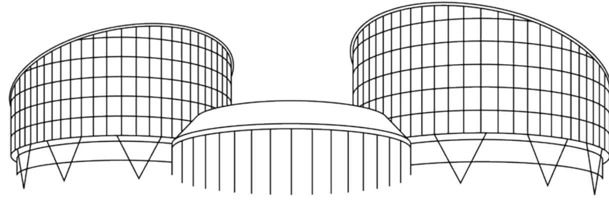

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF JASINSKIS v. LATVIA**

*(Application no. 45744/08)*

JUDGMENT

STRASBOURG

21 December 2010

**FINAL**

*21/03/2011*

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

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

**In the case of** Jasinskis v. Latvia**,**

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 30 November 2010,

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

# PROCEDURE

1. The case originated in an application (no. 45744/08) 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 Aleksandrs Jasinskis (“the applicant”), on 25 June 2008.

2. The applicant was represented by Ms A. Dāce, a lawyer practising in Rīga. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that his son had died after being taken into police custody and that the police were responsible for his death. He alleged in addition that the subsequent investigation had not been effective.

4. On 27 January 2009 the President of the Third Section decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Events leading to the death of the applicant's son

5. The applicant was born in 1933 and lives in Balvi. He is the father of Mr Valdis Jasinskis ("the applicant's son"), a Latvian national who was born in 1962 and who died on 28 February 2005.

6. On 26 February 2005 the applicant's son (who had been deaf and mute since birth) and several of his friends were drinking beer in a bar in Balvi. Witness statements differ somewhat as to how much alcohol the applicant's son consumed that night. After the applicant's son's death, a forensic expert took into the account witness testimonies and used Widmark's equation to arrive at the estimate that, after finishing his last drink, the alcohol concentration in the applicant's son's blood would have been 4.52 ‰, which meant that all traces of alcohol would have left his body approximately thirty hours later. The expert, however, noted that this figure was approximate. The applicant disagreed with the estimate, noting that such a concentration of alcohol would be deadly.

7. After leaving the bar, the applicant's son and his friends walked to a nearby school where a party was taking place. In front of the school entrance M.I. – a minor – pushed the applicant's son, who fell backwards down the stairs in front of the school, hit his head against the ground and lost consciousness for several minutes. The persons present then tried to attract the attention of the security guards, who were inside the school, by knocking on the locked doors. In the process a glass pane of the entrance doors was cracked. It appears from the subsequent investigation that the glass was broken by one of the students of the school.

8. The security guards came outside and saw the applicant's son lying unconscious on the ground. They called an ambulance and the police. After the applicant's son had regained consciousness, the security guards sat him down on the stairs of the school.

9. The police arrived on the scene at 1.40 a.m. They later reported that the applicant's son had been unable to stand up on his own and had been flailing his arms. Upon their arrival the officers were informed that the applicant's son was deaf and mute and that he had fallen down the stairs. They were also told that he was probably responsible for breaking the glass of the entrance doors.

10. The policemen decided not to wait for the ambulance that had been called and took the applicant's son to the Balvi District Police station in order to initiate administrative proceedings for petty hooliganism and public

drunkenness. The policemen alleged that in the car on the way to the police station the applicant's son had behaved aggressively and had been flailing his arms and kicking.

11. The record of the administrative detention of the applicant's son indicates that the reason for the detention was to “sober up” the detainee. The only injury that was noted was a graze on his face. The same record also notes that at 5.50 p.m. on the following day the applicant's son was released from detention because he had “sobered up” (but see paragraph 16 below).

12. The policemen alleged that on the premises of the police station the applicant's son had continued to behave aggressively by flailing his arms. The applicant submits that it is probable that his son was trying to communicate with the policemen by using gestures, because they had taken away the notebook he normally used to communicate with persons who did not understand sign language.

13. Shortly afterwards the ambulance crew contacted the police station. The officer on duty informed them that no medical aid was necessary, since the applicant's son was merely intoxicated. He was then placed in the sobering-up room. For a while he kept knocking on the doors and walls but stopped doing so after a while and went to sleep.

14. At 8.40 a.m. in the morning the duty officers tried to wake the applicant's son but he only opened his eyes and, according to the conclusions of the internal investigation of the police, “did not want to wake up”.

15. Approximately fourteen hours after the applicant' son had been brought to the police station (at approximately 3.30 p.m.) one of the policemen considered that he had been “sleeping for too long” and called an ambulance. The doctors apparently refused to take Valdis Jasinskis to a hospital (during the internal investigation the officers reported that the ambulance crew had indicated that he was “faking” and was healthy). The Government dispute that fact, observing that it had not been mentioned in the report on the quality of medical care provided to the applicant's son (see below, paragraph 18). Nevertheless, the fact of the ambulance crew's initial refusal is confirmed by the statements of the police officers who were present at the police station at the time, which have been recounted in several documents, such as the conclusions of the internal inquiry of 4 April 2005 (see below, paragraph 19), the report of the additional internal inquiry of 5 August 2005 (see below, paragraph 22), the 2 November 2005 decision to terminate the criminal proceedings (see below, paragraph 23) and others.

16. The applicant's son was taken to hospital only after repeated requests from his father, who had at that time been informed of his son's arrest and had arrived at the police station. From the reports of the internal investigation it appears that the transfer took place at 5.30 p.m. on 27 February 2005. Upon arrival at the hospital it was noted that the

applicant's son was conscious but “non-communicative”. His condition was characterised as “serious” and he was diagnosed with severe intoxication with unknown alcohol surrogates. At 9.10 p.m. the applicant's son lost consciousness and his condition was described as “very serious”. At 11.30 p.m. the medical report was updated to note that the presence of an intracranial haematoma could not be excluded but that because of his condition the patient could not be transported for a CT scan (which was only available at a hospital in Rēzekne, some eighty kilometres from Balvi). The applicant's son died at 2.00 a.m. on 28 February 2005.

17. A post-mortem examination of the applicant's son's body was carried out on 28 February 2005. It disclosed fractures of the frontal, parietal and occipital bones of the applicant's son's cranium, oedema in the brain as well as multiple other injuries to the head and brain. The expert concluded that those injuries had been the cause of death. It was further established that neither the blood nor the urine of the applicant's son contained any traces of alcohol.

## B. Investigation

### *1. Concerning medical care*

18. On 9 May 2005 an expert of the Inspectorate of Quality Control for Medical Care and Working Capability (“MADEKKI”) issued a report on the quality of medical aid provided to the applicant's son before his death. The report noted several shortcomings in the treatment of the applicant's son at the police station. In particular, it was noted that no information was available concerning the health condition of the applicant's son during the time spent in the police station or when he was placed in the sobering-up room. It was further concluded that the ambulance had been called to the police station belatedly. The final conclusion of the report was that the death of the applicant's son was not attributable to any lack of professionalism on behalf of the doctor who had treated him in the hospital but rather to the severity of his injuries.

### *2. Concerning criminal responsibility*

19. After the death of the applicant's son the Balvi District Police Department launched an internal inquiry. On 4 April 2005 the final report of the inquiry was approved by the head of that department. The report concluded that the policemen present at the police station during the night in question had acted in accordance with the internal guidelines and the legislation governing police work. The report further referred to an article in the local newspaper in which a surgeon had expressed the opinion that injuries such as the ones sustained by the applicant's son were difficult to

detect, in particular if the injured person was intoxicated. The final conclusion was that the staff of the department had committed no infractions.

20. On 26 May 2005 an investigator of the Balvi District Police Department adopted a decision to terminate the criminal proceedings against M.I., which had been initiated on 2 March 2005. In this decision several witness testimonies were recounted and some of them seemed to indicate that the security guards who had been on duty during the party at the school had hit the applicant's son in the head with a rubber truncheon. It was also found that upon the applicant's son's arrival at the police station the policemen had noted that he did not have any visible injuries and that he was heavily intoxicated. The decision further remarked that at 5.30 p.m. at the police station a doctor had observed that the applicant's son was conscious and had no traces of having been hit on his body or head. There was some dried blood in one of his nostrils. However, considering that the applicant's son was deaf and mute and thus unable to communicate orally any complaints about his health, he had been diagnosed as being intoxicated with alcohol surrogates and taken to the Balvi hospital. It was further noted that the internal inquiry of the Balvi District Police Department had established that the policemen in charge had not committed any offence. Lastly it was established that M.I.'s actions did not constitute *corpus delicti*. Therefore, the criminal proceedings concerning the death of the applicant's son were terminated.

21. On 17 June 2005 the Balvi District Public Prosecutor's Office decided to quash the decision of 26 May and remitted the case for additional investigation. Among other things, the public prosecutor indicated that it was necessary to determine whether it would have been possible to correctly diagnose the applicant's son's injuries had he been taken to hospital earlier than he was, whether the police had adequately taken into account the fact that he was deaf and mute, and whether there were any visible external signs of the injuries that eventually caused his death.

22. On 5 August 2005 the head of the Balvi District Police Department approved a report drawn up in the context of an additional internal inquiry that had been prompted by the decision of 17 June. Once again no wrongdoings on the part of the police officers were established. In particular, it was noted that even though an internal police instruction concerning sobering-up rooms prohibited the placement therein of persons with visible physical injuries, the applicant's son did not fall within that category. The report confirmed that his injuries had not been obvious, in that regard referring to the visit of the ambulance crew to the police station at 3.50 p.m. on 27 February 2005, during which no injuries had been noted.

23. On 2 November 2005 the Balvi District Police Department terminated the criminal proceedings for the second time. The decision pointed out, *inter alia*, that even if the applicant's son had been taken to

hospital sooner, it was not certain that he would have received the correct diagnosis due to the absence of a CT scanner and a specialist neurologist at Balvi hospital. It was also established that since the applicant's son's injuries were not visible, the police officers in question had not breached the law.

24. On 8 November 2005 the Balvi District Public Prosecutor's Office decided to quash the decision of 2 November 2005 on the ground that the evidence had not been examined.

25. On 10 November 2005 the Balvi District Police Department decided to terminate the criminal proceedings. The text of the decision was practically identical to that of 2 November 2005.

26. As of 19 September 2006 the applicant was represented by a lawyer. Pursuant to a request by the applicant's representative, on 1 November 2006 a prosecutor of the Office of the Prosecutor General quashed the decision of 10 November 2005 and sent the case to the Bureau of Internal Security of the State Police (*Valsts policijas Iekšējās drošības birojs*) for continued investigation. The decision of 19 September focused, *inter alia*, on the actions of the policemen before and after the applicant's son's arrest as well as on the legality and permissibility of his detention as such. It was suggested that the question of the potential liability of the policemen of the Balvi District Police Department for criminal inaction (section 319(2) of the Criminal Law, see below, paragraph 34) needed to be resolved.

27. On 18 January 2007 that Bureau decided to split the criminal proceedings into two parts, one regarding the actions of M.I. and the other concerning the inaction of the Balvi District policemen. The first part was transferred back to the Balvi District Police Department and the second remained with the Bureau of Internal Security.

28. On 7 March 2007 the Balvi District Police Department decided to terminate the criminal proceedings against M.I. due to lack of *corpus delicti*. The applicant did not appeal against that decision.

29. On 23 August 2007 the Bureau of Internal Security of the State Police decided to terminate the criminal proceedings against the officers of the Balvi District Police Department for want of *corpus delicti*. During the course of the investigation statements were taken from all five officers who had been present at the police station during the night of the applicant's son's arrest and the following day. The officers who had arrested the applicant's son confirmed that the security guards at the school had informed them that he had fallen backwards down the stairs but they had not waited for the ambulance that had been called because he had behaved in a way that was typical of an intoxicated person and had had no visible injuries. The officers who had been on duty on 27 February 2005 pointed out that they had tried to wake up the applicant's son on several occasions without success, but that after they had eventually succeeded, the applicant's son had gotten up without any help and walked to the reception area of the police station where he had been seen by a doctor who had arrived in an ambulance. The

doctor had then allegedly proclaimed that the applicant's son was “faking” and was still drunk. He had only been taken to hospital after the applicant had persuaded the doctor to do so. The decision also pointed out that it was “obvious” that a mistake had been made by the doctors, who had failed to correctly diagnose the applicant's son's injuries before his death.

30. On 26 September 2007 a public prosecutor of the Balvi District Public Prosecutor's Office dismissed the applicant's representative's appeal against the decision of 23 August 2007.

31. On 24 October 2007 a senior prosecutor of the same office rejected the applicant's representative's appeal against the decision of 26 September 2007. In addition to upholding the conclusions of the decision of 23 August 2007, it was pointed out that no causal link existed between the decision of the officers present at the scene to transport the applicant's son to the police station without waiting for the ambulance and the applicant's son's death, since the death had occurred despite the fact that the applicant's son had eventually been placed under medical supervision.

32. In a final decision of 31 January 2008 a senior prosecutor of the Public Prosecutor's Office attached to the Latgale Regional Court dismissed the applicant's complaint about the decision of 24 October 2007.

## II. RELEVANT DOMESTIC AND INTERNATIONAL LAW PROVISIONS

33. The fifth paragraph of section 5 of the Law on Police provides one of the basic principles for organising the work of the police is safeguarding the health of persons in police custody, which includes carrying out emergency measures to provide medical assistance. The duty of police officers to provide medical and other assistance to injured persons is repeated in section 10(3) of the Law on Police. That section specifically provides for a duty to provide assistance to anyone, even persons who, because of their state of inebriation, have lost the ability to move or who pose a danger to themselves or others.

34. Section 319(2) of the Criminal Law provides that state officials' can be held criminally liable for intentional or negligent failure to perform acts which are compulsory by law or are part of the duties assigned to the official in question. In order to engage criminal responsibility such dereliction of duties has to have caused substantial harm to the state or to the rights and interests of individuals.

35. On 1 February 2004 the Law of Administrative Procedure entered into force. That law, among many other things, provides for a mechanism for complaining about the legality of *de facto* actions of state institutions to administrative courts.

36. The Law on Compensation for Damage Caused by State Institutions came into force on 1 July 2005. It provides for practical implementation of

the rights guaranteed by the Constitution and the Law of Administrative Procedure to receive compensation for damage caused by unlawful administrative acts issued by state institutions or for unlawful *de facto* actions of those institutions. Pursuant to section 14(3) of that law, the maximum compensation for non-pecuniary damage that can be awarded is 20,000 Latvian lati (LVL) approximately 28,200 euros (EUR).

37. As to the consequences of awarding compensation, section 32 of the Law on Compensation for Damage Caused by State Institutions provides as follows:

> "1) In order to establish the circumstances that have caused or fostered the infliction of the damage to be compensated, an authority hierarchically superior to the one which has caused the damage shall evaluate each individual case when damage has to be compensated pursuant to a decision of the authority or a court.
>
> 2) After evaluating all the circumstances pertinent to the compensation for damage, a hierarchically superior authority shall adopt a decision concerning forwarding the materials in the case file to a competent authority, which shall decide whether the official responsible for causing the damage ought to be held disciplinarily, administratively or criminally responsible."

38. Section 22 of the Law of Criminal Procedure contains a general principle according to which that Law provides for procedural opportunities for persons who have suffered harm as a result of criminal acts to request compensation for pecuniary and non-pecuniary damage. The specifics of the implementation of that principle are contained in various sections throughout the Law.

39. The general standards contained in the Second General Report [CPT/Inf (92) 3] by the Council of Europe's Committee for the Prevention of Torture (CPT) provide that persons detained by the police should have the right of access to a doctor, including the right to be examined, if the person detained so wishes, by a doctor of his own choice (in addition to any medical examination carried out by a doctor called by the police authorities) (§ 36). Persons taken into police custody should be expressly informed without delay of the above rights (§ 37). The results of the medical examination and relevant statements by the detainee and the doctor's conclusions should be formally recorded by the doctor and made available to the detainee and his lawyer (§ 38).

40. Article 14(2) of the United Nations Convention on the Rights of Persons with Disabilities ("the CRPD"), which entered into force on 3 May 2008, was signed by Latvia on 18 July 2008 and ratified on 1 March 2010, provides as follows:

> "States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

41. The Interim Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, submitted on 28 July 2008 by the Office of the United Nations High Commissioner for Human Rights to the 63rd session of the General Assembly of the UN (A/63/175) in its paragraphs 50 and 54 provides as follows:

> “Persons with disabilities often find themselves in ... situations [of powerlessness], for instance when they are deprived of their liberty in prisons or other places ... In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse ...”

and

> “The Special Rapporteur notes that under article 14, paragraph 2, of the [Convention on the Rights of Persons with Disabilities], States have the obligation to ensure that persons deprived of their liberty are entitled to 'provision of reasonable accommodation'. This implies an obligation to make appropriate modifications in the procedures and physical facilities of detention centres ... to ensure that persons with disabilities enjoy the same rights and fundamental freedoms as others, when such adjustments do not impose disproportionate or undue burden. The denial or lack of reasonable accommodation for persons with disabilities may create detention ... conditions that amount to ill-treatment and torture.”

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

42. The applicant complained that his son's death and the subsequent failure to conduct an effective investigation in that regard were in violation of the guarantees of Article 2 § 1 of the Convention, which reads as follows:

> “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 ...”

43. The Government contested that argument.

### A. Admissibility

#### *1. The Government*

44. The Government argued that the applicant could have challenged the actions and omissions of the officials of the Balvi District Police Department in conformity with the procedure prescribed in the Law of

Administrative Procedure and subsequently requested compensation in conformity with the Law on Compensation for Damage Caused by State Institutions (see above, paragraphs 35 and 36). More specifically the Government suggested that what should have been subjected to administrative review were the *de facto* actions of the applicant's son's arrest and his placement in administrative detention. According to the Government, such a procedure was effective, accessible and offered reasonable prospects of successfully obtaining redress for the applicant's complaints about his son's death and the alleged defects of the subsequent investigation.

45. The Government referred to the Court's decision in *Caraher v. the United Kingdom* ((dec.), no. 24520/94, ECHR 2000-I) and the judgment *Branko Tomašić and Others v. Croatia* (no. 46598/06, § 38, ECHR 2009-... (extracts)) in support of their argument that in cases of use of lethal force by a State agent, as well as with regard to complaints about the failure of the State to take adequate positive measures to protect a person's life, the possibility of obtaining compensation was to be considered an adequate and sufficient remedy in respect of a substantive complaint under Article 2.

46. As for the applicant's complaint under the procedural aspect of Article 2, the Government submitted that while in principle a mechanism had to be available to the victim or the victim's family for establishing the liability of State officials or bodies for acts or omissions involving a breach of Convention rights (a reference was made to *E. and Others v. the United Kingdom*, no. 33218/96, § 110, 26 November 2002), cases of a non-intentional infringement of the right to life did not necessarily require the provision of a criminal-law remedy in every case (*Branko Tomašić and Others*, cited above, § 64). More specifically, the Government pointed out that in the sphere of negligence a civil or disciplinary remedy may suffice (referring in this regard to *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII), especially considering that the Convention does not grant to an individual a right to request conviction of third persons. The Government further alleged that pursuant to section 32(2) of the Law on Compensation for Damage Caused by State Institutions a court judgment awarding compensation for damage "trigger[ed] an obligation for a [hierarchically] superior institution to re-examine the case at hand". Taking those considerations into account, the Government submitted that the remedies provided by the Law of Administrative Procedure and the Law on Compensation for Damage Caused by State Institutions satisfied the criteria for an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in that they were capable of providing redress in respect of the applicant's complaints.

47. The Government further submitted that the proposed remedy was available in theory as well as in practice. With regard to the practical availability the Government referred to a decision of the Administrative

Chamber of the Senate of the Supreme Court in case SKA-259/2008. That case concerned a person who was arrested and transported to a hospital for a narcotic intoxication test without adequate documentation. The administrative courts then proceeded *ex officio* to question the police officers involved in the incident and, upon finding that a procedural violation had been committed, ordered the police to issue a written apology. The Government considered that the approach adopted by the administrative courts attested to their capacity to conduct an independent and impartial *ex officio* investigation into the wrongdoings of police officers, which in turn attested to the fact that administrative courts were to be considered an effective and available remedy which offered reasonable prospects of success in cases where it was not compulsory to provide a criminal-law remedy.

48. Lastly, the Government submitted that the only purpose of the criminal inquiry into the fact of the applicant's son's death had been "to examine and investigate the circumstances of the death" and "under no circumstances" was the purpose of the investigation "to compensate for the losses incurred", since even if an individual responsibility on the part of the state officials had been established, the applicant would have had to initiate a claim for compensation and to substantiate his claim.

*2. The applicant*

49. The applicant pointed out that the Latvian law at the relevant time provided for two separate review procedures concerning complaints such as his, namely, criminal proceedings or an administrative procedure. Both of those procedures provided the possibility to find that actions of State agents had been unlawful and to request compensation in that regard. As to which of the procedures should have been used, the applicant referred to the Court's earlier finding that "it is for the individual to select which legal remedy to pursue" (*Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32) and accordingly argued that he did not have an obligation to exhaust all available avenues of domestic remedies. In any event, according to the applicant, he had never been informed, either by the Prosecutor's Office or by the Ombudsman's Office, of the availability of administrative proceedings in his case. The applicant further focused on the requirement arising from the Court's case-law that in cases concerning a death in circumstances that might give rise to the State's responsibility the authorities must act of their own motion once the matter has come to their attention and that the next-of-kin could not be obliged to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (*Branko Tomašić and Others*, cited above, § 43). Lastly, the applicant argued that the administrative courts lacked the competence to evaluate the effectiveness of the investigation into the applicant's son's death, since that investigation fell within the realm of criminal law.

*3. The Court's assessment*

50. The Court notes that it is common ground that the applicant made full use of the remedy provided by the criminal-law procedures. The Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999; *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V; and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005). Accordingly, the Court has to determine only whether the Government have submitted any arguments that would indicate that the remedy provided for in the Law of Administrative Procedure and the criminal-law remedy do not have "essentially the same objective", that is to say, whether the administrative-law remedy would add any essential elements that were unavailable through the use of the criminal-law remedy.

51. The Court observes that, for a domestic remedy to be considered an effective one in cases where a violation of Article 2 or 3 of the Convention has been alleged, it would have to provide for a legal mechanism of investigating the complaint. That conclusion is mandated by the procedural aspect of Articles 2 and 3 (see, *mutatis mutandis*, *Oğur v. Turkey* [GC], no. 21594/93, § 66, ECHR 1999-III). A remedy whose only consequence is a possibility to obtain compensation for the alleged violation would not suffice (ibid., see also *Şenses v. Turkey* (dec.), no. 24991/94, 14 November 2000; *Baysayeva v. Russia*, no. 74237/01, §§ 108 and 109, 5 April 2007; and *Dzieciak v. Poland*, no. 77766/01, § 80, 9 December 2008). The Government have submitted that administrative courts possess the power to conduct an *ex officio* investigation and have submitted an example of one domestic case where such an investigation had apparently been carried out. In the context of the present case the Court has no reason to doubt that administrative courts are capable of carrying out an investigation either of their own volition or pursuant to a request by the parties. Nevertheless, the Government have failed to explain, and the example of the domestic case submitted does not clarify how an investigation carried out by administrative courts would be more pertinent than the one carried out by police and prosecutorial authorities within the context of criminal law procedures, which provide for all the legal and practical means necessary for that purpose.

52. It appears to be common ground that both avenues – the criminal-law one and the administrative-law one – could in principle, if pursued successfully, lead to an award of monetary compensation for the alleged violation. It has furthermore not been disputed that an adequately carried out criminal investigation could lead to a decision determining the individual responsibility of any State officials who might be held accountable for the

applicant's son's death. None of the arguments advanced by the Government suggest that the administrative-law procedures would add anything to the possibilities offered by the criminal law. Even if the possibility of re-examination of the case is triggered by a an administrative act or a judgment awarding damages for a wrongdoing committed by a State institution, any individual responsibility of State officials could only be established following such re-examination, which can require additional investigation by several levels of domestic authorities. Accordingly, recourse to administrative-law procedures would not necessarily result in a more effective examination of the case.

53. Taking the above into account, the Court considers that the Government have failed to demonstrate that the remedy offered by the Law of Administrative Procedure and the Law on Compensation for Damage Caused by State Institutions would pursue objectives that are any different from the ones pursued by the criminal-law remedy.

54. The Court therefore considers that in the light of the facts pertinent to the present case there was no reason for the applicant to pursue the administrative-law remedy in addition to the criminal-law remedy, the effectiveness of which has not been disputed by the parties.

55. Accordingly the applicant has exhausted the domestic remedies. Furthermore, the complaint under Article 2 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. Substantive aspect*

56. The applicant argued that the police officers of the Balvi District Police Department had been negligent and ignorant in the performance of their duties. In this regard he emphasised that before his son was transported from the school to the police station the officers had been alerted to the fact that he had fallen down the stairs, hit his head and had been unconscious for some time. Nevertheless, the police had chosen not to wait for the ambulance which had been on its way. According to the applicant, by making that decision the police had taken full responsibility for its consequences. Accordingly, it had been the lack of due diligence on the part of the police officers that had led to the death of the applicant's son.

57. The Government did not submit any comments on the merits of the applicant's complaints.

58. The Court reiterates that the first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the

Council of Europe (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324), enjoins the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36 *Reports of Judgments and Decisions* 1998-III).

59. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability (see *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII, *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004, and international law sources mentioned in paragraphs 39 to 41 above). More broadly, the Court has held that States have an obligation to take particular measures to provide effective protection of vulnerable persons from ill-treatment of which the authorities had or ought to have had knowledge (*Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V).

60. The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (*Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000 VII). Furthermore, the national authorities have an obligation to protect the health of persons who have been deprived of their liberty (see, *inter alia*, *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004, and *Dzieciak v. Poland*, no. 77766/01, § 91, 9 December 2008). In the context of Article 2, the obligation to protect the life of individuals in custody also implies an obligation for the authorities to provide them with the medical care necessary to safeguard their life (see *Taïs v. France*, no. 39922/03, § 98, 1 June 2006, and *Huylu v. Turkey*, no. 52955/99, § 58, 16 November 2006). A failure to provide adequate medical care may constitute treatment in breach of the Convention (*Huylu*, cited above, § 58).

61. The Court considers that the question to be resolved first is whether the officers of the Balvi District Police Department knew or ought to have known about the danger to the applicant's son's health (see, *mutatis mutandis*, *Keenan v. the United Kingdom*, no. 27229/95, § 93, ECHR 2001-III). Subsequently the Court has to evaluate whether the officers in question displayed adequate diligence in light of the medical condition of the applicant's son and his disability in so far as they knew or ought to have known about them.

62. Turning its attention first to the moment of the applicant's son's first encounter with the police, the Court observes that it is common ground that

upon their arrival at the scene the officers were informed about the applicant's son's fall from the stairs and of his losing consciousness after hitting his head against the ground. The policemen were also told about the sensory disability of the applicant's son (see above, paragraph 9). They were further informed that an ambulance had been called and was on its way. Nevertheless, the policemen chose not to wait for the ambulance and to take the applicant's son to the police station, believing him to be merely intoxicated.

63. When the applicant's son was brought to the police station, he was observed by the officer on duty, who noted that there was a graze on his face (see above, paragraph 11). It appears that no medical examination took place. On the contrary, the police officers informed the ambulance crew that no medical assistance was necessary (see above, paragraph 13). It appears that the officers arrived at that decision without consulting the applicant, since it seems that none of the officers understood sign language and since the notepad that the applicant's son used for communication had been taken away from him.

64. From the information and the documents submitted by the parties it is not possible to establish with any certainty how many times and with what frequency the officers present at the station checked on the applicant's son's condition. What does not seem to be disputed is that for some time after being placed in the sobering-up room the applicant's son continued to knock on the doors and the walls of the cell, which did not prompt any reaction from officers present at the station.

65. The first time the police officers tried to wake up the applicant's son was some seven hours after taking him into custody (see above, paragraph 14). Almost another seven hours passed before an ambulance was called to the police station (paragraph 15).

66. The Court considers that the Government have failed to explain why the police, knowing about the applicant's son fall and having been informed about his disability, did not consider it necessary to wait for the ambulance or to have medical professionals examine the applicant's son after he was brought to the police station as specifically required by the applicable standards of the Committee for Prevention of Torture (see above, paragraph 39). What is more, it appears that the police never gave the applicant's son any opportunity to provide information about his state of health, even after he kept knocking on the doors and the walls of the sobering-up cell. Taking into account that the applicant's son was deaf and mute, the police had a clear obligation (arising at the least from sections 5 and 10(3) of the Law on Police and the above-mentioned international standards cited in paragraphs 39-41 above) to at least provide him with a pen and a piece of paper to enable him to communicate his concerns. The Court is even more concerned by the almost seven hours that passed between the time when the applicant's son “refused to wake up” in the

morning and the time when an ambulance was called. Not getting up for some fourteen hours can hardly be explained by simple drunkenness (compare with *Taïs*, cited above, § 101).

67. The foregoing considerations enable the Court to conclude that, taking into account the police's knowledge about the applicant's son's fall and his sensory disability, their failure to seek a medical opinion about his state of health coupled with their failure to react to his knocking on the doors and walls of the sobering-up cell and to call an ambulance for almost seven hours after he could not be woken up in the morning, the police failed to fulfil their duty to safeguard the life of the applicant's son by providing him with adequate medical treatment.

68. There has accordingly been a violation of the substantive aspect of Article 2 § 1 of the Convention.

*2. Procedural aspect*

69. The applicant pointed out that the initial investigation into the circumstances of his son's death was conducted by the Balvi District Police Department – the same institution which, in his submission, was responsible for the death. Accordingly the investigators had lacked the necessary independence. Furthermore the investigation had failed to establish whether the police officers in question had had a duty to wait for the ambulance that could have offered medical assistance to the applicant's son and whether it had been lawful to detain the applicant's son without first obtaining a medical opinion as to his state of health.

70. The Government did not submit any comments on the merits of the applicant's complaints.

71. The Court reiterates that 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 individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324, and *Kaya v. Turkey*, judgment of 19 February 1998, § 105, *Reports* 1998-I).

72. The Court has recently found that the obligation under Article 2 to carry out an effective investigation has evolved into a "separate and autonomous duty" (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). However, it would emphasise that this obligation may differ, both in content and in terms of its underlying rationale, depending on the particular situation that has triggered it (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I, and *Banks and Others v. the United Kingdom* (dec.), no. 21387/05, 6 February 2007). The essential purpose of such an investigation is to secure the effective implementation of the

domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (*Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV).

73. In as much as different considerations apply in cases such as the present one in which the death has not been caused by use of force or similar direct official action, the standard against which the investigation's effectiveness is to be assessed may be less exacting. However, even in such situations those concerned are entitled to an independent and impartial official investigation procedure that satisfies certain minimum standards as to its effectiveness (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 102, 17 December 2009, and the jurisprudence cited there). In this regard the Court would point out that this is not an obligation of result, but of means (see, among other authorities, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II) and that Article 2 does not entail the right to have others prosecuted or sentenced for an offence, or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 94 and 96, ECHR 2004-XII). Nevertheless, the Court has also held that if the negligence attributable to State officials or bodies goes beyond an error of judgment or carelessness, in that the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, have failed to take measures that have been necessary and sufficient to avert the risks to the victim's life, the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2 of the Convention (*Öneryıldız*, § 93).

74. One of the minimum standards of effective investigation is a hierarchical, institutional and practical independence of persons carrying out the investigation from the persons implicated in the events under investigation (see *Paul and Audrey Edwards*, cited above, § 70; *Mastromatteo v. Italy* [GC], no. 37703/97, § 91, ECHR 2002-VIII; and *Mikayil Mammadov*, cited above, § 101).

75. With regard to the independence of the investigative authorities in the present case the Court notes that the applicant is correct in pointing out that the initial as well as additional inquiry was carried out by the Balvi District Police Department, that is, the same authority that was implicated in the death of his son (see above, paragraphs 19 and 20). In this respect the Court has previously held that an internal inquiry cannot be regarded as adequate in cases concerning allegations of ill-treatment in contravention of Article 3 of the Convention (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 333-341, ECHR 2007-... with further references, *Jašar v. “the former Yugoslav Republic of Macedonia”* (dec.), no. 69908/01, 11 April 2006, and *Kopylov v. Russia*, no. 3933/04, § 138,

29 July 2010). The Court considers that the same conclusion is applicable to complaints under Article 2 of the Convention. Furthermore, the Balvi District Police Department was the same institution which on four occasions decided to terminate the criminal proceedings regarding the events surrounding the death of Valdis Jasinskis (see above, paragraphs 20, 23, 25 and 28). The first time the investigation went outside the recursive route between the Balvi District Police Department and the Balvi District Public Prosecutor's Office was after the applicant's representative sought help from the Office of the Prosecutor General. As a result, the first time anyone outside the Balvi District had access to the case file was more than a year and a half after the applicant's son's death.

76. The Court therefore considers that the investigation that was carried out by the Balvi District Police Department cannot be said to have been effective since it did not comply with the minimum standard of independence of the investigators. What remains to be seen then is whether that defect was cured when the investigative role was later taken over by the Bureau of Internal Security of the State Police, whose findings were then confirmed on three occasions by public prosecutors' offices.

77. In this regard the Court notes that the investigation conducted by the Bureau of Internal Investigation was not limited to merely reviewing the documentary evidence accumulated in the course of prior investigation. Instead, the investigators questioned the five police officers who had been present at the police station during the days prior to the death of the applicant's son and drew their own conclusions which coincided with the ones reached by the Balvi District Police Department's internal inquiry.

78. The Court does not find it necessary in the particular context of the present case to draw general conclusions about the independence or lack thereof of the Bureau of Internal Investigation, since it considers that the investigation carried out by that Bureau was defective for several reasons. At the outset the Court reiterates that a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *Mikayil Mammadov*, cited above, § 105). In the present case the investigation left the confines of the institution implicated in the events under investigation only more than eighteen months after the events. The Bureau of Internal Investigation adopted its decision almost one more year later.

79. The requirement of promptness of investigation, apart from the considerations mentioned previously, also follows from the necessity to promptly gather evidence and perform other investigative actions which could become impossible or excessively burdensome with the passage of time. For instance, in the present case it would have been opportune to question the witnesses of the circumstances the applicant's son's death soon

after the respective events, while their memories were still fresh. In addition, a prompt investigation would have given the investigator an opportunity to ask supplementary questions to the expert who performed the autopsy and to observe the scene of the applicant's fall as well as the sobering-up cell where he had been detained.

80. The Court furthermore observes that the investigation that was carried out by the Bureau of Internal Investigation failed to provide answers to several questions that would have been crucial in determining the individual responsibility of the police officers of the Balvi District Police Department. For example, the fact that MADEKKI had identified several significant shortcomings with regard to the treatment of the applicant's son that may have contributed to his demise (see above, paragraph 18) was left without any assessment. What is more, it does not appear that any effort was made to evaluate whether the police officers' actions when not waiting for the ambulance, when informing the ambulance crew that the applicant did not need any medical assistance and when delaying seeking medical help for some fourteen hours had been compatible with their duties, which derive from sections 5 and 10 of the Law on Police (see above, paragraph 33), and the special needs of persons with disabilities like the applicant's son. Since no such assessment was made, the Bureau reached the conclusion that no crime had been committed and the police officers' responsibility was never weighed by a court (see, by contrast, *Douglas-Williams v. the United Kingdom* (dec.), no. 56413/00, 8 January 2002).

81. Lastly, the Court cannot but decry the lack of effectiveness and expediency of the investigation, epitomised by the fact that responsibility for the investigation was passed back and forth between the police and various prosecutors' offices three times (see, *mutatis mutandis*, *Denis Vasilyev v. Russia*, no. 32704/04, § 103, 17 December 2009, and *Mikheyev v. Russia*, no. 77617/01, § 120, 26 January 2006). The blame for this defect is to be shared by the police, whose investigation was consistently inadequate, and the prosecutors' offices, who failed to provide adequate instructions to the police with a view to remedying the defects identified in the investigation.

82. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the circumstances of the applicant's son's death was not effective.

83. There has accordingly been a violation of the procedural aspect of Article *2* § 1 of the Convention.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. Lastly, the applicant also complained that there was no effective investigation, referring to the procedural aspect of Article 3. Taking into account the conclusions reached above with regard to the applicant's

complaints under Article 2 § 1, the Court finds that there is no need to examine the same complaints under Article 3 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed EUR 50,000 in respect of non-pecuniary damage.

87. The Government considered that the amount requested was unjustified, excessive and exorbitant. They submitted that the award, if such were to be made, ought to be commensurate to compensation awarded in comparable recent cases (the Government mentioned *Juozaitienė and Bikulčius v. Lithuania*, nos. 70659/01 and 74371/01, 24 April 2008, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007 and other judgments).

88. Taking into account the seriousness of the violations it has found in this case, the Court awards the applicant EUR 50,000 in respect of non-pecuniary damage.

### B. Costs and expenses

89. The applicant did not formulate a claim in respect of costs.

### C. Default interest

90. The Court considers it appropriate that the default interest 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 complaints concerning Article 2 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of the substantive aspect of Article 2 § 1 of the Convention;

3. *Holds* that there has been a violation of the procedural aspect of Article 2 § 1 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;

5. *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, EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Latvian lati at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Santiago Quesada | Josep Casadevall |
| --- | --- |
| Registrar | President |