and regrettable, they did not amount to circumstances of the kind that would justify a decision to declare the application inadmissible as an abuse of the right of petition (see *Felbab v. Serbia*, no. 14011/07, § 56, 14 April 2009). It follows that the Government's preliminary objection must be dismissed.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION TO THE APPLICANT'S LOCUS STANDI

48. The Government submitted that the applicant was not a victim of the alleged violation of the Convention because he had not requested that the national authorities recognise him as a victim during the domestic criminal proceedings even though he was not precluded from doing so and such recognition would have significantly expanded his procedural rights. Although the Government accepted that victim status in the context of Article 34 of the Convention was not necessarily the same as the national criteria relating to *locus standi* in legal proceedings, its purpose was to provide practical safeguards for persons who were not able to seek redress

under domestic law for violations of their Convention rights. This was not the applicant's case, as he had had an available domestic remedy for the complaints raised before this Court.

49. The applicant contested that assertion.

50. The Court reiterates that Article 34 of the Convention "requires that an individual applicant should claim to have been actually affected by the violation he or she alleges. It does not constitute for individuals a kind of *actio popularis* for the interpretation of the Convention; it does not permit individuals to complain against a law *in abstracto* simply because they feel it contravenes the Convention. In principle, it does not suffice for an individual applicant to claim that the mere existence of a law violates his rights under the Convention; it is necessary that the law should have been applied to his detriment" (see *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28). This principle also applies to decisions that are allegedly contrary to the Convention (see *Fairfield v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI).

51. The Court considers that the applicant, as the father of the deceased, could legitimately claim to be a victim of any deficiencies in the investigation into an event as tragic as the death of his daughter (see, for example, *Kurt v. Turkey*, 25 May 1998, § 134, *Reports of Judgments and Decisions* 1998-III). Insofar as he can be criticised for failing to obtain recognition as a victim in the domestic criminal proceedings, this is a question of exhaustion of domestic remedies. It follows that the Government's objection must be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicant complained to the Court under Articles 6 and 13 of the Convention about the effectiveness of the investigation into S.J.'s death. In particular, he complained that the investigation was not adequate, that it was not independent, and that he was denied access to the case file.

53. The Court is not bound by the legal characterisation given by an applicant to the facts of the case (see, for example, *Guerra and Others v. Italy* judgment of 19 February 1998, Reports 1998-I, p. 223, § 44). As such, it considers that it would be more appropriate to examine the applicant's complaints about the conduct of the investigation under the procedural aspect of Article 2 of the Convention.

54. Article 2 provides 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.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

55. The Government contested the applicant's arguments concerning the effectiveness of the investigation.

A. Admissibility

1. Non-exhaustion of domestic remedies

56. Insofar as the applicant complained about his lack of access to the case file, the Government submitted that he had failed to exhaust domestic remedies because he had not asked to be recognised as a victim in the domestic criminal proceedings as permitted by Article 96 of the Criminal Procedure Law. Had he done so, pursuant to Article 98 of the Criminal Procedure Law he would have had the right to receive copies of materials in the criminal case file or, upon the consent of the prosecutor, to become acquainted with the criminal case file materials following the conclusion of the pre-trial investigation. During the pre-trial investigation he would have had the right, *inter alia*, to make applications regarding the performance of investigative and other operations, to familiarise himself with decisions on determination of an expert examination and to submit applications regarding amendments thereto, to submit complaints regarding the actions of officials, and to appeal procedural decisions.

57. Even if it were not accepted that the procedural rights under Article 98 would meet the requirements of Article 2 of the Convention, the Government submitted that the applicant had a right under Article 19 of the Law on the Constitutional Court to challenge the Convention compatibility of that legislation before the Constitutional Court.

58. The applicant has not commented on this submission.

59. In the circumstances of the present case, the Court considers that the possibility of obtaining victim status under domestic law would have provided the applicant with an effective remedy in respect of his complaint about lack of access to the case file. Although in Latvia "victims" are not granted full access to the case file while a criminal investigation is ongoing, Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (*Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 348, ECHR 2007-II). Indeed, the Court has routinely held that the disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects for private individuals or other investigations. It cannot therefore be regarded as an automatic requirement under Article 2 that a deceased victim's surviving

next-of-kin be granted full access to the investigation as it goes along. The requisite access of the public or the victim's relatives may be provided for in other stages of the available procedures (see, among other authorities, *Ramsahai*, cited above, § 347 and *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III). In any event, were the applicant to consider that Article 98 of the Criminal Procedure Law is contrary to his fundamental rights a complaint in that regard to the Constitutional Court would have provided a relevant remedy in the Latvian legal system (see *Grišankova and Grišankovs*, cited above; *Liepājnieks v. Latvia* (dec.), no. 37586/06, §§ 73-76, 2 November 2010; *Savičs v. Latvia*, no. 17892/03, §§ 113-117, 27 November 2012; *Mihailovs v. Latvia*, no. 35939/10, §§ 157-158, 22 January 2013; *Nagla v. Latvia*, no. 73469/10, § 48, 16 July 2013; and *Latvijas jauno zemnieku apvienība v. Latvia* (dec.), no. 14610/05, §§ 44-45, 17 December 2013).

60. The applicant has not provided the Court with a satisfactory explanation for failing to apply for victim status. It is clear that he was aware of the possibility of making such an application and the consequences of failing to do so. On 20 August 2007 the Prosecutor advised the applicant in writing that under the Law of Criminal Procedure the only persons who had a right to view the case file were the accused and persons recognised as victims. Moreover, his granddaughter, D.J., had obtained victim status on 20 August 2007.

61. Consequently, the Court considers that insofar as the applicant wishes to complain about lack of access to the case file, he has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

2. Manifestly ill-founded

62. The Government further submitted that the Court should declare the remainder of the Article 2 complaint inadmissible as manifestly ill-founded. However, the Court, being satisfied that the complaint under Article 2 concerning the adequacy and the independence of the investigation raises complex issues of fact and Convention law calling for examination on the merits, considers that it cannot be rejected as manifestly ill-founded. Since this part of the application is not inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. The parties' submissions

63. The applicant submitted that the domestic authorities had not conducted an effective investigation into the circumstances of his daughter's death. In particular, he argued that the investigation was not conducted promptly, as his daughter was found dead on 21 May 2004 and the criminal

investigation did not begin until 23 July 2004. In addition, the autopsy was only conducted four days after the body was found, and as a result it was impossible to establish the exact time of death. Likewise, A.J. only appeared to have been interviewed ten days after S.J.'s body was found, and his uniform and car seat covers were only seized for forensic examination on 9 August 2004.

64. The applicant further complained about the overall effectiveness of the investigation. In this regard, he pointed to the disciplinary proceedings brought against A.G. and A.M. as evidence that it had not been conducted properly from the outset. He further claimed that the investigators had failed to seize S.J.'s mobile phone and diary, and both of these items had since been destroyed. Finally, he pointed to the fact that after eight years the police were no closer to prosecuting anyone for S.J.'s murder as evidence of the ineffectiveness of the criminal investigation.

65. Although the applicant accepted that the Prosecutors were independent and impartial, he complained that the officers from the Ventspils State Police were not, as they were colleagues of A.J. He therefore suggested that they had deliberately obstructed the investigation to protect their colleague.

66. The Government submitted that there had been an effective investigation by the domestic authorities into the circumstances of S.J.'s death. The scope of the State's obligation to conduct an official investigation was one of means and not of result. As such, the authorities were only required to take the reasonable steps available to them to secure the evidence concerning the incident, such as witnesses' testimonies, forensic evidence and, where appropriate, an autopsy which provided a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death.

67. In the present case S.J.'s body had been found at 08.15 on 21 May 2004. The police were notified at 08.20 and a car was dispatched immediately. Upon arrival, the police had commenced an examination of the scene. In particular, they secured the available evidence, photographed the scene and identified the persons present. S.J.'s body had been sent for an autopsy and statements were taken from family members, neighbours, household workers and colleagues to reconstruct the events of 20 May 2004. However, at this stage there had been no compelling evidence to indicate that S.J.'s death was not self-inflicted: the autopsy and forensic examination had not revealed evidence of a struggle or self-defence; the search of S.J.'s home had not raised suspicions that it had been searched for money or valuables; and homicidal hanging was extremely rare because the victim needed to first be unconscious or intoxicated, and the autopsy had revealed no evidence of alcohol in S.J.'s blood.

68. Nevertheless, further examinations had been carried out and additional evidence seized for forensic examination. The first compelling

evidence that S.J. had been murdered was received on 21 July 2004 and criminal proceedings were initiated two days later. The Government therefore submitted that the proceedings had satisfied the requirements of speediness and promptness under Article 2 of the Convention as there had been no undue delay in the initiation of the official investigation.

69. The Government further submitted that the investigation had been both impartial and independent. Initial procedural actions had been performed by the Ventspils State Police; however, these actions constituted a routine response to a police call, including the examination of the scene and the transportation of the body. The criminal proceedings had been initiated by the OCCD of the Kurzeme Regional Criminal Police, which was institutionally, hierarchically and practically independent from the Ventspils State Police. In addition, the course of the investigation had been supervised by the institutions of the Prosecutor's Office (the Kurzeme Regional Prosecutor's Office and the General Prosecutor's Office). The Prosecutor's Office was an institution exercising judicial functions. It had issued several sets of instructions for the responsible OCCD investigators and examined the case file on a regular basis.

70. Finally, the Government submitted that the investigation had been thorough. In the months following the initiation of the criminal proceedings the responsible investigative authorities had questioned forty persons and ordered a number of forensic tests, including DNA analysis, fibre tests and post-mortem forensic psychiatry tests. In addition, the authorities had examined information provided by mobile phone operator companies and drafted a list of suspects on the basis of information provided by the Road Traffic Safety Department.

71. Contrary to the applicant's assertion, S.J.'s diary had been promptly located and attached to the criminal file. Nevertheless, it did not contain any information which would have been useful to the investigation. S.J.'s phone had also been examined but no relevant information was found on it. It was for this reason that records had been requested from the operating company. Accordingly, the Government contended that every available piece of evidence had been properly gathered and examined.

2. The Court's assessment

a. General Principles

72. 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', requires by implication that there should be some form of effective official investigation when there is reason to believe that an individual has died in suspicious circumstances. The essential purpose of such an investigation is to secure

the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, for example, *Ramsahai v. the Netherlands*, cited above, § 321).

73. For an investigation into a suspicious death to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see, for example, *Ramsahai v. the Netherlands*, cited above, § 321).

74. There must also be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, for example, *Ramsahai v. the Netherlands*, cited above, § 321).

75. These obligations under Article 2 of the Convention are not confined to cases where it has been established that the death was caused by an agent of the State. On the contrary, the mere fact that the domestic authorities have been informed of the death will give rise *ipso facto* to an obligation under Article 2 of the Convention to carry out an effective investigation into the circumstances in which it occurred (see, for example, *Vasîlca v. the Republic of Moldova*, no. 69527/10, § 28, 11 February 2014). As with cases where the death was caused by an agent of the State, the Court has held that the investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment (see, for example, *Vasîlca v. the Republic of Moldova*, cited above, § 28). A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, Reports 1998-VI, pp. 2439-40, §§ 102-04; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III).

76. Finally, the obligation is not one of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident (see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see, for example, the Northern Irish judgments concerning the inability of inquests to compel the security-force witnesses directly involved in the use of lethal force, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 127, ECHR 2001-III (extracts)).

b. Application of the general principles to the present case

(i) Adequacy of the investigation

77. The applicant submitted that the investigation into his daughter's death was not conducted promptly, as his daughter was found dead on 21 May 2004 and the criminal investigation did not begin until 23 July 2004. The Court does not accept this argument. It is clear from the information submitted to the Court that the investigation commenced when the Ventspils State Police arrived at the scene on the morning of 21 May 2004. Although this investigation was not initially a criminal investigation, the Court accepts that prior to 21 June 2004 there was no clear evidence that a crime had taken place. Nevertheless, the police interviewed a large number of witnesses and ordered medical and forensic tests. Consequently, the Court does not consider that the investigation can be faulted on account of the fact that it was not treated as a criminal investigation from the outset.

78. The applicant also criticised the promptness with which certain forensic tests were carried out. In particular, he submitted that the autopsy was only conducted four days after the body was found, and as a result it was impossible to establish the exact time of death. Likewise, A.J. only appears to have been interviewed ten days after S.J.'s body was found, and his uniform and car seat covers were only seized for forensic examination on 9 August 2004.

79. The Court has already accepted that in view of the lack of clear evidence that a crime had taken place, the investigating authorities could not be faulted for failing to initiate a criminal investigation prior to 23 July 2004. As such, their failure to treat any individual as a suspect prior to that date cannot be in breach of the procedural aspect of Article 2 of the Convention. Nevertheless, given that A.J. was first interrogated as a suspect on 23 July 2004, the Court is surprised that forensic evidence was not seized until 9 August 2004, some two and a half weeks later, particularly in view of the importance of seizing such evidence promptly, and the time which had already elapsed since S.J. died. The Court is also concerned about the

delay in conducting the autopsy. According to a forensic report dated 11 August 2004 a more precise time of death could not be established "considering that the forensic medical examination of S.J.'s body had been performed four days after it was found and that *livor mortis* appears within the first hour of death". Autopsies should normally be performed as soon as possible following death as the quality of the body's tissues (and thus the quality of the autopsy results) deteriorates over time. In *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, § 146, 17 July 2014) the Court found a procedural breach of Article 2 where an autopsy had not been carried out immediately in contravention of domestic law. In the present case the delay in conducting the autopsy may not have contravened domestic law, but it does appear to have prevented the exact time of death from being established. The Government have not sought to explain either the delay in carrying out the autopsy or the delay in seizing material for forensic examination and, as such, the Court finds that it detracted from the authorities' capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Article 2 of the Convention.

80. The applicant further pointed to the disciplinary proceedings brought against A.G. and A.M. as evidence that the investigation had not been conducted properly from the outset. He further claimed that the investigators had failed to seize S.J.'s mobile phone and diary, and that both of these items had since been destroyed.

81. The Court does not consider that the applicant's complaints concerning the diary and the mobile phone have been substantiated. In particular, it notes that the diary appears to have been submitted to the police and attached to the case file. Likewise, the deceased's mobile phone was held as evidence by the police and both calls and SMSs made and received by the phone were examined by the police as part of the investigation.

82. As concerns the misconduct of the officers, it is clear that this issue was addressed by the authorities and it would appear that the officers in question were disciplined and charged with criminal offences. That being said, the Government have provided neither the applicant nor the Court with details of the relevant offences. It is therefore impossible for the Court to ascertain how serious the misconduct was or, more importantly, how prejudicial it was to the effective conduct of the investigation and as a consequence the Court cannot be satisfied that the investigation into the death of S.J. was adequate for the purposes of Article 2 of the Convention.

83. Finally, the applicant pointed to the fact that after eight years the police were no closer to prosecuting anyone for S.J.'s murder as evidence of the ineffectiveness of the criminal investigation. However, while the Court has expressed some concerns in the paragraphs above about the adequacy

and overall effectiveness of the investigation, it recalls that the investigative obligation is one of means and not of results.

84. In light of the deficiencies in the investigation, most notably the delay in conducting the autopsy, the delay in seizing A.J.'s uniform and seat covers (see paragraphs 79 above), and the unexplained misconduct of the investigating officers, the Court finds that the authorities in the present case failed to take the reasonable steps available to them to secure the relevant evidence.

(ii) Independence of the investigation

85. The applicant complained that the officers from the Ventspils State Police were not sufficiently independent as they were colleagues of A.J. He accepted, however, that the Prosecutors were adequately independent and impartial for the purposes of Article 2 of the Convention. The Court agrees with this concession, as it would appear that in Latvia the Prosecution Service has a hierarchy of its own, separate from the police, and in operational matters of criminal law and the administration of justice the police are under its orders.

86. It is clear that the procedural obligation under Article 2 to conduct an independent and impartial investigation applies in every case where there has been a suspicious death (see, for example, *Ramsahai v. the Netherlands*, cited above, § 321 and *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 258, 26 April 2011). In cases where no responsibility for the suspicious death attaches – or appears to attach – to agents of the State, the investigation into that death may usually be conducted by the local police force without any issue arising under Article 2. However, the Court has had occasion to find a violation of the procedural aspect of Article 2 where an agent of the State was potentially responsible for a death and the subsequent investigation was carried out by direct colleagues of the person allegedly involved (*Aktaş and Others v. Turkey*, no. 19264/92, § 301, 30 January 2001). In such cases, supervision by another authority, however independent, has not been found to be a sufficient safeguard for the independence of the investigation (*Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, ECHR 2001-III (extracts) and *McKerr v. the United Kingdom*, no. 28883/95, § 128, ECHR 2001-III). For example, in *Ramsahai v. the Netherlands*, cited above, the Court held that the deployment of the National Police Internal Investigations Department, a task-force of special duty police officers at the disposal of the Minister of Justice, some fifteen and a half hours after a fatal shooting was unacceptable as the local police force had carried out essential parts of the investigation in their absence. The task-force's subsequent involvement did not suffice to remove the taint of the local force's lack of independence.

87. The Court has found States to be responsible for deaths which were caused by the use of force by State agents, whether acting in an official

capacity in the course of their duties (see, for example, *Ramsahai v. the Netherlands*, cited above), or in their private capacity (*Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 54, ECHR 2012 (extracts)); deaths which occurred in police custody (see, for example, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002-II); and deaths which were the result of negligent medical treatment (see, for example, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* cited above).

88. Where responsibility for a suspicious death appears to attach to a State agent, the Court considers that it would be illogical to find that the procedural aspect of Article 2 only precludes the local police force, direct colleagues of the agent concerned, from investigating the death where the agent was acting in the course of his or her duties, as opposed to acting in a private capacity.

89. In the present case the Court observes that the initial inspection of the scene of the crime disclosed no evidence of murder. In particular, there was no sign of a struggle, no evidence of a theft or break in, and although the autopsy noted some injuries it found no evident sign of violence. In this regard, the Court has already accepted that the State could not be held accountable for not having launched a criminal investigation prior to 23 July 2004, when strong evidence was uncovered which indicted that S.J.'s death might not have been suicide. However, the initial absence of adequate grounds for launching a criminal investigation does not mean that there were no grounds for suspecting a suspicious death. The Court will therefore have to look carefully at the facts as established by the domestic authorities and as submitted by the parties.

90. First, the Court notes that there was no apparent motive for suicide. This appears to have been confirmed by the applicant and B.L. in their statements to the police on 24 May 2004. The applicant also wrote to the Prosecutor two days later, on 26 May 2004, alleging that his daughter had been murdered.

91. Secondly, on 26 May 2004 the police obtained statements from a neighbour of S.J. who recalled that between 22.00 and 22.15 on 20 May 2004 she had observed a red vehicle similar to the one driven by A.J. parked in the courtyard of the building where S.J. and A.J. lived. Another neighbour subsequently recalled seeing such a vehicle in the courtyard from 22.00 to 22.30. Although this conflicted with the evidence given by A.J. and his colleagues on the police force, the Court considers that these statements at the very least cast some doubt about the veracity of his statement and potentially placed him at his home for a period on the night that S.J. died.

92. Finally, the Court has regard to the misconduct of both A.G. and A.M. during the initial investigation. Although the Court has received no details of the nature of A.G. and A.M.'s misconduct or the prejudice it caused to the investigation, in view of the proximity of their colleague to the

death it considers that any misconduct in the investigation could create suspicion as to his involvement and, more importantly, cast serious doubt upon the independence of the investigating officers.

93. Consequently, the Court considers that in the circumstances of the present case the initial investigation into S.J.'s death ought to have been handled by a body which was institutionally, hierarchically and practically independent from the Ventspils State Police.

94. The Court also observes that when the criminal investigation was initiated on 23 July 2004, it was initiated by the OCCD. Although the Government have asserted that this body was institutionally, hierarchically and practically independent from the Ventspils State Police, it has not submitted any evidence to substantiate this claim (compare, for example, the National Police Internal Investigations Department in the Netherlands, which was a nationwide service with its own chain of command, answerable to the country's highest prosecuting authority, and which the Court in *Ramsahai* found to be sufficiently independent for the purposes of Article 2 of the Convention). In any case, even if the OCCD were sufficiently independent, it is not clear why the Ventspils State Police continued to be involved in the investigation even after A.J. had been declared a suspect. In *Hugh Jordan v. the United Kingdom*, cited above, the Court held that mere supervision by an independent body was not a sufficient safeguard where the investigation was for all practical purposes conducted by police officers connected with those under investigation. Likewise, in the present case the Court does not consider that the involvement of the OCCD in the criminal investigation acted as a sufficient safeguard when the Ventspils State Police continued to be involved in the investigation (see paragraph 23 above).

95. Therefore, in addition to its conclusions at paragraph 84 above, the Court further finds that the investigation into S.J.'s death was not sufficiently independent.

96. Accordingly, it finds that there has been a violation of the procedural aspect of Article 2 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed ten thousand five hundred and forty euros (EUR 10,540) in respect of pecuniary damage for "unfavourable experience

and for sufferings within the period of eight years. He claims a further seven hundred and eleven thousand four hundred and thirty five euros (EUR 711,435) in respect of non-pecuniary damage.

99. The Government submitted that the applicant had failed to substantiate his claim for pecuniary damages and contended that his claim for non-pecuniary damage was unjustified, excessive and exorbitant.

100. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant ten thousand euros (EUR 10,000) in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicant also claimed three hundred and fifty euros (EUR 350) for the costs and expenses incurred before the Court.

102. The Government noted that the applicant had only submitted receipts for postal costs to the Council of Europe for the total amount of 12 LVL. As Article 41 required him to submit itemised particulars of any claim, they argued that he should not be awarded more than 12 LVL in costs and expenses.

103. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of seventeen euros (EUR 17) for the proceedings before the Court.

C. Default interest

104. 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. *Declares* the complaint under Article 2 of the Convention concerning the adequacy and the independence of the investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention;

3. *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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 17 (seventeen 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;

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

Done in English, and notified in writing on 18 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President