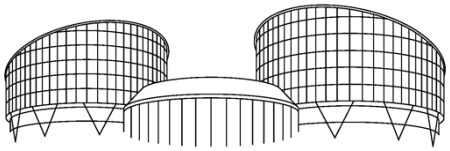

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF L.H. v. LATVIA

(Application no. 52019/07)

JUDGMENT

STRASBOURG

29 April 2014

FINAL

29/07/2014

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

In the case of L.H. 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,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 1 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 52019/07) 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, Ms L.H. ("the applicant"), on 3 August 2007. The President of the Third Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Ms S. Olsena, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and subsequently Mrs K. Līce.

3. The applicant alleged that the collection of her personal medical data by a State agency had violated the right to respect for her private life, guaranteed by Article 8 of the Convention.

4. On 8 September 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in the Cēsis District (Latvia).

A. Background to the case

6. On 16 June 1997 the applicant gave birth in the Cēsis District Central Hospital (a municipal enterprise, hereinafter "the Cēsis hospital"). Caesarean section was used, with the applicant's consent, because uterine rupture had occurred during labour.

7. In the course of that surgery the surgeon performed tubal ligation (surgical contraception) without the applicant's consent.

8. On 4 February 2005, after her attempt to achieve an out-of-court settlement with the hospital had failed, the applicant initiated civil proceedings against the hospital, seeking to recover damages for the unauthorised tubal ligation. In December of 2006 her claim was upheld and she was awarded compensation in the amount of 10,000 Latvian lati for the unlawful sterilisation.

B. Assessment of the quality of health care provided to the applicant

9. On 19 February 2004 the director of the Cēsis hospital wrote to the Inspectorate of Quality Control for Medical Care and Fitness for Work (hereinafter "the MADEKKI"), requesting it to "evaluate the treatment received by [the applicant] during childbirth in accordance with the legislation in force in 1997". The MADEKKI initiated an administrative procedure on the following day. The administrative inquiry concerned the applicant's health care and in particular the gynaecological and childbirth assistance she had been provided from 1996 to 2003. In the process of that inquiry the MADEKKI requested and received medical files from three different medical institutions, containing detailed information about the applicant's health over that period.

10. In April 2004 M.Z., a MADEKKI staff member, telephoned the applicant and informed her of the on-going inquiry. M.Z. invited the applicant to comment on the case, which she declined to do, referring the MADEKKI to her legal representative, Ms Olsena, instead. During the conversation M.Z. allegedly admonished the applicant for wanting to sue the hospital for damages, and told her that she herself was to blame for her sterilisation.

11. On 7 May 2004 Ms Olsena asked the MADEKKI for information on the legal grounds for, and the factual circumstances of, the inquiry.

12. On 14 May 2004 the MADEKKI issued a report concerning the medical treatment given to the applicant during childbirth in 1997. The report contained medical details about the applicant of a particularly private and sensitive character. It concluded that no laws had been violated during the applicant's antenatal care or during childbirth. A summary of the findings of the report was sent to the director of the Cēsis hospital on 21 May 2004.

13. On 18 May 2004 the MADEKKI answered Ms Olsena's questions concerning the administrative inquiry, setting out its opinion on the legal basis for it and providing information on the steps that had been taken in the course of the inquiry.

14. The applicant's representative lodged a claim with the Administrative District Court, alleging that the MADEKKI had initiated the inquiry unlawfully, since in essence its purpose had been to help the Cēsis hospital to gather evidence for the impending litigation, which was outside the MADEKKI's remit. It was also alleged that the MADEKKI had acted unlawfully in requesting and receiving information about the applicant's health, as it had violated the applicant's right to respect for her private life. That right had been further violated when the MADEKKI unlawfully transferred the applicant's data to the Cēsis hospital. Lastly, the court was requested to annul an administrative act – the MADEKKI's report – since its findings were erroneous. Compensation in the amount of 500 Latvian lati was requested in respect of non-pecuniary damage.

15. On 12 May 2005 the Administrative District Court adopted a judgment by which it terminated the proceedings with regard to the request to annul the MADEKKI report, as in the court's opinion the report did not create any specific rights or obligations for the applicant and thus could not be considered an administrative act, and dismissed the remainder of the application as ill-founded.

16. Counsel for the applicant appealed and on 16 June 2006 the Administrative Regional Court adopted a judgment by which it upheld in full the first-instance court's judgment and endorsed that court's reasoning, essentially equating the activities of the MADEKKI with the provision of health care, which, according to domestic law, was a legitimate reason for gathering personal data.

17. On 8 February 2007 the Senate of the Supreme Court dismissed an appeal on points of law lodged by the applicant, in which reference was made, *inter alia*, to Article 8 of the Convention and to the cases of *Z v. Finland* (25 February 1997, *Reports of Judgments and Decisions* 1997-I) and *M.S. v. Sweden* (27 August 1997, *Reports of Judgments and Decisions* 1997-IV).

18. The Senate agreed with the lower courts that the MADEKKI report could not be considered an administrative act. It further considered that this report was not an action of a public authority (*faktiskā rīcība*) and thus was not amenable to review in administrative courts.

19. It thus remained for the Senate to address the applicant's claims that the MADEKKI's actions in preparing the report had been unlawful. In this regard the Senate considered that the Medical Treatment Law gave the MADEKKI the right to examine the quality of medical care provided in medical institutions not only upon receiving a corresponding complaint from a patient but also when a request for such examination had been

submitted by a medical institution, which had an obligation to protect the interests of the society so that, should any irregularities be found by the MADEKKI, they might be eliminated and their recurrence with respect to other patients avoided in the future.

20. The Senate agreed with the applicant that the processing of sensitive data concerning her constituted an interference with her rights guaranteed by, *inter alia*, Article 8 of the Convention. The Senate then went on to summarise the findings of the Strasbourg Court in the two cases invoked by the applicant, emphasising in particular that the Convention left to the States a wide margin of appreciation in balancing the confidentiality of medical data and the necessity to preserve patients' confidence in the medical profession and in the health services in general.

21. The Senate further held that both the Medical Treatment Law and the Personal Data Protection Law contained exceptions that permitted the MADEKKI to collect and process the otherwise confidential medical data. The former listed such exceptions explicitly (see paragraph 30 below), while the latter allowed processing of medical data for the purposes of medical treatment or the provision or administration of heath care services (see paragraph 28 below) or if processing of personal data was necessary for a system administrator to carry out his legal duties (see paragraph 29 below). The Senate continued as follows: "according to [the law] the MADEKKI has a duty to control the quality of medical care. In order to carry out such control, the MADEKKI requires information about the patient and his care".

22. The Senate concluded as follows:

> "Taking into account the aforementioned, the [Senate] finds that restrictions to a person's private life connected to gathering and processing of sensitive personal data are provided for by law. When regulating this question, the legislator has already assessed the aim and proportionality of such restrictions, as well as has provided for safeguards against unjustified disclosure of the above-mentioned data. Consequently [the applicant's] argument that the Regional Court ought to have assessed the aim and proportionality of the restriction is unfounded.
>
> Additionally the [Senate] considers that the Regional Court has correctly interpreted and applied the above-mentioned legal provisions and has come to the correct conclusion that the MADEKKI, in order to carry out the control of the quality of medical care, which it is competent to do, had a right to receive and process [the applicant's] sensitive data without asking for her consent and that the MADEKKI has acted within its sphere of competence and in accordance with the provisions of the law concerning the processing of sensitive personal data. The MADEKKI used the information it had collected about [the applicant] in order to carry out its functions, namely, to control the quality of the medical care provided to [the applicant], while to the Cēsis hospital it only handed over its conclusions concerning the legality of the doctors' actions, which did not contain [the applicant's] sensitive data."

23. For these reasons the Senate decided to uphold the lower courts' decisions.

II. RELEVANT NATIONAL LAW

A. Legal regulation of the MADEKKI

24. Section 10 of the Medical Treatment Law (*Ārstniecības likums*) at the relevant time provided that the MADEKKI was the institution responsible for monitoring the quality of medical care provided in medical institutions.

25. The MADEKKI's work at the relevant time was governed in more detail by its statute (*nolikums*), which had been approved by the Cabinet of Ministers. The statute provided that the MADEKKI was a government institution, whose main functions were to inspect and monitor the professional quality of health care in medical institutions irrespective of their ownership status (paragraph 1). Paragraph 3 of the statute listed the principal functions of the MADEKKI, such as to examine complaints in order to protect the rights of patients (paragraph 3.3), to oversee and issue reports concerning the professional quality of medical care in the event of complaints (paragraph 3.4), to issue reports on the quality of medical care in medical institutions (paragraph 3.6) and the like.

26. According to its statute the MADEKKI had a right to carry out scheduled ("*plānveida*") checks on the quality of medical care as well as to carry out the required checks in response to complaints and requests (paragraph 4.1). Paragraph 4.2 authorised the MADEKKI "to request from private individuals and officials documents and information concerning questions within its field of competence". If the MADEKKI found that laws had been broken in the course of providing health care, it was authorised to apply administrative fines and issue warnings, as well as to give appropriate recommendations to doctors and administrators of medical institutions.

27. Lastly, section 7^2 of the MADEKKI statute provided that its staff had to maintain confidentiality with regard to any information obtained in the performance of their professional duties.

B. Personal data

28. The Personal Data Protection Law (*Fizisko personu datu aizsardzības likums*) provides, in section 11, that the processing (which is defined as any activities with personal data, including collecting, registering, using, and so on) of sensitive personal data (including information about a person's health) is permitted only after having received written consent from the data subject. Without such consent personal data may be processed only in a limited number of situations, including "if ... necessary for the purposes of medical treatment [or] the provision or administration of heath care services" (section 11(5)).

29. Section 7 of the Personal Data Protection Law provided more generally that processing of personal data was allowed only if that law did not provide otherwise and if at least one of the other conditions was present. One of the additional conditions was that the processing of the data was necessary for a system administrator to carry out his legal duties (section 7(3)). A "system administrator" for the purposes of this Law was "a natural or legal person who determines the aims of a data processing system and the means of processing [of the data]".

30. As in force at the relevant time, section 50 of the Medical Treatment Law provided that information concerning patients' treatment and diagnosis could only be provided to a limited number of institutions, including the MADEKKI.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that the MADEKKI had violated her right to respect for her private life, protected Article 8 of the Convention, which, in so far as is relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ....
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

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

B. Merits

33. The parties agreed that the applicant's medical data formed part of her private life and that the collection of such data by the MADEKKI constituted an interference with her right to respect for her private life. The Court sees no reason to hold otherwise. Therefore there has been an interference with the applicant's right to respect for her private life. It

remains to be determined whether the interference complied with the requirements of the second paragraph of Article 8 of the Convention.

1. Submissions of the parties

34. The Government maintained that the interference had been in accordance with the law. They relied on the conclusions reached by the Senate of the Supreme Court to the effect that the MADEKKI was authorised to check the quality of health care not only in situations where it had received a complaint from a patient. The Senate was of the opinion that a provider of health care services, "with the aim of protecting public interests, is also entitled to request the assessment of the quality of medical care" in order that, should any irregularities be found, they might be eliminated and their recurrence with respect to other patients avoided in the future.

35. The Government further relied on the conclusions of the Senate that sections 10 (see paragraph 24 above) and 50 (see paragraph 30 above) of the Medical Treatment Law in combination with the relevant provisions of the statute of the MADEKKI (the Government referred, *inter alia*, to paragraphs 1, 3.3, 3.4, 3.6, 4.1 and 4.2 of the statute), and taking into account the exception to the prohibition of the processing of personal data contained in section 11(5) of the Personal Data Protection Law, entitled the MADEKKI to collect and process the applicant's sensitive data "in order to monitor the quality of medical care, which in turn is part of the provision of heath care services".

36. The Government submitted that the MADEKKI had collected the applicant's data in order to establish whether the treatment administered to her on 16 June 1997 had complied with the legislation in force at the material time. If any violations of the applicable legislation had been found, it would have helped to prevent similar situations from arising in the future. Thus the purpose of collecting the applicant's personal data had been to protect public health and the rights and freedoms of others.

37. In addition, referring to a statement made by the director of the Cēsis hospital during the hearing before the Administrative District Court, the Government pointed out that the MADEKKI assessment had been ordered in order to determine whether the doctor at the Cēsis hospital who had performed the tubal ligation had committed any crime.

38. The Government further submitted that the hospital requested the MADEKKI to assess the treatment administered to the applicant

> "as a result of the applicant's attempts to achieve an out-of-court settlement with the hospital seeking to recover compensation for damage caused by the allegedly unauthorised tubal ligation. Given that [the hospital] was the respondent in a civil case which may have resulted in significant legal and financial implications, it is natural that it sought independent expert advice. It must specifically be noted that [the hospital] sought expert advice from the national independent institution competent to

deal with the issue, the same institution that would have been consulted by courts, had the case proceeded further".

39. The Government submitted that the interference with the applicant's right to respect for her private life had been of an "insignificant level". The MADEKKI, upon having completed its examination of the applicant's data, had only informed the Cēsis hospital of the conclusions of its report (see paragraph 12 above), without making the full report available. The Government thus concluded that the MADEKKI had processed the applicant's data very carefully and had respected the applicable national data protection legislation.

40. The applicant argued that the domestic law did not grant the MADEKKI the right to collect confidential medical data without receiving the patient's prior consent. She submitted that section 50 of the Medical Treatment Law on which the Government sought to rely did not give the MADEKKI the right to acquire information about patients. Rather, that provision left the decision whether or not to give information about patients to the discretion of the medical institutions in possession of such information. Should the medical institution be of the opinion that disclosure would be at odds with the data protection legislation or other laws, it had an obligation to decline the MADEKKI's request.

41. The applicant further criticised the Government's reliance on the exception contained in section 11(5) of the Personal Data Protection Law, arguing that it was doubtful that medical treatment dispensed in 1997 could be considered to have been "administered" in 2004.

42. The applicant considered that the statute of the MADEKKI, having been approved by the Cabinet of Ministers, which is an executive and not a legislative body, could not be considered "law" for the purposes of Article 8 § 2 of the Convention.

43. The applicant argued that the only aim for which her personal data were collected by the MADEKKI had been to assist the Cēsis hospital in gathering evidence for use in the litigation concerning her sterilisation, as evidenced by the fact that the Cēsis hospital only sent its request to the MADEKKI after the applicant had set about initiating settlement negotiations with regard to her sterilisation. The applicant disagreed with the submission of the Government that the information had been collected in order to establish potential criminal liability of the doctor of the Cesis hospital.

44. The applicant was critical of the proposition that the MADEKKI had collected her personal data to protect public health or the rights and freedoms of others, as no threat to anyone's health, rights or freedoms had been identified.

45. The applicant argued that the interference in the present case had not been necessary in a democratic society. Even assuming that the actions of the MADEKKI had pursued a legitimate aim in aiding the Cēsis hospital in

the process of ascertaining the lawfulness of its employees' actions, it could have done so by using means less restrictive of individual rights. For instance, the Cēsis hospital could have forwarded the applicant's data to the MADEKKI without disclosing her name.

46. The applicant also disagreed with the Government's submission that the interference with her right to respect for her private life had been insignificant. Citing *I. v. Finland* (no. 20511/03, § 38, 17 July 2008), the applicant submitted that the collection of her personal data had undermined her confidence in the medical profession and in the health services in general.

2. Assessment of the Court

47. The Court refers to the interpretation given to the phrase "in accordance with the law" in its case-law (as summarised in *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, §§ 95-96, ECHR 2008). Of particular relevance in the present case is the requirement for the impugned measure to have some basis in domestic law, which should be compatible with the rule of law, which, in turn, means that the domestic law must be formulated with sufficient precision and must afford adequate legal protection against arbitrariness. Accordingly the domestic law must indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise.

48. The Court takes note of the Government's argument that in the light of the Senate of the Supreme Court's interpretation of the domestic law the MADEKKI was authorised to assess the quality of medical care provided in medical institutions not only upon receiving complaints from patients but also in response to "requests", which to the Senate meant requests from medical institutions. In the course of carrying out such checks the statute of the MADEKKI as well as section 50 of the Medical Treatment Law entitled the MADEKKI to collect information and documents relating to questions within its field of competence.

49. The Court reiterates that according to Article 19 of the Convention its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 29, ECHR 1999-I). Against this background, the Court turns to the interpretation of section 11(5) of the Personal Data Protection Law given by the Senate of the Supreme Court (see paragraph 28 above).

50. The Court notes that in the present case the MADEKKI started to collect the applicant's medical data in 2004, seven years after her sterilisation and at a time when the applicant was involved in civil litigation with the Cēsis hospital. In the Court's view this lengthy delay raises a

number of questions, such as the one highlighted by the applicant, namely, whether data collection in 2004 can be deemed to have been "necessary for the purposes of medical treatment [or] the provision or administration of heath care services" within the meaning of section 11(5) of the Data Protection Law, if the actual health care services had been provided seven years earlier, in 1997. Such a broad interpretation of an exception to the general rule militating against the disclosure of personal data might not offer sufficient guarantees against the risk of abuse and arbitrariness (see *S. and Marper*, cited above, § 99).

51. In this context the Court finds it noteworthy that the applicant had never been informed that the MADEKKI had collected and processed her personal data in order to carry out a general control of the quality of health care provided by the Cēsis hospital to patients in situations comparable to the one of the applicant. The hospital itself was never given any recommendations on how to improve the services provided by it. The only information that was received by the hospital pertained specifically to the actions of the doctor responsible for the applicant's treatment and that information was provided to the hospital at a time when there was an ongoing litigation between the applicant and the hospital.

52. The Court notes that the applicable legal norms described the competence of the MADEKKI in a very general fashion. The Senate of the Supreme Court did not explain which of its functions the MADEKKI had been carrying out or what public interest it had been pursuing when it issued a report on the legality of the applicant's treatment. Accordingly the Senate did not and could not examine the proportionality of the interference with the applicant's right to respect for her private life against any public interest, particularly since it came to the conclusion that such weighing had already been done by the legislator (see paragraph 22 above).

53. Moreover, this took place against the background of domestic law, as in force at the relevant time, which did not provide for the right of the data subject to be informed that the MADEKKI would be processing his or her medical data before it started collecting the data. Thus the MADEKKI was under no legal obligation to take decisions concerning the processing of medical data in such a way as to take the data subject's views into account, whether simply by asking for and potentially receiving the data subject's consent or by other means (see *Z v. Finland*, cited above, § 101, referring to *W. v. the United Kingdom*, 8 July 1987, § 64, Series A no. 121).

54. The Court cannot accept the Government's suggestion that the MADEKKI was collecting information concerning the applicant's medical history in order to determine whether the doctor who had performed the tubal ligation had to be held criminally liable. Firstly, seven years after the event the prosecution had certainly become time-barred (depending on the legal classification of the potentially criminal act, the statutory limit was most likely two years but certainly no more than five years). Secondly,

neither the director of the Cēsis hospital nor the MADEKKI had the legal authority to determine, even on a preliminary basis, the criminal liability of private individuals.

55. Turning to the Government's argument that the MADEKKI was authorised by the law to assist the hospital in litigation, in order to curtail the legal costs (see paragraph 38 above), the Court notes that the MADEKKI is part of the State administration structure, the *raison d'être* of which is to serve the interests of the general public within the limits of its competence. According to the Government, a hospital, which at the time was a respondent party in private-law litigation, was authorised to seek independent expert advice from the MADEKKI. Such a hypothesis was not discussed by the Senate of the Supreme Court. The Court has difficulties in understanding the legal basis for the argument of the Government, since, at least *prima facie*, none of the legal norms cited by the Government states that providing independent expert advice in ongoing litigation is one of the functions of the MADEKKI.

56. The Court reiterates that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of the right to respect for his or her private life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve confidence in the medical profession and in the health services in general (see *Z v. Finland*, cited above, § 95, and *Varapnickaitė-Mažylienė v. Lithuania*, no. 20376/05, § 44, 17 January 2012).

57. The Court notes that the applicable law did not limit in any way the scope of private data that could be collected by the MADEKKI. In the present case the MADEKKI collected the applicant's medical data concerning a period spanning seven years, starting one year before the disputed tubal ligation and ending six years after it. The medical information collected and analysed by the MADEKKI originated from three different medical institutions. The relevance and sufficiency of the reasons for collecting information about the applicant that was not directly related to the procedures carried out at the Cēsis hospital in 1997 appear not to have been examined at any stage of the domestic procedure (see *Z v. Finland*, cited above, § 110).

58. The Court notes that the MADEKKI appears to have collected the applicant's medical data indiscriminately, without any prior assessment of whether the data collected would be "potentially decisive", "relevant" or "of importance" (see *M.S. v. Sweden*, cited above, §§ 38, 42 and 43, and *L.L. v. France*, no. 7508/02, § 46, ECHR 2006-XI) for achieving whatever aim might have been pursued by the MADEKKI's inquiry. In this context it becomes less relevant whether the staff of the MADEKKI had a legal duty

to maintain the confidentiality of personal data (see paragraph 20 above and compare *M.S. v. Sweden*, cited above, § 43).

59. In the light of the above considerations the Court cannot find that the applicable Latvian law was formulated with sufficient precision and afforded adequate legal protection against arbitrariness. Neither did it indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise.

60. The Court accordingly concludes that the interference with the applicant's right to respect for her private life was not in accordance with the law within the meaning of Article 8 § 2 of the Convention. Consequently there has been a violation of Article 8.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government argued that the applicant had not substantiated her claim in respect of non-pecuniary damage. The Government submitted that, should the Court decide to award the applicant anything under this head, the award should not exceed EUR 3,500.

64. The Court considers that the applicant must have suffered distress and anxiety on account of the violation it has found. Ruling on an equitable basis, it awards the applicant EUR 11,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 2,183 for the costs and expenses incurred before the domestic courts and EUR 1,435 for those incurred before the Court.

66. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see The Sunday Times *v. the United Kingdom (no. 1)* (Article 50), 6 November 1980, § 23, Series A no. 38).

67. The Government referred to the applicant's submission that owing to her poor financial situation she had not actually paid the two invoices issued by her representative for the costs and expenses of her representation before the Court. Therefore, according to the Government, the costs and expenses were not "actually incurred".

68. The Court notes that, although the applicant has not yet actually paid part of the legal fees and expenses, she is bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the applicant's representative is entitled to seek payment of her fees and expenses under the contract, the legal fees were "actually incurred" (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 106, ECHR 2009).

69. The Government further submitted that the sum claimed by the applicant with respect to the domestic proceedings was "exorbitant". To support that argument, the Government relied upon the law setting down the rates to be paid by the State to legal-aid lawyers in the Latvian legal system.

70. In the light of the complexity and the scope of the domestic proceedings, the Court, having taken into account the documents in its possession, finds the sum claimed in that respect reasonable as to quantum. The Court further notes that the Government have not disputed the applicant's claim in so far as it relates to the costs and expenses incurred in respect of the proceedings before the Court. The Court considers the applicant's claim in that respect reasonable as to quantum as well.

71. Therefore the Court considers it reasonable to award the sum of EUR 2,768, covering costs under all heads, which represents the requested sum, less EUR 850 already paid to the applicant's lawyer in legal aid.

C. Default interest

72. 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 application admissible;

2. *Holds* that there has been a violation of Article 8 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 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,768 (two thousand seven hundred and sixty-eight 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 29 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President