



## Jasinskis v. Latvia

Application no. 45744/08

**Country:** Latvia

**Region:**

**Year:** 2011

**Court:** European Court of Human Rights

### Facts

The applicant, Mr. Aleksandrs Jasinskis filed an application against the respondent, the Republic of Latvia after the applicant's son had died in police custody. He filed the application under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 34 provides a right to victims whose rights have been violated by a High Contracting party to file an application before the Court. The case concerns applicant's son Valdis Jasinski's, who was deaf and mute since his birth. On Feb 26th, 2005, applicant's son was enjoying with his friends at a bar, where he allegedly consumed alcohol. After the bar, Valdis and his friends went to a nearby school where a party was going on. In the party, a minor pushed Valdis who fell backward down the stairs, hit his head against the ground and lost consciousness for several minutes. The school guards called an ambulance and police both. The police arrived before the ambulance and took the applicant to the Police Station for questioning and the police had informed the ambulance that no medical aid was needed. The applicant alleged that the police officers took away the notebook with which his mute son used to communicate things to people. The next day Valdis was taken to the hospital on his father's perusal with the police officers. In the hospital, he was declared conscious but non-communicative and a few hours later he passed away. 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, edema 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.

Later an expert of the Inspectorate of Quality Control for Medical Care and Working Capability (â€œMADEKKIâ€•) noted several shortcomings in the treatment of the applicant's son at the police station. The applicant argued that the police officers of the Balvi District Police Department had been negligent and ignorant in the performance of their duties. Whereas in the internal investigation conducted by the Police Department, it was observed that the policemen had acted in accordance with the internal guidelines and legislations. 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 Â§ 1 of the Convention, which protects everyone's life by Law.

### Decision and Reasoning

The Court admitted the applicant's complaint and held that there had been a violation of the substantive as well as the procedural aspect of Article 2 Â§ 1 of the Convention. For arriving at this conclusion, the Court considered two questions. First, 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. Second, 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.

The Court reasoned that the officers were informed about the applicant's son's fall from the stairs, his loss of consciousness after hitting his head against the ground, and his sensory disability, upon their arrival at the scene. The police were also informed that an ambulance was called, but decided to take him to the police station instead of waiting for a medical evaluation because they believed that he was merely intoxicated. Further, when the ambulance subsequently contacted the police department, the police officers informed the ambulance crew that no medical assistance was necessary without consulting the applicant because none of the officers understood sign language and the notepad that the applicant's son used for communication had been taken away from him.

The Court reasoned that taking into account that the applicant's son was deaf and mute, the police had a clear obligation to at least provide him with a pen and a piece of paper to enable him to communicate his concerns. The Court stated that the denial or lack of reasonable accommodation for persons with disabilities may create detention conditions which may amount to ill-treatment and torture. The Court further reasoned that 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, was further evidence of an Article 2 violation.

The Court observed that the initial internal investigation had been carried out by the same police station which had detained the applicant's son. Therefore, the investigation cannot be considered effective as it did not ensure the minimum standard of independence of the investigators. Another investigation had been conducted by the Bureau of Internal Investigation more than a year after the incident. The lack of promptness and effectiveness in carrying out the investigation into the applicant's son's death was condemned by the Court. The Court awarded damages amounting to EUR 50,000 to the applicant.

### **Decision Excerpts**

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 corresponding to his special needs resulting from his disability. Para 59.

The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies. Furthermore, the national authorities have an obligation to protect the health of persons who have been deprived of their liberty. 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. A failure to provide adequate medical care may constitute treatment in breach of the Convention. Para 60.

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. Para 67.