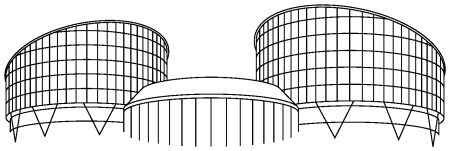

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TARANEKS v. LATVIA

(Application no. 3082/06)

JUDGMENT

STRASBOURG

2 December 2014

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 Taraneks v. Latvia,

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

George Nicolaou, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Paul Mahoney, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 13 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 3082/06) 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 Aivars Taraneks ("the applicant"), on 14 December 2005.

2. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and subsequently Mrs K. Līce.

3. The applicant alleged, in particular, that the criminal trial against him had been unfair because he had been the victim of police incitement and because his conviction had been based on evidence obtained improperly. He further complained that his right to respect for his private life had been violated by the recording of his conversations and search of his office.

4. On 9 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Salaspils.

6. The applicant, who had been working as a bailiff (*tiesu izpildītājs*) since 1996, was arrested and eventually convicted of corruption offences. He was sentenced to five years' imprisonment. The events leading up to the

final decision adopted by the Senate of the Supreme Court on 17 March 2006 unfolded as follows.

A. The pre-trial investigation

7. On 9 November 2001, following a request by a private company, R.L., for its claim to be secured in a commercial dispute with another private company, M., a court issued an order for M.'s moveable property to be seized. On 15 November 2001 the director of R.L., O.V., submitted a writ of execution of the said decision to the Riga City Vidzeme District Bailiffs' Office (*Rigas pilsētas Vidzemes priekšpilsētas Tiesu izpildītāju kantoris*). The applicant was the senior bailiff of that office, but the specific matter was entrusted to another bailiff of the same office, G.P. On 19 November 2001 G.P. seized M.'s property, which chiefly consisted of fur coats, transported it to another location, and entrusted its storage to O.V. On the same day representatives of M. contacted the applicant, asking him to ensure that the coats were stored in proper conditions, to prevent any damage. The applicant alleged that he then decided to entrust the storage of the seized property to an independent third party, whose costs would have to be reimbursed by R.L. Accordingly, the applicant directed his secretary to prepare documentation for the request of an advance payment from R.L. for the expected costs of the storage. The next day the applicant signed a document requesting an advance payment of 500 Latvian lati (LVL), which he considered would be sufficient to cover the costs of transporting the fur coats to an independent storage facility and obtaining an estimate of the value of the coats from an expert.

8. On 28 November 2001 the order of 9 November for the seizure of the property was quashed and a court ordered the immediate return of the seized property to M. On 5 December 2001 the bailiffs' office sent a letter to O.V., informing him that the seized property must be returned to M. On 7 December 2001 R.L. lodged an ancillary complaint against the decision of 28 November. Under Latvian law as it stood at the relevant time, the lodging of such a complaint had suspensive effect.

9. It appears that on 14 December 2001 O.V. submitted a complaint to the police, alleging that the applicant and G.P. were asking him to pay a bribe of LVL 500, failing which the seized property would be returned to M. in accordance with the decision of 28 November. On the same day a recording was made of a telephone conversation between S.Ž. (a lawyer for R.L.) and G.P. The relevant part of the conversation ran as follows:

"**S.Ž.** Listen, [G.P.], [O.V.] called me.

G.P. Yes.

S.Ž. Well, he told me that he has received some kind of a letter.

G.P. Yes, of course, from me, yes.

S.Ž. Well, and what does he have to do now?

G.P. He has to return the fur coats to [M.], there is a court decision, didn't you know?

S.Ž. But perhaps we could settle this matter in some other way?

G.P. Well, not me, I have a court decision that he has to return this property, it says "return". Do you understand? And I cannot do anything else about that.

S.Ž. But can't I talk to [the applicant]?

G.P. You can talk. Call [the applicant]."

10. On the same day a recording was made of a telephone conversation between the applicant and S.Ž. Also on the same day O.V. and S.Ž. visited the applicant in his office. Their conversation was secretly recorded.

11. On 17 December 2001 O.V. went to the bailiffs' office to receive a document confirming that the decision of 28 November had been suspended pending examination of an ancillary complaint lodged by R.L.

12. It appears that on 18 December 2001 a prosecutor from the Office of the Prosecutor General approved an investigative test (*operatīvais eksperiments*) to look into suspicions against the applicant and G.P.

13. On 18 December 2001 O.V. went to the bailiffs' office. The applicant alleged that O.V. refused to accept from G.P. a copy of the document which had been prepared the previous day, and instead insisted on speaking to the applicant, who was not in the office at that time. When the applicant arrived at the office O.V.'s conversation with him was secretly recorded. The relevant part of it ran as follows:

"**O.V.** I have money.

The applicant How much is there?

O.V. Well, 500, as we agreed.

A. Yes, there was [something] for [G.P.], how much was there?

O.V. I will ask you [to do it], you [do it] yourself, I don't want to.

A. Yes, fine.

O.V. You yourself divide and count please, how much is there.

A. Well, OK.

O.V. No, no, wait, I need [the document stamped with a seal].

A. I'll go, I'll go, I'll go, a seal. [inaudible], yes?

O.V. Yes, yes.

A. [leaves] Who has the seal? (*talks to colleagues*)

O.V. Listen ... you count [the money], so that well, just in case, you divide it yourself, I don't know how much will be given to [G.P.].

A. OK, yes, all right, yes.

O.V. Do you think everything is OK?

A. Yes ..."

14. The applicant indicated that during the conversation O.V. had tried to hand him the money, and later placed it on his desk. He also stated that he assumed that O.V. must have placed the money under some books on his desk when he left the office to stamp the prepared document, as the money was not on the desk when he returned to the office.

15. After O.V. left, the applicant was detained by the police. The applicant stated that he did not provide any explanation of what had happened to the money, since he thought O.V. had taken it with him to pay G.P. He was then handcuffed and traces of a luminescent substance which had been used to mark the money offered by O.V. were observed on his hands under a special light.

16. After some time the police officers told the applicant that they had received authorisation to search his office. The case file contains a copy of a decision (dated 18 December 2001) to search the applicant's office. The decision is on a standard pre-typed form (the top right-hand corner contains an indication that it is "Form 33") with the blanks filled in typescript or by hand. One of the pre-typed fields is to be completed to indicate which court should subsequently be informed of the decision authorising a search. In the top left corner of the decision is a signed prosecutor's resolution authorising the search. The resolution is dated 18 November 2001. The search was filmed. During the search LVL 500 was found on the applicant's desk under some books.

17. On 19 December 2001 the police informed a judge of the Riga City Centre District Court that a search had been authorised and carried out.

18. On 29 January 2002 the applicant was charged with extortion carried out by an organised group and with wilful abuse of official position. The criminal proceedings that had been initiated against G.P. were terminated on 15 February 2002. In April 2002 the applicant's criminal case was transferred to the first-instance court (the Riga Regional Court).

B. Trial

19. The Riga Regional Court delivered its judgment on 18 March 2005. The court found the applicant guilty. It held that on 20 November 2001 the applicant had requested a bribe from O.V. to allow the fur coats belonging to M. to be kept in O.V.'s possession. The bribe was held to have been requested as an advance payment of non-existent storage costs.

20. When testifying in court the applicant indicated that the payment requested from O.V. had been entirely legitimate. He admitted that the conversations that had been surreptitiously recorded had indeed taken place. However, the applicant insisted that the recording had been tampered with and that the portions of the conversations attesting to the legitimacy of the requested payment had been edited out. In respect of the day when the

alleged bribe had been paid, he indicated that he had not been in the office when O.V. had arrived. Nevertheless, G.P. had telephoned him and indicated that O.V. was in the office, where he was refusing to accept a copy of the decision suspending the execution of the decision of 28 November 2001 and insisted on talking to the applicant in person. When the applicant arrived at the office he had a conversation with O.V. During that conversation the applicant inquired whether O.V. had made the required advance payment. In response, O.V. produced some banknotes and placed them on the applicant's desk. The applicant explained that the money had to be paid to G.P., and left O.V. in his office while he went to ask his colleagues for a seal. When the applicant returned to the office he saw that the money had disappeared from the desk and assumed that O.V. had taken it back. The applicant insisted that he had not touched the banknotes in question and said he could only assume that the special dye had appeared on his hands "in some other way".

21. The first-instance court did not give credence to the applicant's testimony. It based his conviction on statements by the victim O.V. and ten witnesses. The relevant parts of their statements were as follows. O.V. stated that he had informed the police about the applicant's attempt to extort a bribe because he did not have enough money to pay that bribe. The police had then performed various undercover operations, specifically the recording of the conversations between the applicant and O.V. and his lawyer S.Ž. On 18 December 2001 O.V. had received from the police LVL 500 in banknotes which had previously been marked. He also had an audio recording device. When O.V. arrived at the office, the applicant was not there. He arrived soon afterwards and went into his office with O.V. According to O.V.'s statement, the applicant took hold of the money, but did not count it, and instead placed it between some books on his desk.

22. S.Ž. testified as a witness and stated that she had been present at meetings when the applicant had directly requested payment of a bribe. After O.V. had reported the attempted extortion of a bribe to the police, the police had performed various undercover operations.

23. A police officer, R.B., testified that O.V. had complained to the police that a bribe had been extorted. In order to check that information and obtain evidence, telephone conversations and conversations between people were recorded. R.B. had handed over the recordings to the officer in charge of the investigation (*izziņas izdarītājs*). The content of the recordings had not been edited. In the course of an investigative test specially marked banknotes had been given to O.V., who had handed them to the applicant. Two other police officers including V.B., who had been in charge of the investigation, also denied that the recordings of the conversations had been edited.

24. In her witness statement G.P. stated that when O.V. had arrived at the bailiffs' office on 18 December 2001 the applicant had initially

instructed her by telephone to give O.V. a copy of the decision suspending execution of the decision of 28 November 2001 and to receive a payment of LVL 500 from him. However, O.V. had wanted to see the applicant in person and had waited for him to arrive. G.P. considered that there was no legitimate reason to request a payment from R.L., since no costs had actually been incurred or were expected to be incurred in connection with the storage of M.'s property.

25. The first-instance court also took into account a number of documents. One of the documents mentioned in the judgment was

> "a draft of a decision ... [which] attests that [the applicant], on 19 November 2001, prepared a notification for [R.L.], indicating that the writ would not be executed unless a payment of LVL 500 was made to the bank account of the Riga City Vidzeme District Bailiffs' Office [to cover] the costs of the storage of the seized property".

26. The first-instance court also considered a number of procedural documents related to the recording, analysing and transcribing of the applicant's conversations, the marking of the banknotes issued to O.V., the detection of traces of the special dye on the applicant's hands, and the search of his office. The recorded conversations were summarised in the judgment by stating that the applicant had requested a payment of LVL 500 to ensure that O.V. could continue to store the seized property. An expert had established that the recordings of the conversations had not been edited.

27. Lastly, the first-instance court concluded that the evidence presented had been "gathered, confirmed [*nostiprināti*] and verified in accordance with the Code of Criminal Procedure", and also that it was sufficient. It did note, however, that during the pre-trial investigation certain procedural documents had been drafted and procedural steps taken which had "various imperfections". Nevertheless, the court found that, taking into account the body of evidence presented to it as a whole, these "imperfections" became irrelevant.

28. Taking into account the evidence presented to it, the court decided to amend the charges brought against the applicant. The charge of extorting a bribe was accordingly changed to that of demanding a bribe, which was the offence of which the applicant was then found guilty. The sentence imposed consisted of five years' imprisonment with confiscation of property.

29. On 21 March 2005 the applicant appealed against the judgment of the first-instance court. He emphasised that on 17 and 18 December 2001 it had been O.V. who had insisted on meeting him in person in order to obtain a decision suspending execution. The applicant firstly noted that there were no practical or legal reasons for O.V. to demand such a decision, since the suspension of execution of decisions was an automatic corollary to the lodging of an ancillary complaint and did not require a separate decision. He also stated that it was noteworthy that O.V. could have obtained the decision from G.P. on two occasions, but instead had insisted on meeting

the applicant in person. Taking those considerations into account, the applicant concluded that the only motivation for O.V.'s actions was the instructions he had received from the police. The applicant also complained about the first-instance court's refusal to request the production of documents pertaining to the investigative measures taken in his case (*operatīvās darbības lieta*). He asked the appeal court to obtain the relevant documents from the police. In respect of the recordings of his conversations, he indicated that the unavailability of proper documentation made it impossible to determine by whom, when and where the conversations had been recorded. Accordingly, the applicant argued that the recordings should not be admissible in evidence. The applicant also disputed the legality of the search of his office, stating that his signature confirming that he had read the decision authorising the search had been forged.

30. The Supreme Court adopted its judgment on 5 January 2006. It quashed the applicant's conviction for abuse of an official position but upheld the conviction for demanding a bribe. The sanction remained unchanged.

31. Before and during the appeal hearing the applicant and his counsel raised a number of issues pertaining to the legality and admissibility of evidence. As to the plea of incitement the appeal court held that "the testimony of [the applicant] that he was subjected to incitement (*pret viņu veikta provokācija*) ... is not confirmed by anything and is patent speculation". As to the evidence used by the first-instance court more generally, the appeal court pointed out that "the examination and assessment of the evidence in the first-instance court was carried out without [*sic*] observing the requirements of the [Code of Criminal Procedure] while assessing the relevance and admissibility of the evidence". It was further noted that although the first-instance court had established that certain errors had been committed while procedural documents were drafted and other procedural steps taken, the Supreme Court considered that those errors did not render the evidence in question inadmissible, since the information supported by that evidence was reliable and confirmed by other facts of the case. The appeal court concluded that the procedural defects identified by the first-instance court had not caused that court to adopt an unlawful and unfounded judgment.

32. More specifically, with reference to the recordings of the applicant's conversations the appeal court examined the police documentation concerning the investigative steps taken, and established the following. On 14 December 2001 the police had issued S.Ž. and O.V. with a dictaphone to record telephone conversations. On 17 December the initiation of an investigative operation was approved (*tika apstiprināta operatīvās izstrādes ierosināšana*). On 18 December an investigative test was approved in accordance with section 15(3) of the Law on Operational Activities. This was carried out in conformity with the legislation in force at that time. The

appeal court further considered that the audio recording of the conversations of 14 December (thus before the operative investigation was initiated) was admissible as evidence, since the recording had been requested by O.V. and S.Ž. in accordance with section 7(6) of the Law on Operational Activities. Similarly the appeal court upheld the first-instance court's conclusion that the search of the applicant's office on 18 December 2001 had been authorised by a prosecutor and conducted legally. It emphasised that neither the applicant nor his counsel nor other persons present at the time of the search had expressed any objections.

33. On 9 February 2006 the applicant lodged an appeal on points of law, which he amended on 14 February. In it he focused, *inter alia*, on arguments that his conviction had been based on illegally obtained and inadmissible evidence. More specifically he argued that:

- the courts had relied on evidence which was obtained on 14 December 2001, namely before a prosecutor had approved an investigative test;
- the police had used undercover agents, who had offered him a bribe. This activity had not been supervised in any way;
- section 7(6) of the Law on Operational Activities could not serve as a legal basis for recording the conversations of 14 December 2001;
- the courts had not assessed whether O.V. and S.Ž. had incited criminal activity. The applicant argued that the incitement and the courts' refusal to review this issue violated Article 6 § 1 of the Convention;
- the search itself had been illegal, since it had been authorised by a public prosecutor and not by a judge; public prosecutors could authorise searches only in urgent cases. The courts had not assessed whether the specific occasion created such urgency.

34. The applicant's counsel also submitted an appeal on points of law. This asserted, among other things, that the search of the applicant's office had been conducted illegally, since it had not been authorised by a judge.

35. The final decision in the applicant's criminal case was adopted by the Senate of the Supreme Court on 17 March 2006. The Senate dismissed the appeals submitted by the applicant and his counsel. As regards the admissibility of the evidence, the Senate held as follows:

> "The conversations of [O.V.] and [S.Ž.] were not recorded as part of an undercover operation. The conversations recorded by [O.V. and S.Ž.] themselves and not by a body performing operational activities [*nevis operatīvās darbības subjekts*], which is why Article 176^1 of the Code of Criminal Procedure and the Law on Operational Activities are not applicable to the recordings. Accordingly the [applicant's] complaint that [the evidence is inadmissible owing to a violation of human rights] is unfounded.
>
> As regards the search, from the materials in the case file ... it appears that it was carried out after authorisation by a prosecutor, in conformity with the requirements of the third paragraph of Article 168 of the Code of Criminal Procedure. [A] judge was

[subsequently] informed in accordance with the procedure and within the time-limit established by law; accordingly, there is no reason to declare this procedural step unlawful."

C. Complaints outside the context of criminal proceedings

36. On 30 April 2004 the applicant requested the State Police to assess the legality and adequacy of the procedural actions performed in the course of the pre-trial investigation of the criminal case against him. On 13 May 2004 the applicant was informed that jurisdiction over such questions lay exclusively with the prosecutors' offices.

37. On 20 June 2005 the applicant complained to the Prosecutor General. On 22 July 2005 a reply was given by a prosecutor of the Office of the Prosecutor General. The reply contained a reference to section 18(2) of the Law on Operational Activities, in accordance with which investigative operational activities could be launched before the initiation of a criminal case. The prosecutor explained that the investigative test had been authorised on 18 December 2001. As regards the recording of the applicant's conversations, the prosecutor explained that this had been done by O.V., who was a private individual. According to the prosecutor, recording of conversations by a private individual – even if they were recorded by devices supplied by the police – did not constitute an investigative operational activity and consequently no authorisation by a judge or a prosecutor was necessary. Lastly, the prosecutor refused to inform the applicant of specific decisions and dates of decisions taken in the course of implementing operational activities, as "that information may not be used in criminal proceedings, since it has been declared a State secret".

38. On 15 August 2005 the applicant received a decision on his appeal against the reply he had received on 22 July. The reply was signed by a hierarchically superior prosecutor. In contrast with the previous response, this time a distinction was made between the conversations that had been recorded before and after the approval of the investigative test on 18 December 2001. According to the prosecutor, the Law on Operational Activities was not applicable to recordings of conversations made by private individuals, since the provisions of section 17(3) of that Law did not apply in such a situation. The recordings of the applicant's conversations made before 18 December were legally permissible for that reason. As regards the recording made on 18 December 2001, it had been carried out in conformity with section 28(1)(2) of the Law on Operational Activities (this provision authorised law-enforcement officers "to create and utilise information systems and technical means [to carry out operational activities] and to record information").

39. On 29 August 2005 the same prosecutor who had provided the reply of 15 August amended her reply. She clarified that the conversation of

14 December 2001 had been recorded by one of the parties to that conversation and that that had been done "while operational activities were being carried out but not in the course of an investigative operational process". In any case, the reply indicated that the recording of the applicant's conversations did not need to be authorised by a judge (the exact wording of the reply appears to relate to the text of the Law on Operational Activities as in force from 1 October 2005 and thus after the completion of the pre-trial investigation and the adoption of the judgment of the first-instance court).

40. The final reply on this subject was given to the applicant by the Prosecutor General on 21 September 2005. The Prosecutor General in substance upheld the lower-level prosecutors' replies, adding that certain operational activities could be carried out "in a general way" (*vispārējā veidā*) without officially initiating an investigation (*bez operatīvās uzskaites lietas ierosināšanas*). Furthermore, those activities could be carried out with the consent of the supervisor of the investigator concerned, which did not have to be given in writing. Lastly, the Prosecutor General pointed out that the decision authorising an investigative test and the outline of that test contained information concerning the organisation and methods of carrying out such operations, and therefore constituted a State secret (see paragraph 49 below), which was, however, accessible to the investigators and judges dealing with the related criminal investigation.

II. RELEVANT DOMESTIC LAW

41. The Code of Criminal Procedure which was in force at the time of the recording of the applicant's conversations and the search of his office directly regulated the authorisation of searches and interception of telephone conversations. More specifically, Article 168 provided that a search could be performed on the basis of a reasoned decision of an investigator or a prosecutor. Searches had to be authorised by a judge and only in urgent cases (*neatliekamos gadījumos*) could they be authorised by a prosecutor. In such urgent cases a judge had to be notified within the next twenty-four hours. Pursuant to section 176^1 telephone conversations could be monitored by the police only after authorisation had been received from a court or a judge. As an exception, the second paragraph of that Article provided that conversations could be monitored in the absence of authorisation from a court or a judge "if a victim, witness or some other party to [a criminal] case ha[d] received threats of violence, extortion or other unlawful actions". That exception was limited to conversations involving the persons who had received the threats in question.

42. At that time certain investigative actions were regulated by the Law on Operational Activities (*Operatīvās darbības likums*). It remains in force to this day, although it has been significantly revised in the meantime. At

the material time, the "operational activities" referred to in the Law covered all operations, covert or otherwise, of specially authorised State institutions that were aimed at protecting individuals, the independence and sovereignty of the State, the constitutional system, the country's economic and scientific potential, and classified information against external or internal threats (section 1). Operational activities were aimed, *inter alia*, at preventing and detecting criminal offences, tracing the perpetrators of criminal offences, and finding sources of evidence (section 2).

43. As to when the Law on Operational Activities was to be applied, section 4(4) contained an explanation that operational activities were to be undertaken only when the goals and tasks set out in sections 1 and 2 could not be achieved or fulfilled in any other way, or if the achievement of those goals and fulfilment of tasks would otherwise be significantly hampered. According to a report submitted by the Minister of the Interior to the Cabinet of Ministers on 15 May 2009, the practical effect of section 4(4) was such that it first had to be assessed whether the investigative actions deemed necessary could be carried out in accordance with some other procedure, in particular in criminal proceedings.

44. Under section 18(2) of the Law on Operational Activities such operational activities could begin before the initiation of criminal proceedings and continue throughout the investigative stage of criminal proceedings, as well as after the completion of an investigation.

45. All operational activities had to be carried out in strict compliance with the law and human rights. In particular, no harm could be caused to the individuals concerned, nor could they be subjected to violence, threats or incitement to crime (section 4(1) to (3)). Any person who considered that he or she had suffered harm as a result of the actions of a member of the security forces could lodge a complaint with the prosecuting authorities or the relevant court (section 5). Specific operational activities were under the control of the Prosecutor General and prosecutors specifically authorised by him (section 35(1)).

46. Section 6 of the Law contained an exhaustive list of diverse operational activities that could be undertaken under the Law. Section 6(3) provided that, *inter alia*, audio recordings could be made in the course of operational activities. The way such recordings were to be made was to be determined by the body carrying out the operational activities (*operatīvās darbības subjekts*).

47. The procedure for authorising operational activities was set down in section 7. In cases where the planned activities did "not significantly impinge on individuals' constitutional rights", they could be authorised by the supervisor of the official carrying out the activities (section 7(2)). Other activities had to be authorised by a prosecutor or, in the case of activities provided for in section 17 (monitoring of correspondence, covert interception of non-public conversations (including telephone

conversations), obtaining information from technical devices (*tehniski līdzekļi*) and entering premises (*operatīva iekļūšana*)), by a judge (section 7(4)). Section 7(6) provided:

> "The approval of a judge shall not be necessary for activities [carried out] in respect of arrested persons, suspects, accused, defendants and convicted persons ... in cases where the body performing the investigative operations, on the basis of a written submission by a specific person, monitors the conversations of that person (the second part of Article 176^1 of the Code of Criminal Procedure)."

Lastly, as in force at the relevant time, the second paragraph of the transitional provisions of the Law provided that "the operational activities mentioned in this Law which require authorisation by a judge shall be authorised by the Prosecutor General and prosecutors specifically authorised by him until this issue is resolved in legislation".

48. Section 15 of the Law concerned "investigative tests" (*operatīvie eksperimenti*):

> "(1) An investigative test is an action of officials of bodies performing investigative operations, the purpose of which is to create specific circumstances (situations) in order to determine ... the actions of persons in relation to whom an investigative process is being conducted ... in such circumstances, and to determine the motivation (subjective aspect) of such persons for their actions. ...
>
> (3) An investigative test whose purpose is to record how persons in relation to whom an investigative process is being conducted act in a situation eliciting a criminal or otherwise illegal act shall be performed only with the approval of a prosecutor."

49. Section 24(1) of the Law provided that information obtained in the course of operational activities was a "service secret" (*dienesta noslēpums*) and that it could only be used in accordance with the law. Such information could be used as evidence in criminal proceedings only after it had been checked in accordance with the Code of Criminal Procedure. Furthermore, in accordance with the Law on State Secrets and the Regulation of the Cabinet of Ministers no. 226 (1997) as in force at the material time, information concerning the organisation and methods of operational activities was secret or confidential (see also *Perry v. Latvia*, no. 30273/03, § 36, 8 November 2007).

50. At the time of the applicant's trial the general principles of admissibility of evidence were contained in section 130 of the Law of Criminal Procedure (in force since 1 October 2005):

> "(1) It shall be admissible to use as evidence information acquired during criminal proceedings, if such information has been obtained and procedurally recorded in accordance with the procedures specified in this Law.
>
> (2) Information that has been acquired in the following manner shall be held inadmissible and unusable as evidence:
>
> 1) by using violence, threats, blackmail, fraud, or duress; ...
>
> 4) by violating the fundamental principles of criminal proceedings.

(3) Information obtained through other procedural violations shall be considered to have limited admissibility, and may be used as evidence only in cases where the procedural violations are not substantial or may be avoided, or where such violations have not influenced the veracity of the acquired information, or if the reliability of such information is supported by the rest of the information acquired in the course of the proceedings."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ENTRAPMENT

51. The applicant complained that he had been subjected to entrapment by O.V. and S.Ž., which had deprived him of the right to a fair trial as provided in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

52. The Government argued that the applicant had never raised the issue of the alleged entrapment before the domestic courts, hence implicitly submitting that the applicant had not exhausted the available domestic remedies.

53. The applicant disagreed, and stated that he had clearly and explicitly raised the issue of entrapment and the appeal court had dismissed it in summary fashion.

54. The Court notes that the applicant clearly brought the issue of the alleged entrapment to the attention of the appeal court and also specifically mentioned it in his appeal on points of law (see paragraph 33 above). The Government's objection is therefore dismissed.

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

B. Merits

56. The applicant submitted that O.V. and S.Ž. had approached him at G.P.'s suggestion, even though he was not handling the matter in the context of which the bribe had allegedly been requested. He categorically denied that it had been he who had first approached O.V., referring, among

other things, to the fact that even on 18 December 2001 when O.V. had arrived at the office the applicant had directed him to G.P., stating that G.P. was the one who could deal with all the questions O.V. might have. Nevertheless, O.V. had continued to insist on talking to the applicant and had made attempts to hand him money.

57. The Government reiterated at the outset that the Court had held that the use of special investigative techniques and, in particular, undercover techniques did not in itself infringe the right to a fair trial, citing *Ramanauskas v. Lithuania* [GC], no. 74420/01, § 51, ECHR 2008.

58. In respect of the present case the Government maintained that the initial contact with O.V. had been made by the applicant. In this regard the Government referred to the applicant's own statements at the criminal trial, stating that he had been the one to ask O.V. to pay LVL 500. Neither O.V. nor the domestic authorities had exerted any pressure on the applicant. Just the opposite was true – the applicant had threatened O.V. that in the event of failure to pay the seized furs would be returned to M.

59. In conclusion, the Government considered that the law-enforcement agencies had confined themselves to investigating criminal activity in an essentially passive manner, and therefore submitted that the applicant had not been subjected to police incitement.

60. The Court's long-standing view in entrapment cases has been that the public interest in combatting corruption cannot justify the use of evidence obtained by means of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset (see *Bannikova v. Russia*, no. 18757/06, § 34, 4 November 2010, with further references).

61. The first step is to establish whether the offence in question would have been committed without the authorities' intervention. The definition of incitement given by the Court in *Ramanauskas* (cited above, § 55) reads as follows:

> "Police incitement occurs where the officers involved – whether members of the security forces or acting on their instructions – do not confine themselves to investigating criminal activity in an essentially passive manner, but exert such an influence on the subject as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is, to provide evidence and institute a prosecution ..."

62. In deciding whether the investigation was "essentially passive" the Court will examine the reasons underlying the covert operation and the conduct of the authorities carrying it out. The Court will rely on whether there were objective suspicions that the applicant had been involved in criminal activity or was predisposed to commit a criminal offence (see *Bannikova*, cited above, § 38).

63. Nothing in the case file or in the observations submitted by the Government indicates that the applicant had a criminal record or that the

national authorities had any good reason to suspect him of any prior criminal activity (compare *Teixeira de Castro v. Portugal*, 9 June 1998, § 38, *Reports of Judgments and Decisions* 1998-IV).

64. It therefore remains to be determined whether the authorities had in their possession any preliminary information concerning pre-existing criminal intent on the part of the applicant. Such preliminary information must be verifiable (see *Vanyan v. Russia*, no. 53203/99, § 49, 15 December 2005, and *Khudobin v. Russia*, no. 59696/00, § 134, ECHR 2006-XII (extracts)). What is relevant in that respect is the question of the point at which the authorities launched the undercover operation, that is, whether the undercover agents merely "joined" the criminal acts or instigated them (see *Bannikova*, cited above, § 43). When drawing a line between legitimate infiltration by an undercover agent and instigation of a crime the Court will examine the question whether the applicant was subjected to pressure to commit the offence. It has found the abandonment of a passive attitude by the investigating authorities to be associated with such conduct as, for example, taking the initiative in contacting the applicant, renewing the offer despite his initial refusal, insistent prompting (see *Bannikova*, cited above, § 47, with further references).

65. Turning to the present case, the Court notes, contrary to what has been suggested by the Government, that it appears that all the telephone calls and private meetings in the course of which the applicant allegedly asked O.V. to pay a bribe took place at the initiative or even the insistence of O.V. or S.Ž., and not that of the applicant (see paragraphs 9-11, 13, 20 and 32 above). The Court attaches particular importance to the events of 18 December 2001, when O.V. insisted on waiting for the arrival of the applicant, who had been absent from the office, and also refused to receive a copy of the decision from G.P. and insisted on speaking with the applicant (compare *Ramanauskas*, cited above, § 67).

66. Since the applicant's allegations of entrapment in the course of the criminal proceedings against him were not "wholly improbable", the prosecution had an obligation to prove that there was no incitement (see *Ramanauskas*, cited above, § 70). The Court notes that, similarly to the above-cited case of *Teixeira de Castro*, and contrary to the case of *Lüdi v. Switzerland* (15 June 1992, Series A no. 238), the undercover operation in the present case had not been authorised by a judge, but instead by a prosecutor from the Office of the Prosecutor General (see paragraph 12 above). It is unclear if the operation was subject to judicial control or any other type of formal supervision (see *Milinienė v. Lithuania*, no. 74355/01, § 39, 24 June 2008).

67. Turning to the requirements regarding the domestic procedure to be used when deciding on an entrapment plea, the Court requires it to be adversarial, thorough, comprehensive and conclusive on the issue of entrapment (see *Bannikova*, cited above, § 57). Furthermore, during this

procedure the authorities need to at the very least undertake a thorough investigation of whether or not the undercover agents incited the commission of a criminal act. To this end the authorities ought to examine the reasons why the operation was mounted, the extent of the police's involvement in the offence, and the nature of any incitement or pressure to which the applicant was subjected. The applicant, furthermore, should have an opportunity to state his case on each of these points (see *Ramanauskas*, cited above, § 71).

68. The Court considers that one of the preliminary questions to be answered in the course of the criminal proceedings against the applicant was whether the investigating authorities were correct to have recourse to an undercover operation regulated by the Law on Operational Activities. In other words, the courts ought to have examined the question of whether other means of achieving the aims laid down in the Law on Operational Activities had been exhausted prior to commencing the undercover operation, as required by section 4(4) of the Law on Operational Activities (see paragraph 43 above, and also *Baltiņš v. Latvia*, no. 25282/07, § 58, 8 January 2013).

69. The Court notes that the only response given to the applicant's plea of incitement appears to have been the one by the Supreme Court (see paragraph 35 above), which can at best be described as succinct. It appears that the courts, even when explicitly confronted with a clearly presented entrapment plea, which, on the face of it, was not trivial, failed to analyse any issues that are directly relevant for determining whether the applicant would have committed the crime he had been charged with, had it not been for the involvement of State authorities. The Court finds that there has been a violation of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF THE RECORDING OF THE APPLICANT'S CONVERSATIONS

70. The applicant complained of a violation of the right to respect for his private life which had allegedly taken place when his telephone conversation with S.Ž. and the conversation in person between him, O.V. and S.Ž. was recorded on 14 December 2001, and when the conversations in his office had been recorded on 18 December 2001. He relied on Article 8 of the Convention, the relevant part of which provides 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

71. The Government argued that the applicant had failed to exhaust the domestic remedies, since he had not disputed the constitutionality of the applicable provisions of the Law on Operational Activities before the Constitutional Court.

72. The applicant submitted that he had not lodged a complaint with the Constitutional Court because that court lacked competence to decide whether national authorities have failed to observe the law. In his submission, if they had observed the law his rights would not have been violated.

1. Conversations of 14 December 2001

73. The Court finds that the Government's objection is closely linked to the substance of the applicant's complaint, and must therefore be joined to the merits of the application. Should it turn out that the alleged violation flows directly from the contents of the respective legal provisions that were applied in the applicant's case, the Government's objection would be well-founded. On the other hand, if the alleged violation originated from the application of laws that are at least *prima facie* compatible with the Constitution and the Convention, the applicant's argument that the Constitutional Court is not an effective remedy in such situations would prevail.

74. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that it is not inadmissible on any other grounds and therefore, having reserved the examination of the question of the exhaustion of domestic remedies to a later stage, declares it admissible.

2. Conversations of 18 December 2001

75. According to the Government, the conversations of 18 December 2001 were recorded in the course of an investigative test duly authorised by a prosecutor in accordance with section 15 of the Law on Operational Activities. The Government did not make available to the court a copy of the decision to authorise the investigative test, despite having been explicitly invited to do so. Under Rule 44C of the Rules of the Court, the Court may draw such inferences as it deems necessary from parties' failure to adduce evidence or provide information requested by the Court. In the circumstances of the present case, the Court can only assume that no specific separate authorisation was granted for recording the applicant's conversations. It appears from the wording of section 6(3) of the Law on Operational Activities (see paragraph 46 above) that certain audio recordings could be made in the course of an investigative test. If this section were to be interpreted to include the recording of non-public

conversations, it would follow that a prosecutor could authorise the recording of private conversations in the course of an investigative test, yet, if such recordings were to be authorised outside the framework of an investigative test, they would require authorisation from a judge (pursuant to section 7(4); see paragraph 47 above).

76. Nevertheless, the Court is prepared to accept that the recording of the applicant's conversations on 18 December 2001 had a legal basis in Latvian law, namely that it was done on the basis of sections 15(3) and 6(3) of the Law on Operational Activities.

77. The Court has frequently held that an individual complaint to the Constitutional Court is an effective remedy for the purposes of the Convention where the applicant calls into question a provision of Latvian legislation as contrary to the Convention, and the right relied on is among those guaranteed by the Latvian Constitution (see *Grišankova and Grišankovs v. Latvia* (dec.), no. 36117/02, ECHR 2003-II (extracts), and *Latvijas Jauno Zemnieku Apvienība v. Latvia* (dec.), no. 14610/05, 17 December 2013, §§ 44-53). In the present case the Court finds that the applicant has failed to dispute the constitutionality of sections 15(3) and 6(3) of the Law on Operational Activities before the Constitutional Court. It follows that the complaint concerning the recording of the applicant's conversations on 18 December 2001 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. The Parties

78. The Government conceded that the recording of the applicant's conversations had amounted to an interference with his right to respect for private life. However, the interference had served a legitimate aim (prevention of crime) and had also been in accordance with the law.

79. Concerning the question of whether the interference that took place on 14 December 2001 had been in accordance with the law, according to the information provided to the Government Agent by the Office of the Prosecutor General, at the preliminary inquiry stage (*operatīvā izziņa*) investigators were authorised to carry out operational inquiry (*operatīvā izzināšana*) without officially initiating an investigation (*bez operatīvās uzskaites lietas uzsākšanas*). What had taken place had been an operational request for information (*operatīvā aptauja*), in the course of which the investigators had engaged O.V., with his consent. Accordingly, the recording of the conversations of 14 December 2001 had not been a separate operational activity (*operatīvās darbības pasākums*) but an activity that could be and had been authorised by the director of the Bureau for Prevention of Organised Crime and Corruption, *Organizētās noziedzības un*

korupcijas apkarošanas biroja (ONKAB) under section 7(2) of the Law on Operational Activities (see paragraph 47 above).

80. In respect of the proportionality of the interference, the Government submitted that the degree of the interference had been kept to the minimum. The only conversations that had been recorded had been the ones that took place between the applicant and the alleged victims of the crime, and the conversations had only concerned the alleged criminal activity under investigation, and did not touch upon the applicant's private or professional life.

81. The applicant submitted that his conversations had been recorded in breach of the domestic law.

2. The Court

82. At the outset the Court notes that it is common ground between the parties that the recording of the applicant's conversations constituted an interference with his right to respect for private life and that this interference was attributable to the State. The Court sees no reason to hold otherwise.

83. Turning to the question of whether the conversations of 14 December 2001 were recorded in accordance with the law, the Court notes that the domestic authorities have advanced different theories as to the legal basis for these actions. Thus the Supreme Court (see paragraph 32 above) concluded that the conversations had been recorded in accordance with section 7(6) of the Law on Operational Activities (see paragraph 47 above), apparently because O.V. and S.Ž. had requested that their conversations be recorded. The Senate of the Supreme Court disagreed with the conclusions of the Supreme Court and found (see paragraph 35 above) that O.V. and S.Ž. had recorded the conversations in their private capacity. Lastly, the Prosecutor General considered that the legal basis for the recordings had been section 7(2) of the Law on Operational Activities (see paragraph 79 above).

84. At this juncture the Court considers it appropriate to turn to the Government's argument concerning non-exhaustion of domestic remedies. The Government suggested that the applicant had failed to dispute the constitutionality of the legal provisions that formed the legal basis for the recording of his conversations. The Court notes that different opinions were expressed by various national authorities as to which provisions formed the legal basis for the recording of the conversations. The Court considers that in the particular circumstances of the present case the constitutional review of broad range of legal provisions which might or might not have formed the legal basis for recording the applicant's conversations cannot be considered a remedy that was an effective one, being available to him in theory and practice at the relevant time, that is to say a remedy that was accessible, was capable of providing redress in respect of the applicant's complaints, and that offered reasonable prospects of success. Therefore the

Government's objection concerning the non-exhaustion of domestic remedies must be dismissed.

85. Regarding the legal basis for the recording of the applicant's conversations, the conclusion of the Senate of the Supreme Court that O.V. and S.Ž. had recorded them in their private capacity are difficult to share because the police were not only well aware that the conversations were going to be recorded but they had also provided the technical equipment for that purpose (see paragraph 32 above). Therefore the recordings were clearly attributable to the State (see also, *mutatis mutandis*, *A. v. France*, 23 November 1993, § 36, Series A no. 277-B, and *M.M. v. the Netherlands*, no. 39339/98, §§ 36-40, 8 April 2003) and any suggestion of a legal basis that refers to them being made by O.V. and S.Ž. acting in their private capacity is misguided.

86. Hence it remains to be determined whether the applicant's conversations were recorded in accordance with section 7(2) of the Law on Operational Activities, which allowed certain operational activities, which did "not significantly impinge on persons' constitutional rights", to be authorised by the supervisor of the official carrying out the activities. According to the Prosecutor General, in the present case the supervisor in question was the director of ONKAB.

87. The Court observes that the phrase "in accordance with the law" not only requires compliance with domestic law but also relates to the quality of that law, requiring it to be compatible with the rule of law. In the context of covert surveillance by public authorities, domestic law must provide protection against arbitrary interference with an individual's right under Article 8. Moreover, the law must be sufficiently clear in its terms to give individuals an adequate indication of the circumstances and conditions in which public authorities are entitled to resort to such covert measures (see *Khan v. the United Kingdom*, no. 35394/97, § 26, ECHR 2000-V).

88. As noted earlier (see paragraph 43 above), the Law on Operational Activities was drafted with the intention of being used only in exceptional cases, that is in situations where investigating criminal offences would be significantly hampered by having a recourse to ordinary procedures, such as, for example, those prescribed by the Code of Criminal Procedure. From the documents made available to the Court it does not appear that any reasons were given for having recourse to the Law on Operational Activities instead of the Code of Criminal Procedure. Neither does there appear to have been any analysis of whether the recording of the applicant's conversations would "significantly impinge" on his constitutional rights, such as, for example, the right to respect for his private life.

89. The reason why such analysis is absent is the fact that, according to the opinion of at least the Prosecutor General (see paragraph 40 above), at the relevant time the authorisation of the investigator's supervisor did not need to be given in writing. In other words, if an investigator and his

supervisor were in agreement that a certain operational activity would not significantly impinge on the constitutional rights of persons subjected to it, a written decision to authorise such an activity was not required. The Court views that approach as incompatible with the rule of law, since it conferred unfettered and uncontrolled in the absence of a written record of the decision or the decision-making process discretion on investigative authorities (see also *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 77, ECHR 2010 (extracts)). It therefore follows that the recording of the applicant's conversations on 14 December 2001 was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

90. Accordingly the Court dismisses the Government's preliminary objection concerning non-exhaustion of domestic remedies and finds that there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF THE SEARCH OF THE APPLICANT'S OFFICE

91. The applicant further complained of the fact that the search of his office that had been carried out on 18 December 2001 had either not been authorised at all or, alternatively, had been authorised in contravention of the applicable domestic law. He relied on Article 8 of the Convention.

A. Admissibility

92. The Government argued that the applicant had failed to exhaust the domestic remedies, since he had not disputed the constitutionality of Article 168 of the Code of Criminal Procedure (see paragraph 41 above) before the Constitutional Court.

93. The applicant submitted that he had not lodged a complaint with the Constitutional Court because that court lacked competence to establish whether actions by national authorities violated the domestic law. In his submission, if the law been observed his rights would not have been violated.

94. The Court finds that the Government's objection is closely linked to the substance of the applicant's complaint and must therefore be joined to the merits of the application. Should it turn out that the alleged violation flows directly from Article 168 of the Code of Criminal Procedure, the Government's objection would be well-founded. On the other hand, if Article 168 was to be found at least *prima facie* compatible with the Constitution and the Convention, the applicant's argument that the Constitutional Court is not an effective remedy in such situations would prevail.

95. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further finds that it is not inadmissible on any other grounds and therefore, having reserved the examination of the question of the exhaustion of domestic remedies to a later stage, declares it admissible.

B. Merits

96. The Government conceded that the search in the applicant's office had amounted to an interference with his right to respect for private life.

97. Nevertheless, the search had been authorised in accordance with the law, the urgency exception contained in Article 168 of the Code of Criminal Procedure having been applied with good reason and the Riga City Centre District Court having been duly informed within 24 hours thereafter.

98. The search had also pursued a legitimate aim, namely it had been carried out in the context of criminal proceedings and thus pursued the aim of preventing crime.

99. Turning to the question of whether the interference was necessary in a democratic society, the Government first noted that it had been authorised by a prosecutor. In accordance with the definition of their role contained in the Law on the Prosecutor's Office, prosecutors exercise judicial functions. The Government further emphasised that the Latvian Constitutional Court had found that the prosecution service was an independent institution offering effective protection to individuals at the pre-trial investigation stage in cases of alleged violations of procedural and constitutional rights. From this the Government drew the conclusion that the authorisation of the search of the applicant's office had been subjected to judicial scrutiny.

100. The search had been necessary in order to uncover evidence of crime, namely the marked banknotes. The applicant had been shown the search warrant and had been present during the search, the conduct of which had been recorded on video. In the submission of the Government, these circumstances militated in favour of the conclusion that the interference with the applicant's right to respect for private life had not been disproportionate to the legitimate aim pursued and had been attended by adequate safeguards against abuse and arbitrariness.

101. The applicant gave considerable weight to the fact that the prosecutor who had authorised the search had indicated that the authorisation had been given on 18 November 2001 (see paragraph 16 above). In the applicant's view, that constituted evidence either that the prosecutor was intoxicated at the time, or that the authorisation was given after the search had already taken place, or else that the police had in their possession blank authorisation forms which they filled in as necessary, without any actual control by prosecutors.

102. At the outset the Court notes that the parties to the case do not dispute that the search of the applicant's office constituted an interference with his rights guaranteed by Article 8 of the Convention. The Court sees no reason to hold otherwise (see, *mutatis mutandis*, *Golovan v. Ukraine*, no. 41716/06, § 51, 5 July 2012, and the case-law cited there).

103. The Court next has to examine whether the interference satisfied the conditions of paragraph 2 of Article 8. The expression "in accordance with the law" requires, firstly, that the impugned measure should have some basis in domestic law; secondly, it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see, among other authorities, *Kopp v. Switzerland*, 25 March 1998, § 55, *Reports of Judgments and Decisions* 1998-II).

104. The parties do not dispute that the search was authorised by a prosecutor in accordance with the urgency exception contained in Article 168 of the Code of Criminal Procedure. Therefore the Court finds that formally the interference had some basis in the national law.

105. The Court notes that it does not appear from the documents in its possession that any assessment was made as to whether there existed a legitimate urgency necessitating recourse to the exceptional procedure contained in Article 168 of the Code of Criminal Procedure. The said provision did not require that such an assessment be made and recorded in writing; it appears that it was sufficient for the investigative authorities to believe that urgent action was necessary.

106. The Court does not exclude that there could be situations which might legitimately mandate urgent searches with shortened authorisation procedures. The Court has had occasion to state that it may be impracticable for the prosecuting authorities to state elaborate reasons for urgent searches (see, for example, *Nagla v. Latvia*, no. 73469/10, § 100, 16 July 2013). However, in situations where it has been impossible to obtain a prior judicial warrant there is a particular need for an effective and diligently conducted *ex post factum* judicial assessment of the lawfulness of, and justification for, the search warrant (see, for example, *Harju v. Finland*, no. 56716/09, § 44, 15 February 2011). Such a system of *ex post factum* review by an investigating judge in Latvia is now provided for in section 180 of the Criminal Procedure Law (see *Nagla*, cited above, § 36). At the relevant time, however, Article 168 only stipulated that a judge was to be "informed" that a search had taken place, and no assessment of the legality of the search warrant was required from the judge.

107. The Court finds it appropriate to turn at this juncture to the Government's argument that the applicant ought to have disputed the constitutionality of Article 168 of the Code of Criminal Procedure in the Constitutional Court. In this connection, the Court reiterates that the Constitutional Court in Latvia is empowered to repeal legal provisions

which it finds unconstitutional, but not to adopt new legal procedures or to close a deemed legislative gap (see *Mihailovs v. Latvia*, no. 35939/10, § 157, 22 January 2013, and *Liepājnieks v. Latvia* (*dec.*), no. 37586/06, §§ 73 and 75, 2 November 2010). The absence of an *ex post factum* judicial assessment of the legality of the warrant for the search in the applicant's office derived precisely from the fact that no such assessment was required by law. Hence the root of the problem was a legislative gap or absence of an appropriate legal procedure. The Government have not submitted any examples from the case-law of the Constitutional Court that would allow the Court to find that the Constitutional Court might have been able through its case-law to be instrumental towards filling such a legislative gap (see *Latvijas Jauno Zemnieku Apvienība,* cited above, § 51). For this reason the Court rejects the non-exhaustion argument raised by the Government.

108. Returning to the merits of the applicant's complaint, the Court has already found that there was no assessment as to whether the need to search the applicant's office had arisen so suddenly that it warranted exceptional recourse to the urgent authorisation procedure provided for in Article 168 of the Code of Criminal Procedure. No such assessment was explicitly required by the said provision. Secondly, there was no judicial examination of the justification for and the scope of the search authorised by the prosecutor. Such judicial control was not required by Article 168.

109. The Court therefore concludes that even though Latvian law provided some legal basis for the search in the applicant's office, at the relevant time the Code of Criminal Procedure did not provide sufficient judicial safeguards, either before the grant of a search warrant or after a search. The applicant was thus deprived of the minimum degree of protection to which he was entitled under the rule of law in a democratic society.

110. The Court finds that in these circumstances it cannot be said that the interference in question was "in accordance with the law" as required by Article 8 § 2 of the Convention.

111. Therefore the Court dismisses the Government's preliminary objection concerning non-exhaustion of domestic remedies, and finds that there has been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE USE OF THE ALLEGEDLY ILLEGALLY ACQUIRED EVIDENCE

112. The applicant further complained that the use of illegally obtained evidence (recordings of his conversations and evidence obtained during the search of his office) in the criminal proceedings against him had violated his right to fair trial guaranteed by Article 6 § 1 of the Convention.

113. The Government referred to the Court's case-law to the effect that, even if some items of evidence had been obtained in violation of the domestic law, this did not automatically render the proceedings as a whole unfair (*Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140). They suggested that the Court had to focus its analysis on the question of whether the proceedings as a whole had been fair. In this respect the Government underlined that the applicant had had an opportunity to vent his allegations that the contents of his recorded conversations had been tampered with, and to cross-examine O.V. and S.Ž. who had been his counterparts in the conversations in question. Lastly, the Government noted that the impugned evidence had not been the sole basis for the applicant's conviction, as the conviction had been supported by other conclusive evidence.

114. The applicant highlighted a number of inconsistencies in the evidence used for his conviction, and stated that the trial as a whole had been unfair.

115. The Court reiterates that, in accordance with Article 19 of the Convention, its only task is to ensure observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Bykov v. Russia* [GC], no. 4378/02, § 88, 10 March 2009).

116. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether or not the applicant was guilty. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (ibid., § 89).

117. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is

no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (ibid., § 90).

118. Turning to the facts of the present case, the Court notes that the applicant's principal objection to the evidence used against him was his allegation that the recordings of his conversations had been edited to his detriment. The Court further notes that the first-instance court secured an expert report to the effect that the recordings had not in fact been edited (see paragraph 26 above). The applicant has failed to submit any arguments that would cast doubts on the expert's findings. The Court further accepts the Government's argument that with regard to the contents of the recorded conversations the applicant had ample opportunity in the course of his trial to question and to cross-examine his counterparts O.V. and S.Ž. The Court also notes that the applicant made no complaints in relation to the procedure by which the courts reached their decision concerning the admissibility of the evidence. Lastly, while noting that it has already found that the criminal proceedings against the applicant were unfair because of the domestic courts' failure to properly address the applicant's entrapment plea, the Court finds that, in the light of the overall body of evidence, the use of the items of evidence obtained by using procedures that did not meet the Convention standards did not of itself render the proceedings as a whole unfair.

119. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

120. The applicant submitted numerous other complaints under various paragraphs and subparagraphs of Articles 5, 6 and 14 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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

122. The applicant left the award in respect of pecuniary and non-pecuniary damage to the Court's discretion.

123. The Government argued that the applicant had failed to substantiate his claim that he had suffered any damage.

124. As regards pecuniary damage, the Court notes that the applicant failed to claim a specific amount in this respect, as required by Rule 60 § 2 of the Rules of Court. The Court therefore rejects the applicant's claim in this regard (Rule 60 § 3).

125. On the other hand, the Court considers that the applicant has sustained non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, it therefore awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

126. The applicant did not claim any specific amount in respect of costs and expenses but left it to the Court's discretion to fix an appropriate sum in this respect.

127. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant failed to submit any relevant supporting documents proving that it had actually incurred any costs and expenses. It follows that the applicant failed to comply with the requirements set out in Rule 60 § 2 of the Rules of Court. The Court therefore makes no award (Rule 60 § 3).

C. Default interest

128. 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. *Joins to the merits* the Government's preliminary objections as to the exhaustion of domestic remedies concerning the complaints under Article 8 of the Convention in respect of the recording of the applicant's conversations on 14 December 2001 and of the search of the applicant's office, and dismisses them;

2. *Declares* the complaint under Article 6 § 1 on account of the alleged entrapment and the complaints under Article 8 concerning the recording of the applicant's conversations on 14 December 2001 and concerning the search of his office admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on the account of the alleged entrapment;

4. *Holds* that there has been a violation of Article 8 of the Convention concerning the recording of the applicant's conversations on 14 December 2001 and concerning the search in the applicant's office;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	George Nicolaou
Registrar	President