

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

FIFTH SECTION

CASE OF LAPSA v. LATVIA

(Application no. 57444/19)

JUDGMENT

STRASBOURG

20 October 2022

This judgment is final but it may be subject to editorial revision.



In the case of Lapsa v. Latvia,

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

Lado Chanturia*, President,*
Mārtiņš Mits*,*
Ivana Jelić*, Judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 57444/19) 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") on 22 October 2019 by a Latvian national, Ms Zanda Lapsa ("the applicant"), who was born in 1983 and lives in Valmiera, and who was represented by Mr A. Zvejsalnieks, a lawyer practising in Riga;

the decision to give notice of the application to the Latvian Government ("the Government"), represented by their Agent, Ms K. Līce;

the parties' observations;

Having deliberated in private on 29 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the effectiveness of domestic proceedings concerning the applicant's allegations under Article 2 of the Convention that her child had died as a result of medical negligence.

2. On 14 March 2008 at 10.30 a.m. the applicant was admitted to hospital for a planned labour induction. On 15 March at 3.48 p.m. the child was delivered by caesarean section. On 16 March at 2 a.m. he died of meconium aspiration syndrome.

3. On 18 August 2008 the Health Inspectorate found deficiencies in the medical care provided to the applicant and her child. On 18 December 2008 criminal proceedings were instituted and two expert reports were commissioned. On 3 March 2010 the two doctors who during their shifts had overseen the delivery – S.G. and V.M. – were declared suspects. On 7 June 2010 they were charged with medical negligence that had caused the child's death. On 30 June 2010 the case was sent for trial.

4. In the first round of proceedings, on 26 October 2010 the first-instance court started hearing the case. Hearings were set at intervals between three and five months. On 29 July 2011 a third expert report was commissioned at the request by the prosecution since they considered that the second report was contradictory. On 23 March 2012 the prosecution withdrew charges against the doctors, finding that in view of the third expert report and other case material there was no causal connection between the medical negligence

and the death of the applicant's child. On 26 March 2012 the first-instance court terminated proceedings. On 7 August 2012 the appellate court quashed that decision and sent the case back to the first-instance court. It held that the third expert report was inadmissible on account of several procedural deficiencies.

5. In the second round of proceedings, the first hearing was scheduled for 12 December 2012. Subsequent hearings were set at intervals between ten days and five months; the applicant caused a delay of no more than one month. On 12 February 2015 the first-instance court convicted the doctors of medical negligence that had caused the child's death and imposed a sentence of imprisonment, in reliance on the first and second expert reports. On 27 April 2017 the appellate court, having set hearings at intervals between one and five months (the applicant caused a delay of no more than one month), upheld their conviction but imposed a fine. On 14 December 2017 the Supreme Court decided to examine the case orally and held a hearing on 14 June 2018. On that date it quashed the judgments of 12 February 2015 and 27 April 2017 and the appellate court's decision of 7 August 2012 and sent the case back to the appellate court. The Supreme Court found that the decision of 7 August 2012 had breached the division of competences between the prosecution and the court. The appellate court had not had jurisdiction to reassess the evidence on which the withdrawal of charges had been based or to question it. Accordingly, the renewal of the criminal proceedings and the subsequent convictions had been unlawful.

6. In the third round of proceedings, on 3 September 2018 the appellate court upheld the first-instance court's decision of 26 March 2012 whereby the criminal proceedings against the doctors had been terminated. Its decision was upheld by the Supreme Court on 23 April 2019.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

7. The applicant relied on Articles 2 and 6 and alleged that the circumstances of her child's death had not been clarified, as the criminal proceedings had been terminated on the grounds that the prosecution had withdrawn the charges; she also complained about the effectiveness of those proceedings and their length.

8. In view of the Court's case-law (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017), the complaint falls to be examined under Article 2, which reads as follows:

> "1. Everyone's right to life shall be protected by law ..."

A. Admissibility

9. The Government argued that the applicant had failed to exhaust domestic remedies, and referred to four avenues by which she could have sought redress. The applicant disagreed and submitted that the proposed remedies were not effective.

10. As to the first and second remedies referred to by the Government – a claim for compensation against the State for a breach of the reasonable-time requirement under Article 92 of the Constitution and section 1635 of the Civil Law, and under a special law (*Krimināl*procesā *un administratīvo pārkāpumu lietvedībā nodarītā kaitējuma atlīdzināšanas likums*) that had taken effect on 1 March 2018 – the Court notes that the length of proceedings is only one aspect of the applicant's wider complaint under Article 2 of the Convention (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). Moreover, the length of the criminal proceedings had an impact on the availability of a civil remedy (see paragraph 11 below). There is no indication that the proposed remedies would be effective in theory or in practice in relation to the entirety of the applicant's complaint under Article 2.

11. As to the third remedy – a claim for compensation against the hospital or its doctors, *inter alia* under section 1635 of the Civil Law – the Court reiterates that in normal circumstances a civil remedy of that kind would have reasonable prospects of success and would be effective (see *Dumpe v. Latvia* (dec.), no. 71506/13, § 69, 16 December 2018). However, that was not so in the present case. By the time a final decision in the criminal proceedings was taken, a civil remedy was no longer available to the applicant since the ten-year limitation period for lodging such claims had expired (see *Plotiņa v. Latvia* (dec.), no. 16825/02, § 46, 3 June 2008, and contrast *Dumpe*, cited above, § 76).

12. As to the fourth remedy – recourse to the Constitutional Court – the matter brought before the Court concerns the interpretation and application of domestic law, and the remedy in question is not effective in such circumstances (see *Elberte v. Latvia*, no. 61243/08, §§ 79-80, ECHR 2015).

13. The Court disagrees with the Government's contention that the final decision with respect to the applicant's complaint was taken on 14 June 2018. On that date the Supreme Court did not uphold the decision of 26 March 2012; it sent the case back to the appellate court. It was only by a final decision of 23 April 2019 that the Supreme Court upheld the decision to terminate the criminal proceedings. The applicant lodged her application within six months from that decision.

14. Accordingly, the Court dismisses the Government's objections. The applicant's complaint is not manifestly ill-founded or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The Court has interpreted the procedural obligation of Article 2 in the context of health care as requiring States to set up an effective and independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible held accountable (see *Lopes de Sousa Fernandes*, cited above, § 214).

16. Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice. The Court is therefore called upon to examine whether the available legal remedies, taken together, as provided for in law and applied in practice, could be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. Rather than assessing the legal regime *in abstracto*, the Court must examine whether the legal system as a whole adequately dealt with the case at hand (see *Valeriy Fuklev v. Ukraine*, no. 6318/03, § 67, 16 January 2014, with further references).

17. The Court firstly notes that with regard to potential medical negligence cases, the respondent State has made available both criminal and civil remedies that in principle enable claims of medical errors resulting in the death of a patient to be addressed and those responsible to be held accountable.

18. In the instant case, there is nothing to indicate that the death of the applicant's child was caused intentionally, so a criminal remedy was not necessarily required. However, if deemed effective, criminal proceedings would by themselves be capable of satisfying the procedural obligation under Article 2 (see *Lopes de Sousa Fernandes*, cited above, § 232).

19. The Court observes that the applicant did not contest the independence and impartiality of the domestic authorities. The applicant was also able to participate in the criminal proceedings. It remains to be ascertained whether those proceedings were effective in terms of being thorough, prompt and concluded within a reasonable time (see, *mutatis mutandis*, *Lopes de Sousa Fernandes*, cited above, § 226).

20. As regards thoroughness, the Court notes that two expert reports were ordered at the pre-trial investigation stage. Those reports, which the applicant alleged and some prosecutors considered to be incomplete and contradictory, were nonetheless relied on by the domestic courts in the second round of proceedings. During the first round, a third report was ordered but it was inadmissible owing to significant procedural and material shortcomings. While the Court's function is not to call into question findings of fact made by the domestic authorities in relation to scientific expert assessments (see *Počkajevs v. Latvia* (dec.), no. 76774/01, 21 October 2004), it cannot but note

that the domestic authorities established certain shortcomings with regard to various expert assessments.

21. Moreover, the overall duration of the criminal proceedings was not reasonable. They lasted for ten years, four months and six days, at three levels of jurisdiction and in three rounds of proceedings. While the case was complex, it related to serious allegations of medical negligence leading to the death of the applicant's son and should have been examined as a matter of priority. Contrary to the Government's assertion, the case file does not suggest that such lengthy proceedings were justified by the circumstances of the case; the applicant did not cause any particular delay. By the time a final decision in the criminal proceedings was made, the civil remedy was no longer available to the applicant. Had the proceedings been terminated when the charges were initially dropped by the prosecution in 2012, the civil remedy would have still been available to the applicant. The unreasonable length of the criminal proceedings therefore precluded the applicant from bringing a claim before the civil courts.

22. In sum, the Court considers that the domestic system as a whole, when faced with an arguable case of medical negligence resulting in the death of the applicant's son, failed to provide an adequate and timely response consonant with the State's obligation under Article 2. Accordingly, there has been a violation of the procedural aspect of that provision.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 760,000 euros (EUR) in respect of non-pecuniary damage in view of the seriousness of the violation. She also claimed EUR 20,852.64 in respect of legal costs and EUR 928.12 for travel expenses incurred during the criminal proceedings. Subsequently, she provided proof of some but not all payments made. Lastly, the applicant claimed EUR 2,700.72 for legal costs incurred before the Court.

24. The Government disagreed with those claims. They pointed out that the applicant had not submitted proof that she had actually incurred the costs and expenses claimed within the time-limit set.

25. The Court considers that the applicant must have suffered anguish and distress on account of the violation it has found. Ruling on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

26. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 9,200 covering costs under all heads, plus any tax that may be chargeable to the applicant.

27. The Court further 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 application admissible;

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, 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 9,200 (nine thousand two hundred 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 20 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President