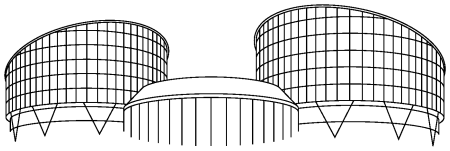

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF R.Š. v. LATVIA

(Application no. 44154/14)

JUDGMENT

STRASBOURG

8 March 2018

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

In the case of R.Š. v. Latvia,

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

Angelika Nußberger, *President,*
Erik Møse,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 30 January 2018,

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

PROCEDURE

1. The case originated in an application (no. 44154/14) 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 R.Š. ("the applicant"), on 9 June 2014. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Mrs L. Sokolova, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

3. The applicant alleged that he had been unable to obtain compensation for harm suffered as a result of an aircraft accident, and that the State should bear responsibility for any shortcomings in the legal regulation of the safety of private flights.

4. On 7 January 2015 the above complaints under Articles 2 and 8 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Mārupe. At the material time the applicant held a pilot licence and was undergoing aviation training.

A. Background information

6. In 2008 the applicant used the services of a company, KD.C. (the name of this company was subsequently changed, but it will be referred to hereinafter as "KD.C." or "the company"). D.K. held 100% of the shares in the company (he was its sole owner) and he was also its sole board member. The company provided private flights and organised private pilot training courses. The Civil Aviation Agency had issued the company with a registration certificate for the provision of private pilot training courses.

7. The company did not provide commercial flights, therefore it fell outside the scope of the Regulation of the Cabinet of Ministers on Procedures Regarding the Issuing of an Air Operator's Certificate for Aerial Work (8 May 2007), and was not certified by the Civil Aviation Agency.

B. Aircraft accident

8. On 16 August 2008 KD.C. organised a private flight from Riga to Tukums using a multi-engine aircraft, a Piper PA-31 with a maximum allowed mass of 2,900 kg. The applicant and six other people boarded the aircraft as passengers. The applicant occupied the front seat of the aircraft, next to the pilot, G.V., and maintained radio communication with the air traffic control service.

9. At around 10 a.m. the pilot, G.V., lost control of the aircraft and it crashed (see paragraph 12 below). As a result, the pilot died and all passengers sustained serious injuries.

10. According to a forensic medical examination, the applicant suffered serious, life-threatening injuries. He permanently lost the vision in his right eye and sustained other permanent damage to his health. He underwent treatment in Latvia and abroad.

After rehabilitation, the applicant was able to continue working as an aviation specialist, but under certain limitations. He was not permitted to operate an aircraft independently and was required to undergo medical checks more often than other aviation specialists.

C. Investigation into the accident

11. Following the accident on 16 August 2008 officials from the Transport Accident and Incident Investigation Bureau (*Transporta nelaimes gadījumu un incidentu izmeklēšanas birojs*, hereinafter "the TAIIB"), whose main task was to establish the circumstances of an accident, went to the scene of the accident and carried out an investigation.

12. According to the TAIIB's final report of 27 June 2009, on the day of the accident, when operating in cloudy weather, G.V., the pilot, made a series of chaotic manoeuvres, as a result of which the aircraft, which was

about 30-50 m from the ground, lost altitude. The attempts to stabilise it were unsuccessful. As a consequence of hitting the ground and damaging its tank, the aircraft caught fire.

13. The investigation concluded that the primary cause of the accident was "human error" (*cilvēka faktors*), namely G.V. having insufficient skills and experience to independently operate a multi-engine aircraft in accordance with instrumental flight rules and, in particular, to operate a Piper PA-31 aircraft. The pilot had not obtained authorisation from the Civil Aviation Agency to fly that particular type of aircraft. In particular, G.V. had started the "differences training programme" for the Piper PA-31 aircraft on 1 August 2008, but had not finished it. Nevertheless, on 16 August 2008 he had flown without sufficient qualifications.

14. The final report indicated several aspects which had contributed to the accident, such as unfavourable weather conditions with poor visibility, and the "unsafe supervision" (*nedroša uzraudzība*) carried out by the Civil Aviation Agency "[to ensure] that the aviation legislation and visual flight rules were complied with".

15. With regard to KD.C., the company which owned the aircraft, the investigation concluded that it had not followed up on the pilot's differences training programme and its outcome. On the day of the accident the company had not checked whether the pilot's documents complied with the requirements of the legislation, and it had unjustifiably (*nepamatoti*) handed over the aircraft to him and verbally authorised him to fly.

16. The above report, *inter alia*, addressed to the Civil Aviation Agency eight recommendations concerning flight safety. The second recommendation advised the Civil Aviation Agency to impose a duty on aircraft owners to set up a procedure for aircraft handovers which would prevent pilots from operating a flight without a licence and would contain confirmation of an appropriate qualification certificate issued by the Civil Aviation Agency.

D. Criminal proceedings

1. Investigation

17. On 16 August 2008 a criminal investigation was opened into the aircraft accident. In the course of the investigation the police gathered evidence, ordered that forensic examinations be carried out, and interviewed numerous witnesses, including various aviation specialists.

18. Questioned as a witness, D.K. stated that he himself had no experience of operating aircrafts, and that G.V. had been the company's *de facto* associate, although legally he had had no contractual relationship with the company; D.K. also stated that he had had no doubts that G.V. had had sufficient qualifications, because he had undergone the necessary training

and obtaining a certificate had only been a formality. It had been supposed that G.V. would at all times be accompanied by a more experienced instructor during the training flights. On the day of the accident D.K. had a telephone conversation with G.V. and the latter informed him that he had finished his "instruction" and would soon be starting a flight. Only afterwards did D.K. find out that another aeroplane had returned to the same airport owing to bad weather conditions.

19. The investigation revealed that G.V. had undertaken to fly the aircraft even though he lacked the requisite skills, which had caused the accident in question. On 14 January 2010 the proceedings with regard to G.V. were terminated due to his death.

20. The material in the criminal case contained a letter from the TAIIB dated 20 October 2009 which stated, *inter alia*, that at the material time the legislative acts regulating aviation safety in Latvia had not provided for a procedure setting out how to hand over an aircraft for a general aviation flight.

21. This was further confirmed in a statement given by a TAIIB official during the investigation, that in general aviation, unlike in commercial aviation, there were no established (*nebija sakārtots*) regulations regarding an aircraft owner's responsibility in relation to a specific flight and a pilot's skills. Therefore the recommendations of the TAIIB were adopted to address that issue within the existing system (see paragraph 16 above). During the investigation, an official of the Civil Aviation Agency testified that in commercial aviation, the question of an operator's responsibility with regard to the qualifications and rights of a pilot was sufficiently regulated, however this regulation did not apply to general aviation flights.

22. On 24 May 2011 the prosecution indicted D.K. for negligence in the performance of his professional duties (section 197 of the Criminal Law) and violation of air traffic safety or operation regulations (section 257(2) of the Criminal Law). The prosecution alleged that D.K. had handed over the aircraft to G.V. knowing that the latter lacked the requisite permit and skills to operate it. On 8 June 2011 the prosecution referred the case for trial.

2. Trial

23. On 22 October 2012 the Tukums District Court found D.K. guilty on both counts. It established that D.K. had not applied any measures to verify G.V.'s qualifications. He had given the aircraft to the pilot knowing that the latter lacked the appropriate authorisation and had permitted him to fly. D.K. was given a suspended prison sentence of five years. He was also ordered to pay the applicant 20,000 Latvian lati (around 29,000 euros (EUR)) in compensation for non-pecuniary damage.

24. On 15 May 2013 the Zemgale Regional Court, acting as an appellate court, quashed the above judgment and acquitted D.K. In the appeal proceedings, D.K. testified that in his telephone conversation with G.V. on

16 August 2008 they had agreed that G.V. would not fly, owing to the bad weather conditions. He explained the inconsistency in relation to his pre-trial testimony (see paragraph 18 above) as follows. Firstly, he had been a witness at that stage. Secondly, he had been interviewed in Latvian, which was not his mother tongue, and he had not been as fluent as was necessary. He had no doubt that G.V. was responsible for the accident, and he could not envisage also being charged in criminal proceedings.

25. With regard to negligence in the performance of his professional duties (see paragraph 44 below), the court deemed that neither the indictment nor the first-instance judgment had shown what professional duties in particular D.K. had neglected. Also, not being an aviation specialist, he could not have been regarded as a "special subject" for the purposes of this section of the Criminal Law (an organisation's responsible employee).

26. Concerning the alleged violation of air traffic safety or operation regulations (see paragraph 45 below), the appellate court concluded that it had not been established precisely what regulations D.K. had violated and by what conduct in particular. Besides, section 257 of the Criminal Law required that the prohibited conduct be committed by a transport employee, which D.K. was not.

27. The appellate court indicated that, even though D.K. could not be held criminally liable, KD.C. had an obligation to provide compensation for the damage sustained by the victim, and therefore the applicant had rights to seek damages in civil proceedings.

28. Both the applicant and the prosecutor submitted appeals against the appellate court's judgment.

29. On 9 December 2013 the Senate of the Supreme Court endorsed the appeal court's findings that it had not been shown that D.K. had committed the requisite *actus reus*. The Senate confirmed that D.K.'s actions did not contain the necessary elements of a crime under sections 197 and 257(2) of the Criminal Law.

30. The Senate stated that the prosecution should not have relied on certain provisions of the Commercial Law, the Civil Law, the Law on Aviation and the Convention on International Civil Aviation (hereinafter "the Chicago Convention"). Those provisions were applicable when determining the civil and not criminal liability of an aircraft owner. In accordance with section 34 of the Law on Aviation, a pilot was prohibited from performing his functions in the event that he had not acquired the appropriate qualifications. The above provision had been binding upon the pilot and not D.K. The Senate also stated that only on 18 November 2010 had Part II of Annex 6 to the Chicago Convention, Seventh Edition, come into force, making provision for the liability of an aircraft owner and a pilot; before that date the Chicago Convention provided the responsibility only of the pilot (see also paragraph 58 et seq. below).

31. Furthermore, at the material time, no legislation had provided for a procedure for handing over an aircraft to a pilot, designating a person responsible for verifying pilots' training, or checking flight planning and implementation. Only subsequent to the accident in question had recommendations been issued to the Civil Aviation Agency on the preparation of statutes relevant to flight safety. As of 24 April 2013, section 9^1 of the Law on Aviation had provided that an aircraft owner or operator was not allowed to hand over an aircraft to a person lacking the appropriate qualifications and insurance cover (see paragraph 55 below).

E. Civil proceedings for damages

32. On 13 August 2010 the applicant lodged a claim for damages against KD.C. (the company which owned the aircraft), D.K. (the sole owner and board member of the company), and the insurance company. In the claim, *inter alia*, the applicant relied on sections 1782, 2347 and 2349 of the Civil Law (see paragraphs 42-43 below). In the meantime, by a final decision of the Riga Regional Court of 8 November 2010, KD.C. was declared bankrupt (*maksātnespējīgs*) upon application by one of its creditors and respective proceedings were started with retrospective effect from 31 December 2008.

33. On 14 May 2013 the Riga Regional Court, acting as a court of first instance, dismissed the claim in full on the grounds that the defendants had not committed unlawful actions (*prettiesiska darbība*). There was no dispute that D.K. had agreed to the pilot starting a "differences training programme" for the Piper PA-31 aircraft with a flight instructor, O.G. However, there was no evidence that on 16 August 2008 D.K. had allowed the pilot to operate this aircraft carrying seven passengers. On the contrary, the instructor and another witness (J.Z.) had testified that it had been planned that the pilot would operate the aircraft with the flight instructor, who had not arrived at the airport to take the flight on that date because of the bad weather conditions. The pilot had been informed of the bad weather conditions and the fact that the flight instructor would not arrive for the flight.

By referring to the investigation carried out by the TAIIB, the Riga Regional Court noted that the primary reason for the accident was "human error" on the part of the pilot, and that the lack of sufficient procedure in relation to handing over an aircraft had contributed to the accident, but was not the sole cause of it. Moreover, the applicant had occupied the front seat of the aircraft, next to the pilot, and had maintained radio communication. Taking into account that he was a pilot himself and that he had received information about the unfavourable weather conditions, he could have avoided any damage by choosing not to fly in such circumstances.

By referring to the second recommendation (see paragraph 16 above), the court concluded that, at the material time, there had been no obligation for aircraft owners to verify the qualifications and health of pilots.

34. On 24 September 2015 the Civil Cases Chamber of the Supreme Court, acting as an appellate court, dismissed the applicant's claim in full on the following grounds.

35. With regard to KD.C., the civil proceedings were terminated because the company had ceased to exist (on 26 May 2015 it had been excluded from the Companies Register) and there was no legal successor.

36. Next, the appellate court found that D.K. could not be held liable under sections 1779 and 1635 of the Civil Law for the damage sustained by the applicant. By referring to the investigation carried out by the TAIIB, the appellate court also noted that the primary cause of the accident had been "human error" on the part of the pilot. While the lack of a sufficient procedure in relation to handing over the aircraft had contributed to the accident, there was no causal link between the accident and the actions of D.K., who managed the company.

The appellate court also referred to the conclusions made in the criminal proceedings to the effect that D.K. was not liable for the flight operated by the pilot, and the fact that he had been acquitted. Moreover, the appellate court referred to evidence given to the first-instance court and concluded that on 16 August 2008 D.K. had not allowed the pilot to operate the aircraft independently and that the pilot's course of action (to operate the aircraft independently) had been arbitrary and unlawful. It had been planned that the pilot would operate the aircraft with the flight instructor (see paragraph 33 above).

In the light of sections 97 and 98 of the Law on Aviation, the owner of the aircraft was the company and not D.K. Thus, the latter could not be held responsible under the Law on Aviation. In so far as the applicant referred to the Chicago Convention, this was inapplicable, because it only provided for the responsibility of a pilot-in-command and, from 18 November 2010 onwards, the responsibility of an owner; D.K. was neither a pilot nor an owner.

Neither could D.K. be held liable under section 1782 of the Civil Law (see paragraph 43 below) because the pilot had not been an employee of the company. Nor could he be held liable under sections 2347 and 2349 of the Civil Law (see paragraph 42 below). Referring to the conclusions made in the criminal proceedings, the appellate court held that D.K. had not engaged in any unlawful (*prettiesiska*) or liable (*vainojama*) activity. Therefore, he could not be required to pay damages to the applicant. There was no doubt that the aircraft was a source of dangerous activity, but D.K. was not its owner. Instead, KD.C. was the owner of the aircraft, therefore it was liable for loss caused by the source of dangerous activity.

37. The appellate court also refused to hold D.K. liable as a board member of the company. It concluded that, under the relevant provisions of the Commercial Law, board members were liable for damage caused to a company. In the present case, the company had not incurred any losses because it had not provided compensation for any damage sustained by the applicant.

38. Lastly, the appellate court dismissed the claim against the insurance company. In the judgment, it stated that the aircraft accident fell outside the terms of the aircraft's insurance, which provided that compensation was not awarded if an accident was caused by a pilot who had no right to operate an aircraft. In the present case, the pilot had not had a permit to operate the aircraft in question.

39. In a preparatory meeting on 5 May 2016 the Senate of the Supreme Court dismissed an appeal on points of law by the applicant in the case against KD.C., D.K. and the insurance company.

F. Other relevant information

40. In a letter dated 12 May 2015 addressed to the Government regarding the accident in question, the Civil Aviation Agency stated:

> "As regards the responsibility of the aircraft owner, we note that the legislative acts [at the material time] provided that the owner of an aircraft was responsible for ensuring the maintenance of the aircraft's airworthiness, but not its safe operation during a flight, which was the pilot's responsibility. In particular, in accordance with Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, under Annex I (Part M) M.A. 201 (a), the owner is responsible for the continuing airworthiness of an aircraft and shall ensure that no flight takes place unless: the aircraft is maintained in an airworthy condition; and any operational and emergency equipment fitted is correctly installed and serviceable or clearly identified as unserviceable; and the airworthiness certificate remains valid; and the maintenance of the aircraft is performed in accordance with the approved maintenance programme."

II. DOMESTIC LAW AND PRACTICE

A. Legislation on the right to compensation

41. Article 92 of the Constitution (*Satversme*) provides, *inter alia*, that "any person whose rights are violated without justification has a right to commensurate compensation". Domestic legal provisions pertaining to compensation for pecuniary and non-pecuniary damage under the Civil Law (*Civillikums*) are quoted in full in *Zavoloka v. Latvia* (no. 58447/00, §§ 17-19, 7 July 2009). Sections 1635 and 1779 are also explained in the case of *Holodenko v. Latvia* (no. 17215/07, § 45, 2 July 2013).

B. Civil Law

42. Under section 2347 of the Civil Law, if a person is responsible for causing another person bodily injury through an illegal action, the person responsible shall compensate the victim for medical expenses and the loss of future income (paragraph one). A person engaging in activities, which are dangerous for others (transport, enterprise, construction, dangerous substances, etc.), shall compensate for loss caused by the source of dangerous activity, unless he or she proves that it was incurred owing to *force majeure*, or through the victim's own intentional act or gross negligence (paragraph two). Under section 2349 of the Civil Law, the domestic courts shall award compensation for bodily injuries causing mutilation and disfigurement.

43. Section 1782 provides that a person who fails to exercise due care in choosing agents or other employees, and who fails to satisfy himself or herself as to their abilities and suitability to perform duties as may be imposed on them, shall be liable for losses the agents or employees cause a third party.

C. Criminal Law

44. Section 197 criminalises negligence by an organisation's employee in the performance of his or her professional duties where substantial harm is caused to the organisation or to the lawful rights and interests of another person.

45. Section 257(2) criminalises, *inter alia*, violation by a transport employee of air traffic safety or operation regulations if there are serious consequences (*smagas sekas*).

D. Law on Aviation (as in force at the material time)

46. Section 5 provided that the Ministry of Transport and the Civil Aviation Agency implemented the State policy and administration in the area of the use of the Republic of Latvia's airspace and civil aviation operations.

47. Section 6 defined the powers of the Civil Aviation Agency. These powers comprised, *inter alia*: carrying out State supervision of the use of the Republic of Latvia's airspace and civil aviation operations; prohibiting activities related to the use of airspace or the operation of aircrafts in breach of legislative acts; coming up with measures to guarantee aircraft flight safety; and drawing up legislative acts regulating the safety of civil aviation operations. Together with other authorities, the Civil Aviation Agency was

also tasked with supervising the training, retraining and raising of the level of qualifications of civil aviation personnel (section 31).

48. Section 33 provided that aviation specialists should carry out their functions pursuant to the domestic and European Union law and the international agreements which were binding upon the Republic of Latvia.

49. The relevant parts of section 34 read as follows:

> "An aviation specialist is prohibited from performing his or her functions if he or she:
>
> 1) is unable to present a licence with an appropriate qualification stamp allowing the performance of such functions, or if the specialist's [possession of] the appropriate qualification has not been verified within the time-limit prescribed;
>
> ..."

50. Section 36 provided that the work of a civil aircraft flight crew should be managed by a pilot-in-command. If a civil aircraft flight crew included only one pilot, he or she was also the pilot-in-command.

51. Section 37 set out the duties of the pilot of an aircraft, such as: managing the work of a flight crew so that aircraft flight safety was ensured and the provisions of this Law and other laws of the Republic of Latvia were respected, as well as the requirements of by-laws, instructions and other laws and regulations; implementing measures to prevent danger threatening the aircraft which he or she controlled; rescuing passengers, injured crew members, the aircraft, and its documentation and property on board; and providing medical assistance to those who were injured if the aircraft had an aviation accident.

52. Section 38 set out the rights of the pilot of an aircraft, such as: taking the final decision on an aircraft taking off, continuing with a flight or landing at an intended flight destination or an alternate aerodrome; or temporarily suspending the departure of an aircraft.

53. Section 96 provided as follows:

> "An aircraft owner or operator, if the aircraft has been operated by another person, shall be liable for any harm caused by the death or damage to health of a member of the flight crew which occurs during the performance of his or her official duties. The performance of duties shall commence with a flight crew member's preparation for a flight and shall conclude after the flight at the moment when he or she has fulfilled all of the functions set out in the rules regarding the operation of the aircraft and other regulations."

54. Section 97 provided as follows:

> "An aircraft owner or operator, if the aircraft is operated by another person, shall be liable for any harm caused to a third party in the territory of the Republic of Latvia by an aircraft in flight or an object that has become separated from that aircraft [where this harm] manifests [itself] in either the death of the third party or damage caused to his or her health, or harm caused to his or her property, if the aircraft owner or operator, in accordance with the procedures laid down in legal acts of the Republic of Latvia, does not prove that the harm occurred according to the fault of the victim

himself or herself. The Cabinet [of Ministers] shall determine the procedures by which compensation for harm to a third party or [that third party's] property shall be provided, if [such harm] is caused by a military or civil aircraft (or an object that has become separated from that aircraft) of the Republic of Latvia which the National Armed Forces of Latvia use for military purposes.

For the purposes of this section, an aircraft shall be deemed to be an aircraft in flight from the moment the engines of the aircraft are started before take-off until the moment when the aircraft has finished taxiing after its landing."

55. On 21 March 2013 the Law on Aviation was supplemented by section 9^1. This was to have effect from 24 April 2013 onwards and was worded in the following manner:

"An aircraft owner and operator is prohibited from handing over an aircraft which is to be flown to a person who does not have a civil aircraft flight crew member licence with an appropriate qualification stamp and who is not insured in accordance with section 111 of this law."

E. Examples of domestic case-law concerning claims against the State for compensation for non-pecuniary damage

56. In a judgment of 24 November 2010 in case no. SKC-233/2010, the Civil Cases Chamber of the Senate of the Supreme Court held that there was no specific legal regulation for compensation with regard to actions taken by a domestic court, save for regulation concerning unjustified conviction and administrative arrest. However, such an absence could not be an obstacle to lodging a respective claim, because the third sentence of Article 92 of the Constitution, which provided for the right to receive compensation, was directly applicable.

The Administrative Cases Chamber of the Senate of the Supreme Court, in a decision of 24 July 2012 in case SKA-726/2012, held that, in order for a person to seek compensation for an infringement of his or her rights caused by a legal provision adopted by Parliament, he or she could file a civil claim with a court of general jurisdiction, directly referring to the third sentence of Article 92 of the Constitution. Such a claim would be brought against the Republic of Latvia, which would be represented by its Parliament (*pret Latvijas Republiku Saeimas personā*).

57. The claimant in civil case no. 04255508, relying on Article 92 of the Constitution and Article 1635 of the Civil Law, alleged liability on the part of the State and requested an award of compensation for non-pecuniary damage in respect of a failure to ensure the safety of soldiers' skydiving classes and their compliance with legal provisions, which had resulted in the death of the claimant's son. These skydiving classes had been organised by the National Armed Forces, and the domestic courts established negligence on the part of State officials (they had failed to comply with various provisions of domestic law and internal instructions), as well as a causal connection between that negligence and the death of the soldier. In its

judgment of 6 March 2013, the Senate of the Supreme Court, sitting in an extended composition, referring to, *inter alia*, the State's positive obligations enshrined in Article 2 of the Convention, ruled that an acquittal in criminal proceedings did not exclude the State's liability for an accident. Consequently, the victim's relatives had a right to seek compensation for non-pecuniary damage.

In its judgment of 31 October 2014 in civil case no. C33137808, the Senate of the Supreme Court, sitting in an extended composition, noted that the State police's conclusion reached in the course of criminal proceedings as to the absence of pecuniary damage was not binding on a court adjudicating a civil claim, and did not absolve parties to civil proceedings from the obligation to prove the non-existence of pecuniary damage in the course of those proceedings.

In another decision of 3 February 2015 in case no. C322451I I, the Civil Cases Division of the Supreme Court upheld a lower court's ruling awarding compensation for non-pecuniary damage to a victim's relatives, notwithstanding the fact that criminal proceedings were ongoing in respect of the same events.

III. INTERNATIONAL LAW AND PRACTICE

58. The Chicago Convention provides that every State has complete and exclusive sovereignty over the airspace above its territory (Article 1). No scheduled international air service may be operated over or into the territory of a contracting State without that State's special permission (Article 6). Latvia acceded to the Convention on 13 July 1992, and it entered into force in respect of Latvia on 12 August 1992. The Sixth Edition of Annex 6 ("Operation of Aircraft") to the Chicago Convention contains International Standards and Recommended Practices that were applicable on 1 July 2008. It contains three parts: international commercial air transport – aeroplanes (Part I), international general aviation – aeroplanes (Part II) and international operations – helicopters (Part III).

59. Part II reads as follows:

FOREWORD

Historical background

"...

Level of safety. The Annex should ensure an acceptable level of safety to passengers and third parties (third parties meaning persons on the ground and persons in the air and in other aircraft). Also, as some international general aviation operations (typically under 5,700 kg) would be performed by crews less experienced and less skilled, with less reliable equipment, to less rigorous standards and with greater freedom of action than in commercial air transport operations, it was therefore, accepted that the passenger in international general aviation aircraft would not necessarily enjoy the same level of safety as the fare-paying passenger in

commercial air transport. However, it was recognised that in ensuring an acceptable degree of safety for third parties, an acceptable level of safety for flight crews and passengers would be achieved.

Freedom of action. The maximum freedom of action consistent with maintaining an acceptable level of safety should be granted to international general aviation.

Responsibility. The responsibility that devolves under the operator in Annex 6, Part I, should, in Part II of the Annex, fall under the owner and pilot-in-command.

..."

Applicability

"The Standards and Recommended Practices of Annex 6, Part II, are applicable to international general aviation operations with aeroplanes.

The Standards and Recommended Practices represent minimum provisions and, together with those of Annex 6 – *Operation of Aircraft*, Part I – *International Commercial Air Transport – Aeroplanes*, now cover the operation of all aeroplanes in international civil aviation, except in aerial work operations.

It will be noted that the Standards and Recommended Practices contained in Annex 6, Part II, when applied to the operation of large aeroplanes, are less stringent than those in Annex 6, Part I, applicable to the same or similar aeroplanes when used in commercial air transport operations. Nevertheless, it is considered that, in conjunction with existing provisions in Annexes 1 and 8, Annex 6, Part II, ensures an adequate level of safety for the operations envisaged for the large aeroplanes in question. In this connection attention is drawn to the point that the entire performance Standards of Annex 8 are applicable to all aeroplanes of over 5,700 kg mass intended for the carriage of passengers or cargo or mail international air navigation, of which the prototype was submitted for certification on or after 13 December 1964. Moreover, by virtue of Annex 1 the pilot of an aircraft certificated for operation with a minimum crew of at least two pilots must hold a type rating for that aircraft type."

SECTION 2 – GENERAL AVIATION OPERATIONS

CHAPTER 2.1 GENERAL

2.1.1 Compliance with laws, regulations and procedures

"2.1.1.1 The pilot-in-command shall comply with the laws, regulations and procedures of those States in which operations are conducted.

...

2.1.1.2 The pilot-in-command shall be familiar with the laws, regulations and procedures, pertinent to the performance of his or her duties, prescribed for the areas to be traversed, the aerodromes to be used and the air navigation facilities relating thereto. The pilot-in-command shall ensure that other members of the flight crew are familiar with such of these laws, regulations and procedures as are pertinent to the performance of their respective duties in the operation of the aeroplane.

2.1.1.3 The pilot-in-command shall have responsibility of the operational control.

..."

CHAPTER 2.2 FLIGHT OPERATIONS

2.2.1 Operating facilities

"The pilot-in-command shall ensure that a flight will not be commended unless it has been ascertained by every reasonable means available that the ground and/or water facilities including communication facilities and navigation aids available and directly required on such flights, for the safe operation of the aeroplane, are adequate for the type of operation under which the flight is to be conducted ..."

2.2.2 Operational management

2.2.2.1 Operating instructions – general

"An aeroplane shall not be taxied on the movement area of an aerodrome unless the person at the controls is an appropriately qualified pilot or:

a) has been authorised by the owner ...;

b) is fully competent to taxi the aeroplane;

c) is qualified to use the radio if radio communications are required; and

d) has received instruction from a competent person in respect of aerodrome layout, and where appropriate, information on routes, signs, marking, lights, ATC signals and instructions, phraseology and procedures, and is able to conform to the operational standards required for safe aeroplane movement at the aerodrome."

2.2.5 Duties of pilot-in-command

"2.2.5.1 The pilot-in-command shall be responsible for the operation, safety and security of the aeroplane and the safety of all crew members, passengers and cargo on board.

..."

CHAPTER 2.6 AEROPLANE MAINTENANCE

2.6.1 Owner's maintenance responsibilities

"2.6.1.1 The owner of an aeroplane, or in case where it is leased, the lessee, shall ensure that, in accordance with procedures acceptable to the State of Registry [the State on whose register the aircraft is entered]:

a) the aeroplane is maintained in an airworthy condition;

b) the operational and emergency equipment necessary for an intended flight is serviceable; and

c) the certificate of airworthiness of the aeroplane remains valid.

2.6.1.2 The owner or the lessee shall not operate the aeroplane unless it is maintained and released to service under a system acceptable to the State of Registry.

..."

CHAPTER 2.7 AEROPLANE FLIGHT CREW

2.7.2 Qualifications

"2.7.2.1 The pilot-in-command shall:

a) ensure that each flight crew member holds a valid licence issued by the State of Registry...;

b) ensure that flight crew members are properly rated; and

c) be satisfied that flight crew members have maintained competency.

..."

CHAPTER 2.9 SECURITY

2.9.1 Security of aircraft

"The pilot-in-command shall be responsible for the security of the aircraft during its operation."

60. Section 3 of Part II, providing for the responsibility of an operator of a flight, is not relevant to the present case, because it applies to international general aviation operations with aeroplanes with a maximum certificated take-off mass exceeding 5,700 kg, or aeroplanes equipped with one or more turbojet engines.

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

61. The applicant complained that he had been unable to obtain compensation for harm suffered as a result of an aircraft accident from the various third parties involved (see paragraph 75 below) and that the State should bear responsibility for any shortcomings in the legal regulation of the safety of private flights. The Court, being the master of the characterisation to be given in law to the facts of the case, will consider this complaint under Article 2 of the Convention, the relevant part of which reads:

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

A. Admissibility

1. Applicability of Article 2 of the Convention

62. The parties did not contest the applicability of Article 2 of the Convention in the circumstances of the present case.

63. The Court has found Article 2 applicable in a number of cases where an individual has survived a serious incident in which the right to life or physical integrity was at stake (see, for example, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 146, ECHR 2008 (extracts) concerning mudslide as a threat to the applicant's physical integrity, and *Iliya Petrov v. Bulgaria*, no. 19202/03, §§ 54 and 70, 24 April 2012

concerning electrocution as an accident putting the applicant's life in imminent danger).

64. The particular circumstances of the present case (see paragraphs 8-10,12 above) leave no doubt as to the existence of a threat to the applicant's life or physical integrity such as to bring his complaints within the ambit of Article 2, which is therefore applicable to the present case. The Court will examine the question of the existence of a positive obligation to protect life under the merits of the applicant's substantive complaint under Article 2 of the Convention.

2. The parties' observations on admissibility

(a) Abuse of the right of application

65. The Government contended that the applicant had abused his right of application. Namely, he had misled the Court by stating that the injuries he had sustained as a result of the aircraft accident had prevented him from pursuing his career as a pilot. It appears that since July 2010 the applicant has been employed as a pilot in an airline company.

66. The applicant submitted that after the accident he had been unable to work in his profession for a long period; in his application to the Court he had not alleged that he had been permanently prevented from pursuing his career. He also explained that even though he had regained his ability to work as a pilot, owing to his persisting health problems, his pilot certificate imposed certain limitations on him, such as a ban on his operating an aircraft without another pilot (see paragraph 10 above).

(b) Non-exhaustion of domestic remedies

67. The Government argued that the applicant had not exhausted the following domestic remedies. Firstly, with regard to the procedural obligation to investigate, he could have complained to the supervising prosecutor regarding the actions and decision taken in the course of investigation within the criminal proceedings.

Secondly, at the time when the observations were made in the present case, the proceedings for civil damages against the third parties responsible had been ongoing before a domestic court. The Government contended that the existing legal framework (Article 92 of the Constitution and the relevant provisions of the Civil Law) and the domestic case-law (see paragraph 57 above) had provided for the possibility to claim D.K.'s civil liability (they referred to him as the aircraft's owner) and to request compensation for the accident of 16 August 2008. The above argument had already been accepted by the Court in several cases against Latvia where it had held that a decision to discontinue criminal proceedings owing to a lack of *corpus delicti* had no prejudicial effect in civil proceedings (see, for example, *Y. v. Latvia*, no. 61183/08, § 71, 21 October 2014).

Thirdly, the Government contended that, had the applicant believed that the State had not introduced particular regulations to ensure flight safety back in 2008, and that the failure to introduce such regulations had breached his human rights, he should have relied on Article 92 of the Constitution and instituted proceedings before a court of general jurisdiction (they referred to cases SKC-233/2010 and SKA-726/2012, see paragraph 56 above).

68. The applicant disagreed and contended that he had had no effective remedies.

3. The Court's assessment

(a) Abuse of the right of application

69. The Court reiterates that, under this provision, among other reasons, an application may be rejected as an abuse of the right of individual application if new, important developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with case-law cited therein). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (ibid.). In the present case, the available information provided by the applicant in his observations (see paragraph 66 above) does not indicate that he intended to mislead the Court.

70. Accordingly, the Court dismisses the Government's objection.

(b) Non-exhaustion of domestic remedies

71. In relation to the Government's first argument that, with regard to the procedural obligation to investigate, the applicant could have complained to the supervising prosecutor regarding the actions and decisions taken in the course of the investigation within the criminal proceedings, the Court notes that the case was subsequently examined by the domestic courts. The applicant had the possibility to lodge any complaints during the trial, and he pursued them to the highest level of domestic courts by lodging an appeal on points of law (see paragraph 28 above). Moreover, the applicant's complaint in the present case pertains to the possibility of obtaining compensation from a third party and alleged shortcomings in the legal regulation of the safety of private flights (see paragraph 61 above). In view of these two considerations, the Court dismisses the non-exhaustion argument submitted by the Government.

72. With regard to the Government's next argument that the civil proceedings had been ongoing at the time the parties in the present case had exchanged observations, the Court reiterates that the requirement for an applicant to exhaust domestic remedies is normally determined with

reference to the date on which an application is lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). However, the Court also accepts that the last stage of such remedies may be reached after the lodging of the application but before the Court determines the issue of admissibility (see *Karoussiotis v. Portugal*, no. 23205/08, § 57, ECHR 2011 (extracts)). The applicant lodged his application with the Court on 9 June 2014, while the civil proceedings were ongoing before the appellate court, and his case was finally determined at domestic level on 5 May 2016, when the Senate of the Supreme Court dismissed his appeal on points of law in those civil proceedings (see paragraph 39 above). In the circumstances, there are no grounds for dismissing the applicant's complaint as premature. Consequently, the Court dismisses the Government's argument in that regard.

73. Lastly, the Government also argued non-exhaustion with regard to there being a possibility for the applicant to institute civil proceedings under Article 92 of the Constitution for the State's failure to introduce particular regulations to ensure flight safety. The Court observes that, out of the five examples of domestic practice concerning claims against the State in compensation proceedings (see paragraphs 56-57 above), only one of them pertained specifically to legal regulation (case SKA-726/2012). The Court is not persuaded that that case – which concerned an infringement of rights allegedly caused by an existing legal provision – could attest to the effectiveness of the proposed remedy in a different context, such as that of the present case, which pertains to the possibility of obtaining compensation in the context of alleged lacunae in the legal regulation of the safety of private flights. Moreover, the Government have not indicated against which public body such civil proceedings could be directed or even what specific acts or failure to act could be examined in such proceedings, in particular, in view of the Government's argument that there was no legal obligation on the State to introduce more extensive regulation (see paragraph 77 below). The Court therefore dismisses the Government's argument about non-exhaustion of domestic remedies.

(c) Conclusion

74. The Court considers that the complaint under Article 2 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' observations

75. In essence, the applicant upheld his initial submissions. The applicant alleged that "the management of KD.C." had not verified the pilot's qualifications before the flight. On the one hand, the applicant invoked several provisions of the domestic law and submitted that they contained a sufficient legal basis for holding at least the owner of the aircraft (referring to KD.C.) and its legal representative (referring to D.K.) liable for an accident (he referred to sections 97 and 98 of the Law on Aviation and section 169 of the Commercial Law), but they had not been held liable in this case. On the other hand, the applicant contended that if the Government alleged that the legislation did not require the owner of an aircraft to carry out any checks on the qualifications of their pilots, then the Government should bear responsibility for the shortcomings in the regulatory framework as regards the safety of private flights. In addition, he referred to the audit carried out by the European Commission, which concluded that the Latvian authorities had not introduced unified requirements in Latvian legislation with regard to the employees of aviation companies.

76. The Government contended that, at the moment of accident, the domestic legislation had contained comprehensive and sufficient safeguards for ensuring flight safety, and the legislative framework had been capable of preventing the accident of 16 August 2008. Namely, sections 33-34 and 36-38 of the Law on Aviation had set out the rights and obligations of an aircraft pilot with regard to ensuring safety during a flight (see paragraphs 46-52 above). A similar regulation had been set out in the Chicago Convention. The Government referred to the investigation carried out by the TAIIB, which had found that the primary cause of the accident was the misconduct of the pilot, who had disregarded the legislative provisions and operated the aircraft without the necessary qualifications.

77. In reply to the applicant's argument that the State had failed to require the aircraft owner to verify the pilot's qualifications prior to the flight, the Government contended that, at the material time, no EU regulation or legislation in individual member States of the EU had provided for the duty of an aircraft owner to carry out such a check, and therefore there had been no duty on the State to introduce such a regulation. The Government referred to the information provided by the Civil Aviation Agency (see paragraph 40 above), and submitted that the applicable legislative acts at the material time had provided for an aircraft owner's responsibility for maintaining the airworthiness of an aircraft, while operational safety had had to be ensured by the pilot-in-command. Thus, an owner had been responsible for technical maintenance, but the responsibility of ensuring a safe flight had only rested on a pilot. At international level,

responsibility of an aircraft owner had only been introduced in 2010. Therefore, the recommendation which the TAIIB had addressed to the Civil Aviation Agency (see paragraph 16 above) following the accident could not be interpreted as creating an assumption that the State had failed to perform its duties or that it should be at fault for the accident. In this connection, the Government added that not every risk to life could entail for the authorities a Convention requirement to take operational measures to prevent that risk (they referred to *İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, §§ 36-37, 10 April 2012).

The documents drawn up the by Civil Aviation Agency upon a request by the Government clarified that the audit carried out by the European Commission had concerned commercial flights and not private flights, and that the amendments to the Law of Aviation in April 2013 had not been related to the accident in question (see paragraph 55 above). They also explained that section 3 of Part II of Annex 6 of the Chicago Convention applied only to aeroplanes with a mass exceeding 5,700 kg (see also paragraph 60 above).

2. The Court's assessment

(a) General principles

78. Article 2 does not only concern deaths resulting from the use of force by agents of the State. In the first sentence of its first paragraph it places a positive obligation on the Contracting States to take appropriate steps to safeguard the lives of those within their jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). Such a positive obligation has been found to arise in a range of different contexts examined by the Court. For example, in relation to ensuring safety on board a ship (see *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2001) or on building sites (see *Pereira Henriques and Others v. Luxembourg* (dec.), no. 60255/00, 26 August 2003). In certain circumstances, a State may have positive obligations to protect individuals from a risk to their lives resulting from their own actions or behaviour (see *Bone v. France* (dec.), no. 69869/01, 1 March 2005, and *Kalender v. Turkey*, no. 4314/02, §§ 42-50, 15 December 2009).

79. The above list of different contexts is not exhaustive. Indeed, in its judgment in *Öneryıldız* the Grand Chamber observed that the positive obligation under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life might be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-X).

80. The obligation on the part of a State to safeguard the lives of those within its jurisdiction has been interpreted so as to include a positive obligation to take regulatory measures as appropriate, measures which must be geared to the special features of the activity in question, with particular

regard to the level of the potential risk to human lives involved. The regulatory measures in question must govern the licensing, setting up, operation, security and supervision of the activity, and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. Taking into account the technical aspects of the activity in question, the relevant regulations must also provide for appropriate procedures for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (see *Öneryıldız*, cited above, §§ 89-90, and *Budayeva and Others*, cited above, §§ 131-32).

81. That said, the Court has also held in many cases that the positive obligation under Article 2 is to be interpreted in such a way as to not impose an excessive burden on the authorities, particularly bearing in mind the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Ciechońska v. Poland*, no. 19776/04, § 64, 14 June 2011); this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult social and technical spheres such as the one in issue in the instant case (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 100, ECHR 2003-VIII as concerns the regulation of excessive aircraft noise and the means of redress to be provided to the individual within the domestic legal system).

82. The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's margin of appreciation. There are a number of avenues for ensuring Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means (see *İlbeyi Kemaloğlu and Meriye Kemaloğlu*, cited above, § 37, and *Ciechońska*, cited above, § 65).

83. The Court further notes that the State's duty to safeguard the right to life not only involves the taking of reasonable measures to ensure the safety of individuals as necessary; in the event of serious injury or death, this duty must also be considered to require the setting up of an effective independent judicial system so as to secure legal means capable of establishing the facts, holding those at fault accountable, and providing the victim with appropriate redress (see *Byrzykowski v. Poland*, no. 11562/05, §§ 104-18, 27 June 2006, and *Dodov v. Bulgaria*, no. 59548/00, § 83, 17 January 2008). If the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case, and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII, and *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I).

(b) Application in the present case

84. In the present case, the threat to the applicant's life in the form of life-threatening injuries arose as a result of an aircraft accident when an insufficiently qualified pilot operated a private aircraft. The applicant's complaint pertains to the possibility of obtaining compensation from a third party against the background of the allegedly insufficient legal regulation of the safety of private flights. Therefore, the Court will start its assessment with a focus on the legal regulation.

(i) Substantive aspect

85. The Court notes that the applicant did not specifically complain about the licensing, setting up and operation of private flights in Latvia. He instead took issue with the legal regulation of the safety of private flights (see paragraphs 61 and 75 above). The Court will, accordingly, examine international, European and domestic legal regulation in that regard.

86. According to the Government, at the material time, the applicable international and European regulatory framework in the field of aviation safety did not require aircraft owners to verify whether a pilot had the appropriate qualifications to operate an aircraft (see paragraph 77 above).

87. In this connection, the Court observes that the international instrument in the area of flight safety, that is the Chicago Convention, which applies to international civil aviation, set out the minimum requirements in the area of general aviation (see paragraphs 58-59 above). Since the parties have referred to the Chicago Convention and the domestic courts have analysed it in the domestic proceedings, the Court will also examine the obligations arising thereof, bearing in mind that the particular flight in the present case pertained to a domestic rather than international domain. The Court cannot discern from the Chicago Convention an obligation to provide in principle for the responsibility of an aircraft owner in the area of private flights at the material time. Indeed, as established by the domestic courts, prior to 18 November 2010 the Chicago Convention only provided for the responsibility of a pilot (see paragraphs 30 and 36 above). The Latvian Civil Aviation Agency also confirmed that the applicable European standards provided for a pilot's responsibility for safety during a flight and an aircraft owner's responsibility for ensuring that the aircraft was maintained (see paragraph 40 above). Therefore, the legal regulation of the safety of private flights in the respondent State did not fall short of the international or European standards in this regard at the material time. In view of the wide margin of appreciation afforded to the contracting States in such a difficult technical sphere as aviation safety (see paragraph 81 above), the Court considers that the Convention does not go as far as to require that the States introduce higher standards than those recognised under international or European law. That being said, member States may choose to provide a higher standard of protection than that provided for in

international or European law. Accordingly, the Court will next examine the scope of the legislative framework in the field of aviation safety for private flights in Latvia.

88. At the material time, the principal legislative act in the field of aviation safety in Latvia was the Law on Aviation. It set out the rights and obligations of an aircraft's pilot in relation to ensuring safety during a flight (see paragraphs 51-52 above) and, *inter alia*, prohibited a pilot from operating an aircraft without holding a valid licence bearing an appropriate qualification stamp (see paragraph 49 above). At the material time, the responsibility under domestic law for ensuring that an aircraft was operated by a sufficiently qualified pilot lay with the pilot himself (ibid.).

89. As can be seen from the statements of aviation specialists during the domestic proceedings, at the material time the responsibility of aircraft owners in Latvia was regulated differently in relation to general aviation, including private flights, and commercial flights. In particular, in relation to private flights, there was no requirement for an aircraft owner to provide for a procedure for handing over an aircraft to a pilot, in contrast with commercial flights (see paragraphs 20-21 above). The applicant, who held a pilot licence himself, must have been aware of those differences in the legal framework, as one of a pilot's duties is to ensure flight safety in accordance with the law (see paragraph 51 above). The Court considers that the differences in safety levels between commercial and general aviation as established in Latvia at the material time do not as such raise an issue under the Convention, provided that the State complies with its positive obligations.

90. In view of the wide margin of appreciation afforded to the contracting States in such a difficult technical sphere as aviation safety, the contracting States are not required under the Convention to regulate the safety levels of different types of flights in an identical manner (see paragraphs 81-82 above). The Court notes that the domestic regulation at the material time did not fall below the requirements of international and European law as it prescribed in clear and detailed terms a pilot's responsibility for flight safety in the circumstances at issue. The Court concludes that the respondent State did not overstep its margin of appreciation by not providing a more stringent legislative framework than that incorporated in international or European standards at the relevant time.

Accordingly, the State has complied with its positive obligations in this regard. The Court finds that there has been no violation of the substantive aspect of Article 2 of the Convention.

(ii) Procedural aspect

91. The Court must take a comprehensive look at the procedures that were available to the applicant to establish the circumstances of the aircraft accident, determine those at fault, and provide redress. There were three

such procedures: the investigation by the relevant authority, the criminal investigation opened by the prosecution authorities and the civil proceedings which the applicant brought against the various third parties involved. The question is whether in the concrete circumstances any of those satisfied the State's obligation under Article 2 of providing an effective judicial system.

92. Firstly, the relevant authority immediately went to the scene of accident and carried out an investigation, the results of which revealed that the primary cause of the accident had been "human error" on the part of the pilot, who had had insufficient skills and experience. There had also been several contributing factors, such as bad weather conditions. The authority also made a number of recommendations concerning flight safety (see paragraphs 11-16 above).

93. Secondly, criminal proceedings were instituted promptly and evidence was gathered. However, the pilot could not be held responsible for his failure to ensure flight safety because he had died in the accident, and the criminal proceedings in that regard were terminated owing to his death (see paragraph 19 above). D.K. was prosecuted for negligence and violations of air traffic safety or operation regulations within the same criminal proceedings, but he was eventually acquitted because of the lack of elements of a crime (see paragraphs 22-31 above). The criminal proceedings were not overly lengthy given the complexity of the case.

Although the criminal proceedings by themselves would be capable of meeting the procedural obligation to ensure effective judicial system in the circumstances (see *Öneryıldız*, cited above, § 93, and *Budayeva and Others*, cited above, § 140), the applicant in the present case took issue with one particular aspect, namely the fact that he had been unable to obtain compensation from a third party for damage suffered as a result of the aircraft accident. It is, therefore, necessary to proceed with the examination of the effectiveness of the separate civil proceedings brought by the applicant.

94. Thirdly, the applicant instituted civil proceedings against three respondents – KD.C. (the company which owned the aircraft), D.K. (the sole owner and board member of the company), and the insurance company. He could institute such proceedings while the criminal investigation was still ongoing and the civil proceedings were not stayed. While D.K. could not be held liable for the accident under the various provisions relied on by the applicant (see paragraphs 36-37 above), the situation under the domestic law does not appear to be clear cut in respect of KD.C.'s civil responsibility as the owner of the aircraft. The Court observes that, in the course of the criminal proceedings, the domestic authorities had suggested that the applicant sue the owner of the aircraft for damages (see paragraph 27 above). The civil courts, however, terminated the subsequent civil proceedings concerning the aircraft's owner because it had ceased to exist

and there was no legal successor, therefore leaving open the question of whether or not the owner, had it not ceased to exist, could have been held responsible under the domestic law (see paragraph 35 above). Lastly, the claim against the insurance company was dismissed because the pilot had not had a permit to operate the aircraft in question (see paragraph 38 above).

95. Even though the circumstances of the aircraft accident and those who had been at fault were duly established following the investigation by the relevant authority and the ensuing criminal and civil proceedings, the applicant could not obtain compensation owing to a variety of factors specific to the case. Firstly, the pilot had died in the accident. Secondly, the company which had owned the aircraft had ceased to exist. Thirdly, the insurance contract did not cover situations where an aircraft was operated by an insufficiently qualified pilot. It is therefore that the State cannot be blamed for the applicant's unsuccessful compensation claim, because mechanisms had been put in place for a person to claim compensation from the various third parties involved in an accident.

The Court concludes that the legal system as a whole, faced with an arguable case of a negligent act causing death, provided an adequate and timely response consonant with the State's obligation under Article 2 of the Convention to provide an effective judicial system.

Accordingly, the Court finds that there has been no violation of the procedural aspect of Article 2 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that there has been no violation of the substantive aspect of Article 2 of the Convention;

3. *Holds*, unanimously, that there has been no violation of the procedural aspect of Article 2 of the Convention.

Done in English, and notified in writing on 8 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Mits is annexed to this judgment.

A.N.
C.W.

PARTLY DISSENTING OPINION OF JUDGE MITS

Regrettably, I cannot agree with my colleagues in so far as I think that there has been a violation of the substantive aspect of Article 2 of the Convention. When someone wishes to hire a car, he or she is usually required to produce a valid driving licence. If someone wishes to take a private aircraft to fly, he or she does not need to produce a valid pilot's licence. Is it adequate from the point of view of the State's positive obligations under Article 2 of the Convention in view of such an inherently dangerous activity as operating an aircraft?

Applicable principles

1. Without prejudice to the general principles listed in paragraphs 78-83 of the judgment, the following principles should have formed the basis for the examination of the State's positive obligations under the substantive limb of Article 2 of the Convention in the present case. First, there is a duty to put in place a legislative and administrative framework providing for effective deterrence against threats to the right to life (see *Iliya Petrov v. Bulgaria*, no. 19202/03, § 55, 24 April 2012).

2. Second, in certain areas, the potential for life-threatening accidents that may impact not only on professionals carrying out specific activities, but also the public at large, imposes on the State more compelling responsibility, in terms of strict control mechanisms, towards members of the public who have to live with the real dangers posed by the relevant dangerous activity (see, *mutatis mutandis*, *Cevrioğlu v. Turkey*, no. 69546/12, § 67, 4 October 2016).

3. Third, the choice of means for ensuring the positive obligations under Article 2 of the Convention in principle falls within the State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided for under domestic law, it may still fulfil its positive duty by other means (see *Ilbey Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 37, 10 April 2012).

Application of the principles in the present case

4. As is noted in paragraph 88 of the judgment, domestic law at the material time set out the rights and obligations of an aircraft pilot in relation to ensuring safety during a flight and prohibited a pilot from operating an aircraft without holding a valid licence. The sole responsibility for ensuring that an aircraft was operated by a sufficiently qualified pilot lay with the pilot himself. Neither the owner of an aircraft nor any other authority was

obliged to verify that a pilot had the proper qualifications prior to handing over the aircraft to him (see paragraphs 31 and 33 of the judgment).

5. It is true that no obligation with regard to the responsibility of the aircraft owner or other authority can be discerned from the Chicago Convention, which anyway sets out minimum obligations in the area of international general aviation. However, compliance with the obligations under the European Convention on Human Rights does not depend on the existence of such an obligation under another international instrument.

6. The responsibility of aircraft owners in Latvia was regulated differently for general aviation, including private flights, compared with commercial flights (see paragraph 21 of the judgment). It must be acknowledged that such a difference in safety levels between commercial and general aviation *per se* does not raise an issue under the Convention (it is also accepted by the Chicago Convention, see paragraph 59 of the judgment). However, in view of the inherent dangerousness related to the operation of an aircraft, both types of activities – private and commercial flights – bear comparable risks of potentially serious consequences in case of an accident caused by unqualified crew members. Because of the potentially serious consequences – life-threatening accidents could have an impact upon not only the professionals involved (pilots and crew members) but also the public at large – the State has a compelling responsibility under the Convention to ensure control mechanisms in the area of private flights (see paragraph 2 above).

7. In view of its margin of appreciation (see paragraph 3 above), the State is free to choose the means to ensure compliance with its positive obligations under Article 2 of the Convention. It may, for example, choose to enact legislation extending the responsibility of owners (as was done after the accident), to oblige the relevant authorities to carry out certification of operators, including owners, that would include producing a list of pilots authorised to operate flights, to introduce more specific control mechanisms (e.g. inspections) or to take other appropriate action.

8. In the present case the Civil Aviation Agency, which was tasked with supervising the use of airspace in Latvia and civil aviation operations, was not entitled to carry out certification of private flight operators. The TAIIB acknowledged that in general aviation, unlike in commercial aviation, there were no established regulations regarding an aircraft owner's responsibility in relation to a specific flight and a pilot's skills, and recommended that the Civil Aviation Agency impose a duty on aircraft operators, including aircraft owners, to establish a procedure for handing over aircraft which would prevent pilots from operating an aircraft without a licence (see paragraphs 21 and 16 of the judgment). However, the Civil Aviation Agency cannot establish such a procedure if there is no underlying obligation imposed by the competent institution on the aircraft owner. After the accident, such obligation was introduced by legislative amendments

providing for the responsibility of aircraft owners (see paragraph 55 of the judgment).

9. It follows that at the relevant time there existed a legislative and administrative framework aimed at preventing threats to the right to life. However, this regulatory framework itself was not sufficient to comply with the positive obligations under Article 2 of the Convention since the State was also under an obligation to ensure its effective functioning (see paragraph 1 above, and *Cevrioğlu v. Turkey*, cited above, § 67). There was no control mechanism at all. The fact that the applicant was unable to obtain compensation for the damage sustained as a result of the accident, for which the sole responsibility lay with the unqualified pilot who had died, underlines the overall inefficacy of the legislative and administrative framework in the area of private flights.

Conclusion

10. In view of the fact that the operating of private planes is an inherently dangerous activity triggering the strict responsibility of the State towards members of the public, and despite there being a margin of appreciation as to the means of ensuring compliance with its positive obligations, the existing regulatory framework at the relevant time did not provide for effective deterrence against the threats to the right to life. Consequently, it is my opinion that there has been a violation of the substantive limb of Article 2 of the Convention.