(CEDU, sez. I, sent. 30 gennaio 2020, ric. n. 28926/10)
Il raid notturno in casa degli indagati viola l'art. 8 della Convenzione se non risulta essere proporzionato all'obiettivo perseguito nelle indagini

La Corte EDU si pronuncia sul diritto al rispetto della vita privata, su richiesta del Sig. Vinks e della Sig.ra Ribcka. I due ritengono che il raid notturno da loro subito, da parte degli agenti dell'antiterrorismo, sia stato condotto in maniera brutale, andando a ledere anche i diritti della loro figlia. Secondo quanto stabilito dall'art. 8 della Convenzione "Ognuno ha il diritto al rispetto della sua vita privata e familiare, della sua casa e della sua corrispondenza. Non vi devono essere interferenze da parte dell'autorità pubblica nell'esercizio di tale diritto salvo che non sia conforme alla legge [...]".
Il governo lettone ha affermato che, con quell'azione aveva perseguito l'obiettivo di prevenire la criminalità, poiché era stata condotta nell'ambito del procedimento penale relativo all'evasione fiscale e al riciclaggio di denaro. La perquisizione nella casa del richiedente è risultata, però, essere ingiustificata a causa del fatto che esso non era collegato a nessuna delle società coinvolte nel riciclaggio del denaro. Il mandato di ricerca a suo carico è stato emesso in relazione all'evasione fiscale, che costituisce un reato che incide sulle risorse degli Stati e sulla loro capacità di agire nell'interesse collettivo, soprattutto in questo caso, in cui si sospettava che oltre 7 milioni di euro fossero stati trasportati illecitamente.
Tuttavia, solo ragioni molto serie potrebbero giustificare un'intrusione così grave nello spazio privato dei richiedenti, arrivando anche a rompere le finestre e a puntare le pistole sulla figlia adolescente, nelle prime ore del mattino.
Il rischio di abuso di autorità e di violazione della dignità umana è insito proprio in questo: i richiedenti sono stati affrontati nella loro casa nelle prime ore del mattino da un numero di poliziotti appositamente addestrati per l'antiterrorismo.
La Corte afferma che gli Stati, quando adottano misure per prevenire la criminalità e per proteggere i diritti, possono ritenere necessario, ai fini della prevenzione speciale e generale, ricorrere a misure come questa, al fine di poter ottenere prove di determinati reati in una sfera in cui sarebbe altrimenti impossibile identificare il colpevole. Inoltre, il coinvolgimento delle unità speciali di polizia può essere ritenuto necessario solo in determinate circostanze.
In questo specifico caso, però, vista la gravità dell'interferenza con il diritto al rispetto alla vita privata dei richiedenti, si sarebbero dovute adottare garanzie adeguate ed efficaci contro tali abusi.
Date le circostanze, la Corte rileva che le garanzie disponibili non sono riuscite a garantire un'efficace protezione del diritto dei richiedenti di rispettare la loro vita privata. Pertanto, questa interferenza, non può essere considerata proporzionata all'obiettivo perseguito, ed è proprio per questo motivo che è stata dichiarata la violazione dell'art. 8 della Convenzione.

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

FIFTH SECTION

CASE OF VINKS AND RIBICKA v. LATVIA
(Application no. 28926/10)

JUDGMENT

Art 8 • Respect for private life • Early morning raid by anti-terrorist police unit at applicants' home to carry out a search in the context of economic crimes • Lack of adequate and sufficient procedural safeguards against abuse

STRASBOURG
30 January 2020

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 Vinks and Ribicka v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*
Having deliberated in private on 7 January 2020,
Delivers the following judgment, which was adopted on that date:
PROCEDURE

1. The case originated in an application (no. 28926/10) 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 two Latvian nationals, Mr Vladimirs Vinks (the first applicant) and Ms Jeļena Ribicka ("the second applicant"), on 7 May 2010.

2. The applicants were represented by Ms A. Kalēja, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicants alleged, in particular, that a search of their home on 16 June 2009 had been unlawful and disproportionate, and that no procedural safeguards had been available. They also

alleged that there were no effective remedies available under domestic law in that regard. They relied on Articles 8 and 13 of the Convention.

4. On 7 February 2012 notice of the complaints concerning the search of 16 June 2009 and the effectiveness of domestic remedies in that regard was given to the Government and the remainder of the application was declared inadmissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1975 and 1972, respectively. At the material time they were living together in Ķekava parish. The first applicant, a businessman, has several previous convictions. On 18 March 1999 he was convicted of intentional destruction of property and sentenced to three years' imprisonment, suspended for two years. On 5 March 2008 he was convicted of tax evasion and money laundering and sentenced to community service. A restriction on carrying out unspecified business activities for a period of three years was also imposed on him.

Criminal proceedings against two police officers

6. The parties disagree as to the background of criminal proceedings against A.P. and I.V., two officers of the Finance Police Department of the State Revenue Service (*Valsts ieņēmumu dienesta Finanšu policijas pārvalde* – the "VID FPP"), an authority specifically tasked with preventing and investigating criminal offences in the field of taxation. It can be seen from the material in the case file that on 10 September 2008 the first applicant, having obtained information from another individual, met those officers with a view to receiving their "help" in covering up a fictitious tax evasion and money-laundering scheme. That scheme had allegedly been intended to discover corrupt officers. On an unspecified date, the Bureau for the Prevention and Combating of Corruption (*Korupcijas novēršanas un apkarošanas birojs* – "the KNAB") started an operational investigation and gave guidance to the first applicant in that respect.

7. On 13 November 2008 the first applicant took part in an undercover operation (*operatīvais eksperiments*) that had been organised by the KNAB and had been approved by the prosecutor's office. The KNAB provided the first applicant with marked banknotes in the amount of 6,800 Latvian lati (LVL – approximately 9,685 euros (EUR)) for the purpose of that operation; the first applicant handed over the marked banknotes to both officers as "payment" for their "services".

8. As a result, A.P. and I.V. were arrested on the spot and criminal proceedings were opened against them for corruption and tax-evasion-related offences. The first applicant gave testimony to the KNAB about the fictitious tax evasion and money-laundering scheme, in the covering up of which those officers had allegedly been involved.

9. On 6 May 2009 the criminal case was referred to the prosecution and on 18 May 2009 charges were brought against A.P. and I.V. On 8 June 2010 the criminal case was sent to the first-instance court.

10. On 16 June 2009 the first applicant, after the search at his home (see paragraph 23 below) and after having been taken to the premises of the VID FPP, retracted his testimony against A.P. and I.V. in a complaint addressed to the Prosecutor General, which he drafted in the presence of

several VID FPP officers (see paragraph 33-35 below). That complaint was forwarded to two prosecution departments. One department was dealing with the criminal case against the two police officers (see paragraph 54 et seq. below) and the other was responsible for examining complaints about operational activities (see paragraph 42 below).

11. On 28 June 2009 the first applicant informed the Prosecutor General that the VID FPP officers had compelled him to retract his testimony on 16 June 2009 (see paragraph 39 below). He maintained his initial testimony against A.P. and I.V. (see paragraph 8 above). It appears that at some point the criminal case against A.P. and I.V. was split into two cases.

12. There is no information about the case against I.V., but the first applicant gave testimony before the first-instance court against A.P. The first-instance and the appellate courts examined the circumstances surrounding the retraction of his testimony on 16 June 2009, questioned witnesses and examined a certain audio recording in that regard (see paragraph 35 below). The domestic courts found that the first applicant's initial testimony (see paragraph 8 above) was credible; it was used to convict A.P.

13. On 20 April 2017 the Supreme Court, by a final decision, convicted A.P. of bribery and sentenced him to three years' imprisonment.

14. At the same time, the Supreme Court sent the criminal case against A.P. on tax-evasion related charges back to the appellate court for fresh examination. Those proceedings are currently pending.

Criminal proceedings against the first applicant

15. On 4 June 2009 an investigator of the VID FPP, I.S., instituted criminal proceedings concerning tax evasion and money laundering. Allegedly, an organised group of twenty-five individuals – involved in a large tax evasion and money-laundering scheme using more than two hundred fictitious companies – had been discovered. It was suspected that the first applicant was a member of that group (see, for more details, paragraphs 20-21 below).

16. According to the Government, those criminal proceedings were instituted on the basis of information obtained during an operational investigation that had been ongoing since 1 June 2007.

17. The applicants firmly denied those allegations and insisted that the first applicant had had no connection with the companies involved. The first applicant asserted that his name had been added without any justification to a list of suspects in an ongoing criminal investigation with which he had had no connection.

18. On 15 June 2009 several judges of the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*) examined requests for the issuance of search warrants in respect of nineteen different premises in connection with the above-mentioned criminal proceedings. A search warrant for the applicants' home was issued. In that search warrant, a reference was made to the nature of the alleged offences (see paragraph 15 above), as described by the VID FPP investigator in her request for the warrant. More than six dozen companies were specifically listed: four companies central to the suspected tax evasion and money-laundering scheme and sixty-two other companies. An investigating judge examined the criminal case material, which had been submitted to him, and ruled that there were sufficient grounds to consider that specific documents and items, which

related to the listed companies (accounting documents, powers of attorney, bank cards, digital passwords, and company stamps), as well as "other documents and items that may serve as relevant evidence in the case" might be located in the applicants' home. He ordered the search and seizure.

19. On 16 June 2009 the applicants' home was searched, and the first applicant was taken into police custody and taken to the premises of the VID FPP (see paragraphs 23-32 and 33-36 below). The first applicant alleged that he had been "influenced and forced" to retract the testimony he had given in the criminal proceedings against A.P. and I.V. The Government denied that allegation.

20. On 18 June 2009 the first applicant was officially declared a suspect in connection with the criminal proceedings which had been instituted on 4 June 2009. It was suspected that the first applicant had organised the impugned scheme and that in 2008 and 2009 more than LVL 5,000,000 (approximately EUR 7,000,000) in proceeds had been laundered using bank accounts of four companies. The first applicant was remanded in custody. On 27 November 2009 he was released on bail. Several restrictive measures were imposed on him (a prohibition on leaving the country without prior authorisation, and a prohibition on approaching certain individuals).

21. On 7 July 2009 a prosecutor supervising the criminal proceedings concerning tax evasion and money laundering, on instructions issued by a superior prosecutor, reviewed the actions taken by the VID FPP. He found that the criminal proceedings had been instituted in accordance with the law. More than six dozen companies had been involved in the scheme under investigation, which had been set up for the purposes of tax evasion and money laundering on a large scale. Individuals involved in that scheme had been drawing up taxable business documents for transactions that had not actually taken place, without paying taxes, and had been receiving payments in respect of such transactions. In order to change ownership of those funds and to receive them, fictitious agreements, including loans, had been concluded. The scheme had been operated by three inter-related criminal groups comprising twenty-five individuals. On the basis of judicial warrants, nineteen searches had been carried out (two with the assistance of a special police anti-terrorism unit called Omega, owing to the potential dangerousness of those criminal groups) and, as a result, accounting documents, digital passwords and the stamps of more than two hundred fictitious companies had been seized. Eight persons had been officially declared suspects and two of them (including the first applicant) had been remanded in custody, while others had been released. The supervising prosecutor found no signs of unlawfulness in the investigative actions taken by the VID FPP officers.

22. On 12 July 2011 all restrictive measures, which had been imposed on the first applicant in the course of the criminal proceedings against him, were revoked on the grounds that the time-limit for completing the pre-trial investigation had been exceeded. Those proceedings are currently pending before the VID at the pre-trial investigation stage. The Court has been provided with no further information in this regard.

Search of 16 June 2009

Events that are not disputed between the parties

23. On 16 June 2009 at 7 a.m. the Omega anti-terrorism unit, which consisted of at least four armed men, without prior warning entered the applicants' home through windows situated on the first and second floors. They located four people on the premises – both applicants and their friend, A.G., on the first floor and the second applicant's teenage daughter on the second floor.

24. Subsequently, five officers of the VID FPP entered the applicants' home, showed a search warrant to the applicants (after which they both signed it), and started a search at 7.30 a.m. The officers of the special police unit then left the applicants' home. The search was completed four and a half hours later, at noon. Both applicants and A.G. signed the search record in the capacity of persons who had been present, and made no remarks or comments in the relevant field of that search record. The search record also bore the first applicant's signature below a pre-typed text: "I have received a copy of this record".

The applicants' account of events

25. The second applicant's teenage daughter was pulled out of her bed by two officers of the special police unit; they immediately took her down to the first floor, without allowing her to dress.

26. All those present in the applicants' home, including the second applicant and her daughter, were placed on the ground with their faces against the floor. The first applicant's hands were tied behind his back. Somebody pushed the second applicant's head against the floor with his boot and put a firearm to it.

27. An officer of the VID FPP, S.S., subsequently took the first applicant aside into a bedroom and told him that this was a revenge for his testimony against A.P. and I.V. The first applicant was "influenced and forced" to retract the testimony he had given in the criminal proceedings against A.P. and I.V.

28. Nothing that related to the companies listed in the search warrant was seized during the search at the applicants' home. The first applicant had no connection whatsoever with the companies listed in the search warrant.

The Government's account of events

29. On 16 June 2009 the VID FPP requested assistance by the Omega anti-terrorism unit in carrying out searches in connection with the criminal proceedings concerning tax evasion and money laundering on a large scale. It had had reason to believe that it would face armed resistance and that important evidence (documents, digital passwords, electronic evidence and data carriers) might be destroyed. The Government stated that out of nineteen searches carried out in connection with those criminal proceedings, only two – including the search of applicants' home – had been carried out with the assistance of the special police unit.

30. On the first floor, two officers of the special police unit located both applicants and A.G. The officers instructed all three of them to lie down on the floor in the living room and tied the hands of the first applicant and A.G. behind their backs. No physical force was used. The first applicant's hands were untied so that he could sign the search warrant.

31. On the second floor, two officers of the special police unit located the second applicant's daughter. She was allowed to dress and was taken to the living room on the second floor. She was sat down on a sofa. No physical force was used.

32. During the home search many items were seized, namely, several plastic folders with legal and accounting documents including correspondence with banks, digital passwords, several laptops and hard drives, CDs and USB flash drives, eighteen stamps belonging to different companies, several cell phones and SIM cards, paper notebooks, postal receipts, and several applications to the relevant domestic register concerning the registration of new companies. Those items were listed in the search record, which was signed by all those present. No complaints or remarks were made. The second applicant was issued with a copy of that record (contrast with the document mentioned in paragraph 24 above).

Events in the premises of the VID FPP on 16 June 2009

33. After the search, the first applicant was taken to the premises of the VID FPP in Riga. The first applicant was arrested and a record of his arrest was drawn up by a VID FPP investigator, who had not participated in the search.

34. The first applicant alleged that he had been "influenced and forced" to retract the testimony that he had given (also again in the premises of the VID FPP) in the criminal proceedings against A.P. and I.V. The Government denied that allegation.

35. The first applicant alleged that the VID FPP officers had told him "what to write" in his complaint to the Prosecutor General with a view to his retracting his previous testimony. The Government disagreed. They submitted an audio recording and a transcript of a conversation between the applicant and several officers of the VID FPP. The parties disagree on the significance and interpretation of that recording for the purposes of the present case.

36. In the record made in respect of the first applicant's arrest, the following statement, made by the first applicant in the presence of his lawyer, was recorded:

"I consider my arrest to be unjustified because items seized during the search do not belong to me. I was not given the possibility to explain the situation before I was arrested."

Review of the applicants' complaints

Regarding the search warrant for the applicants' home

37. On 12 February 2010 the President of the Riga City Ziemeļu District Court examined the first applicant's complaint in respect of the search warrant of 15 June 2009. The first applicant alleged that there had been no legal grounds or justification to implicate him in those criminal proceedings and that the search had been unjustified. He had had no connection with the companies listed in the search warrant. The main suspects in those criminal proceedings had been unknown to him. He expressed doubts as to whether the investigating judge had verified all the criminal case material that had been submitted to him. The first applicant also criticised what he described as the cynical, rude and violent manner in which the VID FPP officers had carried out the search.

38. The President of the Riga City Ziemeļu District Court upheld the lawfulness of the search warrant and dismissed all complaints as follows:

"Having examined the complaint lodged by [the first applicant] and the [case] material in its entirety ... the President of [the Riga City Ziemeļu District Court] considers that the search warrant of 15 June 2009 by the investigating judge is justified and should be upheld for the following reasons.

...

It appears from the request by [investigator I.S.] and the accompanying documents, that the search and seizure of the documents and items that were listed in that request will facilitate the establishment of facts that are relevant for the criminal proceedings.

As can be seen from the search warrant, the investigating judge has not breached any provisions of the Criminal Procedure Law. His conclusion that there were grounds to carry out the search at [the applicants'] home was justified. Accordingly, the President of [the Riga City Ziemeļu District Court] considers that [the first applicant's] complaint is unsubstantiated and must be dismissed.

[The first applicant] in his complaint alleges that the human rights and other procedural rights of those present during the search have been disregarded. The President of [the Riga City Ziemeļu District Court] considers that that fact cannot serve as grounds to consider that the search warrant of 15 June 2009 was unjustified.

Any complaints about allegedly unlawful actions taken by the [VID] FPP officers during the search must, under 337(2) of the Criminal Procedure Law, be submitted to the relevant investigating authority.

...

This decision is final and no appeal lies against it."

Regarding actions taken by the officers involved in the search

(a) Complaints by the first applicant

39. On 28 June 2009 the first applicant, while being held in custody, lodged a complaint with the Prosecutor General about allegedly unlawful actions on the part of the VID FPP officers. He alleged that all action taken by the VID FPP against him had been motivated by revenge, since he had helped to discover corrupt VID FPP officers and had cooperated with the KNAB. During the search of 16 June 2009, Officer S.S. had issued threats and passed on "greetings" from the arrested VID FPP officers. He had also received further threats in the VID FPP premises. He had been forced to retract the testimony he had given against the two officers; Officer S.S. had dictated its content and had issued threats against him and his family. In his complaint he specified that he did not wish to retract the testimony that he had given against the two officers.

40. His complaint was forwarded to the Internal Security Bureau of the State police authorities (*Valsts policijas Iekšējās drošības birojs*), the body responsible for examining complaints against the State police authorities. However, as the first applicant's complaint had related to Officer S.S. of the VID FPP, they could not examine that complaint and forwarded it to the VID FPP.

41. On 21 July 2009 a director of the VID FPP issued the following reply, which was sent to the first applicant's home address and which the first applicant received only after his release from custody:

"On 15 July 2009 the Finance Police Department of the State Revenue Service received your 28 June 2009 complaint, which was addressed to the Prosecutor General. The information provided by you has been examined. The facts complained of have not been confirmed and no breaches have been found in the actions of the VID FPP officers during your arrest."

42. On 7 August 2009, in response to the first applicant's complaint of 16 June 2009 (see paragraphs 10 and 35 above), a prosecutor found no breaches of the Law on Operational Activities (*Operatīvās darbības likums*) in the actions of the KNAB officers.

43. On 23 November 2009 and 4 January and 9 February 2010 prosecutors at various levels examined complaints lodged by the applicants' lawyer that raised various issues pertaining to access to the criminal case material (the search warrant and search record), and the lawfulness and legality of the first applicant's arrest and of the reply by the VID FPP to the first applicant's complaint of 28 June 2009. Those complaints were dismissed. It was noted that (i) the search had been authorised by an investigating judge; (ii) the involvement of the special police unit had been justified (a prosecutor referred to sections 54 and 55 of the State Administration Structure Law (*Valsts pārvaldes iekārtas likums*) and to internal police regulations); and (iii) both applicants and A.G. had been present, and they had signed the search record and had made no objections. The first applicant had been issued a copy of the search record. The actions by the VID FPP officers had been justified and lawful. The prosecutors found no breaches of the Criminal Procedure Law (*Kriminālprocesa likums*). They concluded that the search had been lawful and justified.

44. On 5 March 2010 another prosecutor, upon a complaint by the first applicant, found no breaches of domestic law as concerns the search of 16 June 2009; a reference was also made to the replies provided to his lawyer in that regard (see paragraph 43 above). The first applicant's allegation that the actions of the VID FPP had been motivated by revenge was dismissed as unfounded. No evidence that S.S. had physically or morally influenced the first applicant by issuing him oral threats had been discovered.

(b) Complaints by the second applicant as regards the search of 16 June 2009

45. On 29 June 2009 the second applicant lodged a complaint with the prosecutor's office regarding allegedly unlawful actions on the part of the VID FPP and the Omega officers. She also alleged that the first applicant's safety was under threat. The supervising prosecutor requested information from the State police authorities and the VID FPP in that regard. In particular, the State police authorities were asked to explain (i) whether the special police unit's assistance had been organised in a manner in accordance with law, and (ii) which legislative act had authorised its assistance. The VID FPP was further asked to explain whether the involvement of the Omega anti-terrorism unit had been necessary and justified, whether the VID FPP officers had carried out the search in accordance with law and whether Officer S.S. had participated in the search.

46. On 10 August 2009 the State police authorities provided their reply. According to the information at their disposal, the VID FPP had had reasons to suspect that the suspects might resist and obstruct investigative activities, including authorised searches. In order to avoid that, the special police unit's assistance had been necessary and it had authority to provide such assistance under its internal regulations. Taking into account sections 54 and 55 of the State Administration Structure Law, which set out the general principles of cooperation between State authorities, it had been decided to assist the VID FPP.

47. On 12 August 2009 the VID FPP provided its reply. According to the information at its disposal, the first applicant had had prior convictions dating back to 1999 and 2008. In 2007 the prosecution had placed him on a list of wanted persons. In total, the VID FPP had forwarded three criminal cases against him to the prosecution (for charges to be brought). Prior to the search, a preliminary observation of the applicants' home had indicated that: (i) it had been located in a remote area; (ii) it had only one road approaching the property; (iii) it had been surrounded by a two-metre-high fence (thus necessitating fast action in conducting the search); (iv) it had been guarded by two dogs; (v) several men had been present and they might have been armed; (vi) it had been planned to make an arrest; and (vi) it had been possible that those present might offer armed resistance. Taking into account (i) the first applicant's personality, (ii) the possibility that important evidence could be found, (iii) the fact that its destruction was not permissible, and (iv) the results of the preliminary observation, it was decided to seek the assistance of the Omega anti-terrorism unit in entering the applicants' home. Officer S.S. had participated in the search. No complaints had been made by those present during the search.

48. On 24 August 2009 and, 22 January and 25 February 2010 prosecutors at various levels examined complaints lodged by the second applicant. She raised various issues pertaining to access to the criminal case material (the search warrant and search record) and the lawfulness and legality of the search of 16 June 2009. Those complaints were dismissed. The prosecutors noted that (i) the search had been authorised by an investigating judge; (ii) the involvement of the special police unit had been justified; (iii) both applicants and A.G. had been present and they had signed the search record and had made no objections. The first applicant had been issued a copy of the search record. The actions by the VID FPP and the Omega officers had been justified and lawful. The prosecutors found no breaches of the Criminal Procedure Law. They concluded that the search had been lawful and justified. In the last reply, dated 25 February 2010, a note was included to the effect that that reply constituted a final decision as concerns the issues determined therein.

49. On 19 March 2010 another prosecutor, upon a request by a superior prosecutor, examined the second applicant's complaint about the actions of the officers of the special police unit during the search. Prior to providing his response, he received an internal report, dated 12 March 2010, which he had ordered from the relevant department of the State police authorities. That report can be summarised as follows. According to the internal regulations of the Omega anti-terrorism unit, its officers were to provide assistance to law-enforcement authorities, if those authorities faced difficulties in: (i) solving "serious" and "very serious" criminal offences, (ii) arresting suspects and (iii) finding and seizing material evidence. The special unit had provided assistance to the VID FPP in carrying out the search in the applicants' home in order to: (i) avoid the destruction of evidence, and (ii) arrest suspects, because an initial operational investigation had revealed that one suspect held several registered firearms at his home (see paragraph 88 below) and was armed and there was a guard dog on the premises. Moreover, the personality of one of the suspects indicated that he might offer armed resistance and destroy evidence. In his reply to the second applicant, the prosecutor found that the Omega officers had acted in accordance with internal regulations and taking into account the circumstances. They had not breached the domestic law. The reply was open to further review by a superior prosecutor; no such further review took place.

(c) Complaints by the second applicant as regards her personal belongings

50. On 10 December 2009 the second applicant lodged a request that several items (one item of stationary and one portable computer, three mobile phones, two hard drives, a laser printer, a black photo camera and a memory card) which belonged to her, but which had been seized during the search, be returned to her.

51. On 3 February 2010 the VID FPP investigator refused that request because at that stage of the pre-trial investigation "it was not established that those items were unnecessary as evidence." The second applicant was informed of that decision and of the fact that that decision was open to review by a supervising prosecutor at any stage of the pre-trial investigation.

52. On 3 February 2012 the second applicant lodged a complaint with a supervising prosecutor, requesting that several items (see paragraph 50 above as well as a portable computer bag and a men's briefcase), which belonged to her, but which had been seized during the search, be returned to her and that the refusal of 3 February 2010 be quashed.

53. On 9 March 2012 the supervising prosecutor dismissed that complaint stating that the refusal was lawful. There were no grounds to quash that refusal and to return those items to the second applicant. The second applicant was informed that she could request once again that those items be returned to her. In view of the fact that a search had been carried out at the first applicant's home and that the case material contained indications that those items might belong to another individual (see paragraph 36 above), she had to substantiate that those items belonged to her and it was not sufficient to merely list those items as being hers. That reply was open to further review by a higher-ranking prosecutor. No such further review was undertaken.

Investigative activities related to the first applicant's complaints

54. From December 2009 until April 2010 the prosecutor responsible for the criminal proceedings against the two police officers carried out numerous investigative activities related to the first applicant's complaints about the events of 16 June 2009. She questioned the applicants, A.G. and various officers of the VID FPP (including those who had participated in the search), and requested information from the VID FPP. A cross-examination between the first applicant and Officer S.S. was carried out. Both of them agreed to undergo a polygraph test, the results of which indicated that neither of them had lied.

55. On 7 May 2010 the prosecutor separated the material relating to the criminal case against the two police officers and opened new criminal proceedings in respect of the events of 16 June 2009 in so far as the first applicant's allegations were concerned.

56. On 15 February 2011 the first applicant was declared a victim in connection with those criminal proceedings.

57. On 28 March 2011 a prosecutor examined two audio files that had been recorded by an unidentified VID FPP official on 16 June 2009 (see paragraph 35 above), and the transcripts thereof.

58. According to the Government, the proceedings in respect of the events of 16 June 2009 are currently pending before the prosecution authorities at the pre-trial investigation stage. According to the applicants, these proceedings have been terminated owing to the expiry of statute of limitations, which was ten years.

RELEVANT INTERNATIONAL FRAMEWORK

59. On 14 September 2006 the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) adopted the Third Round Detailed Assessment Report on Latvia, following a visit to Latvia from 8 until 24 March 2006 by a team of assessors from the International Monetary Fund. The report contained the following observations:

"**General Situation of Money Laundering and Financing of Terrorism**

48. **Latvia is vulnerable to being used for money laundering purposes due to number of factors including its geographical location.** It is a major transit point for trade between Western Europe and the CIS countries using its ports on the Baltic Sea and the land borders with other Baltic States, Russia and Belarus ...

49. **Financial transactions relating to proceeds of crime have been identified passing through the Latvian financial system.** The high volume of transactions creates a challenge for financial institutions in confirming the true purpose of the financial transactions. The main difficulty is that by the time the money arrives in Latvia it is difficult to identify it as the proceeds of crime ...

...

51. **In general, the recorded crime rate in Latvia is relatively low** ... The major criminal activities identified by the authorities as predicate offences for money laundering are drug trafficking, trafficking in human beings, tax evasion and VAT fraud ... There are ongoing allegations of corruption in the public sector, including some highly-publicised cases ..."

60. On 5 July 2012 MONEYVAL adopted the Fourth Round Mutual Evaluation Report on Latvia, following a visit by experts from MONEYVAL and the Financial Action Task Force from 9 until 13 May 2011. The report contained the following observations:

"**1.2. General Situation of Money Laundering and Financing of Terrorism**

8. Latvia's geographical location, with its ports on the Baltic Sea and the land borders with other Baltic States, makes it a major transit point. The current risks and vulnerabilities in relation to ML and FT that are faced in Latvia are considered to be connected with the "shadow economy" and phishing schemes abroad. ML in Latvia is related mainly to illegal proceeds generated by:

Evasion of taxes (VAT), which has been identified as a domestic predicate crime. Illegal proceeds are laundered in Latvia or in other countries (for example in Estonia or Lithuania) mostly by creating large schemes of transactions executed by a number of legal persons."

61. More recently, on 4 July 2018, MONEYVAL adopted the Fifth Round Mutual Evaluation Report on Latvia, following a visit by an assessment team from 30 October until 10 November 2017. They made the following observations (footnotes omitted):

"***ML/TF Risks and Scoping of Higher-Risk Issues***

Overview of ML/TF Risks

ML Threats

4. The national risk assessment (NRA) identifies illicit economic activities - particularly corruption and bribery (including embezzlement of public funds), fraud (including through fictitious companies), and tax evasion – as Latvia's primary money laundering (ML) threats ...

5. The NRA identifies illegal economic activities as another major ML threat. White collar crime has exceeded other more conventional proceeds-generating offences, such as drug trafficking, in terms of threat. Indeed, the top three predicate offences in the period under review were tax evasion, fraud (including fictitious companies), as well as corruption and bribery (including embezzlement of public funds).

6. Organised crime is also a factor with a substantial impact on the overall ML risk situation in Latvia. According to the NRA, ML threats that arise from international organised criminal groups (OCGs) are rated as high. The proximity and strong financial ties of Latvia with members of the Commonwealth of Independent States (CIS) facilitates the access of regional OCGs to the financial system of Latvia and the international one subsequently. OCGs from CIS are known to exercise influence on the domestic ones. In fact, Latvia hosts approximately 80 OCGs ..., out of which only 10-12 groups are active in the area of severe and organised crime with an international dimension. OCG activities in Latvia are connected with publicly known criminal offences (CO) types: i.e. smuggling of narcotic/psychotropic substances; weapons/ammunition and products subject to excise duty; human trafficking, blackmail and collection of debts that is often covered behind legal commercial activity; as well as fraud and cybercrimes characteristic to Latvia.

7. The growing presence of organised crime in Latvia has also been reinforced by the high corruption levels within the state services, as well as by the shadow economy ..."

RELEVANT DOMESTIC LAW

Criminal Procedure Law

62. Sections 179 to 185 of the Criminal Procedure Law (*Kriminālprocesa likums*) set out the general terms governing searches. A search at premises can be carried out if there are sufficient grounds (*pietiekams pamats*) to consider that the object at issue might be located in those premises (section 179(1)). A search must be aimed at finding items and documents that are relevant to the criminal case (section 179(2)). Under the ordinary procedure for issuing a search warrant, the investigating judge or court authorises the search upon an application by the relevant investigating authority (*procesa virzītājs*), having examined the case material filed in support of that application (section 180(1)). A search warrant must indicate what items and documents must be searched and seized by which domestic authority, where, at whose home, and in connection with which proceedings (section 180(2)). A search must be carried out in the presence of a person whose home is being searched, or an adult member of his or her family (section 181(1)).

63. Section 182 of that law lays down the procedure for carrying out a search. A person must be made acquainted with the contents of a search warrant, and he or she must sign that search warrant to indicate that it has been done (section 182(2)). Following amendments effective as of 4 February 2010, a copy of that search warrant must also be issued to a person at whose premises the search is being carried out. The items and documents listed in a search warrant, as well as other items and documents that may be relevant to the case, must be seized (section 182(6)). The

items and documents seized must be described in an official record, and, if possible, put in a bag and sealed (section 182(8)).

64. Section 185 of that law provides that a copy of a search record must be issued to a person at whose premises the search is being carried out or to his or her adult family member.

65. Section 337 of that law lays down the procedure for examining a complaint. A complaint must be addressed to and lodged with a competent authority; it may also be submitted to the official whose action or decision is being contested (paragraph 1). A complaint about an action or decision by an investigator or his or her direct manager must be examined by a supervising prosecutor, whose action or decision must be examined by a higher-ranking prosecutor. A complaint about an action undertaken or decision given by an investigating judge must be examined by the president of the court to which the investigating judge is attached (paragraph 2). When examining a complaint, the president of the court has to decide on the merits; his or her decision is final (paragraph 4).

Administrative Law

66. The relevant sections of the State Administration Structure Law (*Valsts pārvaldes iekārtas likums*) read as follows:

Section 54 – Basic Provisions for Co-operation

"(1) Institutions shall co-operate in order to perform their functions and tasks.

(2) An institution that has received a co-operation request from another institution may refuse co-operation only if the reasons for refusal provided for in section 56 of this Law exist.

(3) Institutional co-operation shall be free of charge, unless laid down otherwise in external laws and regulations.

(4) Institutions may co-operate both in individual cases and continuously. When co-operating continuously, institutions may enter into interdepartmental agreements (sections 58 – 60).

(5) When co-operating, public persons may enter into co-operation contracts (section 61).

(6) When co-operating institutions shall provide the necessary information in electronic form unless laid down otherwise in an external regulatory enactment and the provision of information is not in contradiction with the provisions for provision of information laid down in laws and regulations. The procedures by which exchange of such information shall take place, as well as the way of ensuring and certifying the veracity of such information shall be determined by the Cabinet [of Ministers]."

Section 55 – Subject-matter of Institutional Co-operation

"(1) An institution may propose that another institution ensure the participation of individual administrative officials in the performance of particular administrative tasks.

(2) An institution, observing the restrictions laid down in laws and regulations, may request that another institution provide the information that is at its disposal.

(3) An institution may request that another institution provide it with an opinion on a matter that is in the competence of the institution that provides the opinion.

(4) Upon mutual agreement and without overstepping their competence institutions may determine another subject-matter of co-operation."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

67. The applicants complained that the search of 16 June 2009 had been unlawful and carried out in a brutal manner and with disregard for the interests of the second applicant's child. They argued that the search had taken place with no prior warning (to allow for voluntary compliance) and had inflicted pecuniary damage (such as broken windows). They argued that the involvement of the special police unit had not been necessary. They also noted the lack of procedural safeguards. They relied on Article 8 of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

68. The Government contested those arguments.

Admissibility

69. The Government argued that the second applicant had not exhausted domestic remedies. They submitted that the final decision as concerns the use of the Omega anti-terrorism unit during the search of 16 June 2009 had been contained in the decision of 19 March 2010 (see paragraph 49 above), and that she had failed to lodge a complaint against it.

70. The applicants disagreed. They argued that the final decision in respect of the second applicant as concerns the lawfulness of the search had been made on 25 February 2010 (see paragraph 48 above).

71. The Court observes that the applicants' complaint is not limited to the use of the Omega anti-terrorism unit during the search. Their complaint relates to the lawfulness and proportionality of that interference with their private, family life and home (see paragraph 74 below). The issues pertaining to the lawfulness of the search warrant for the applicants' home were examined on 12 February 2010 by the President of the Riga City Ziemeļu District Court (see paragraphs 37 and 38 above). Moreover, in response to the complaints lodged by the applicants and their lawyer, prosecutors at several levels examined various issues pertaining to the lawfulness of the search itself and of the actions taken by the officers in that respect. The prosecutors also addressed the issue of whether the involvement of the special police unit had been justified and concluded that it was. As regards the second applicant specifically, the decision

of 25 February 2010 expressly mentioned that it had been final in relation to the issues examined therein (see paragraph 48 above *in fine*).

72. In such circumstances the Court cannot accept the Government's argument that the second applicant should have launched a new round of appeals with the prosecution service in respect of a reply dated 19 March 2010 (see paragraph 49 above). The prosecutors at several levels of hierarchy had already examined the actions of the officers of the Omega anti-terrorism unit during the search and had found them lawful and justified. The Court, accordingly, dismisses the Government's objection concerning non-exhaustion of domestic remedies.

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

Merits

The parties' submissions

(a) The applicants

74. The applicants maintained that there had been an interference with their private life, family life and home. They did not deny that there had been a statutory basis for the interference under the Criminal Procedure Law. Nor did they raise any argument in substance regarding the quality of law. However, disagreeing with the Government, they submitted that they had not been given an opportunity to acquaint themselves with the search warrant and that they had not been issued with a copy of the search record. The first applicant had been "pressured into" signing those documents.

75. In substance, they argued that there had been no legitimate aim for the interference with their Article 8 rights. In the applicants' view, the search had been carried out in revenge for the first applicant's testimony against the two VID FPP officers. The ulterior purpose of the search had been to scare and force the first applicant to change his testimony, which – after having spent a whole day in handcuffs together with numerous VID FPP officers – he eventually did.

76. The applicants argued that the search had been unjustified. The first applicant had had no connection with the companies that had been involved in the tax evasion and money-laundering scheme under investigation. He had not owned them or even worked for them. The companies – which had not been listed in the search warrant, but the documents and items of which had indeed been seized during the search – had also not had any connection with the companies listed in the search warrant. In sum, the search warrant had not been based on a reasonable suspicion against him.

77. In reply to the Government's argument regarding the necessity to avail itself of the special police unit's assistance during the search, the applicants insisted that the information obtained during the operational investigation had been incorrect and false, as there had been no armed men or guard dogs in the territory. This only further demonstrated that operational information to that effect had been concocted in order to obtain the assistance of the special police unit without any real justification. Even the Omega officers had been surprised, having entered the applicants' home, to find that there were no grounds for their assistance being requested.

78. The first applicant criticised the fact that his complaint regarding the actions of Officer S.S., who had been working for the VID FPP and who had resigned following the investigation into the events, had been examined by the director of that very institution. Moreover, he had received the director's reply only after his release from custody – some five months later.

79. The second applicant's personal belongings had not been returned to her and her requests in that regard had been refused. The applicants did not provide any comment on the Government's submission that the first applicant had testified that those items had belonged to someone else.

80. In the applicants' submission, the criminal proceedings against the first applicant had been bound to be discontinued given that four companies that had been central to the suspected schemes had become bankrupt. In any event, those proceedings, and the scheme discovered in the course thereof, had related to other people, with whom the first applicant had not had any connection.

(b) The Government

81. The Government acknowledged that the search at the applicants' home had amounted to an interference with their right to respect for private life. They believed, however, that the interference at issue had been prescribed by law, had pursued a legitimate aim and had been necessary in a democratic society.

82. Firstly, the search had been authorised by the investigating judge, in accordance with sections 179-182 of the Criminal Procedure Law. His decision had been later upheld by the President of the Riga City Ziemeļu District Court. In support of their argument, they submitted copies of the search warrant and the search record indicating that the applicants had signed those documents without any complaints or remarks being recorded (see paragraphs 24 and 32 above). Accordingly, the domestic procedural requirements for carrying out searches had been complied with.

83. Secondly, the interference at issue had pursued the legitimate aim of preventing crime, as it had been carried out within the context of the criminal proceedings concerning tax evasion and money laundering.

84. The Government denied that the criminal proceedings against the first applicant had been instituted in retaliation for his testimony against the two officers of the VID FPP. They indicated that the operational investigation into the tax evasion and money-laundering scheme in connection with which the first applicant had been arrested had been opened on 1 June 2007 – before he gave testimony against those officers. As regards Officer S.S., the Government confirmed that he had indeed resigned from his position at the VID FPP, but informed the Court that he had been admitted to the Bar Association.

85. Thirdly, the Government insisted that the interference had been "necessary in a democratic society". They noted that the investigating judge had issued the search warrant after acquainting himself with the case material presented to him by the VID FPP. There had been sufficient grounds to consider that important evidence might be discovered. In view of the large scale, seriousness and overall negative budgetary implications of offences such as tax evasion and money laundering, there had been a pressing social need to justify the search at the applicants' home.

86. Referring to information provided by the VID FPP, the Government stated that the assistance of the special police unit was only requested in particularly complex cases, when there was information that the officers involved might be denied prompt and unrestricted access to premises, which might in turn lead to important evidence being destroyed. Over a time span of three and a half years (from 1 January 2009 until 1 June 2012) the VID FPP had requested the special police unit's assistance on six occasions. The VID FPP had very limited capacity to ensure fast and prompt access to search locations while at the same time guaranteeing the safety of its officers. During searches it often faced resistance. Given the specific nature of financial offences, such evidence as legal, financial and banking documents and data carriers might be destroyed (shredded or burned) within minutes or destroyed remotely, and even the most insignificant delay might lead to evidence being destroyed.

87. The Government submitted that an initial operational investigation had indicated that the officers might be denied entry to two specific locations, one of them being the applicants' home. A preliminary observation conducted by the VID FPP had yielded the following information: the applicants' home had been located in a remote area with one road approaching the property, it had been surrounded by a high fence, and dogs had been guarding the property. The operational investigation had indicated that there had been several armed men on the premises who might delay any search and destroy evidence (they referred to the request for assistance sent on 16 June 2009 – see paragraph 29 above). In sum, the Government alleged that the VID FPP had taken into account the following factors when taking the decision to request the special police unit's assistance: (i) the seriousness of the offences; (ii) the first applicant's personality (his previous convictions); (iii) the particularities of the search location (a remote area, a high fence and guard dogs); (iv) the possible presence of other individuals; (v) possible armed or physical resistance; and (vi) the availability of firearms. The Government concluded that the participation of the special police unit in the search had been legitimate, justified and proportionate, as had been the actions taken by its officers during the search.

88. The Government explained that during the search of the second location (where the VID FPP had also been assisted by the Omega anti-terrorism unit), various firearms (pistols, revolvers, carbines and shotguns) had been found and seized.

89. The Government denied the allegation regarding the treatment of the second applicant's daughter (see paragraph 25 above) and referred to their own account of events in this respect (see paragraph 31 above).

90. The Government disagreed with the applicants and argued that the first applicant had had connections with the companies listed in the search warrant. They emphasised that the investigating judge had examined the information that had been obtained during the operational investigation and that there had been reason to consider that relevant evidence could be found in the applicants' home (see paragraph 18 above). The evidence that had been seized had related to new companies to be registered and various other companies; its seizure had been authorised under 182(6) of the Criminal Procedure Law (see paragraph 63 above). Given the specific nature of money-laundering-related offences, such items had raised reasonable suspicions that they could be relevant for the criminal case. On average, the lifespan of a fictitious company did not exceed one year, after which period such companies were usually dismantled and went into insolvency. It was irrelevant that four companies had become bankrupt.

91. Lastly, the Government submitted, without elaborating further, that the first applicant, when questioned in the presence of his lawyer, had submitted that all the items seized during the search had belonged to an acquaintance of his and that he had merely been storing them in his home. He had refused to identify that person.

The Court's assessment

(a) Whether there was an interference

92. The parties agree that the search at the applicants' home constituted an interference with their "private life", as guaranteed by Article 8 of the Convention. The Court concludes that in respect of both applicants, there has been an interference with their "private life". In such circumstances it is not necessary to examine whether there has been an interference with the applicants' "home" or "family life".

(b) Whether the interference was justified

93. Next, the Court has to determine whether the interference was justified under paragraph 2 of Article 8 – in other words whether it was "in accordance with the law", pursued one or more of the legitimate aims set out in that paragraph and was "necessary in a democratic society" to achieve that aim.

(i) In accordance with the law

94. The parties agree that the search at the applicants' home had a statutory basis – namely, section 180(1) of the Criminal Procedure Law.

95. The Court notes that at the material time the domestic law did not require that a copy of a search warrant be issued to a specific person. Instead, the affected person only had to be acquainted with the search warrant in question (see paragraph 63 above). The Government argued that both applicants had been acquainted with the search warrant and they submitted a copy of that warrant, which bore the applicants' signatures indicating that they had read it (see paragraphs 24 and 82 above). Accordingly, the Court dismisses the applicants' allegation that they had not been acquainted with the search warrant.

96. By contrast, the domestic law required that a copy of a search record be issued to the affected person (see paragraph 64 above). There is conflicting information as to who was issued with a copy of the search record – the first or the second applicant – but it can be seen from the copy of the search record submitted by the Government that the first applicant signed that record, thus confirming that he had received a copy of it (see paragraphs 24 and 82 above). That is further supported by the prosecutors' replies to the complaints lodged by the applicants' lawyer (see paragraph 43 above). Accordingly, the Court dismisses the applicants' allegation that they had not been issued with the search record.

97. It follows that the interference complained of was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

(ii) Legitimate aim

98. The parties disputed this element to a large extent. For the purposes of the present case, however, it suffices to note that the Government were able to provide information indicating that

the search had taken place in connection with a pending criminal investigation into suspected money-laundering and tax-evasion-related offences that had been subject to an operational investigation since 1 June 2007. The fact that those criminal proceedings have not yet been concluded cannot be taken to indicate that there were no legitimate reasons to conduct the search on 16 June 2009.

99. As to the applicants' allegation that the search had been carried out with an ulterior purpose, the Court is not in a position, based on the material made available to it by the parties, to determine that issue. What matters is whether there were adequate and effective safeguards against possible abuse in such circumstances, including whether the applicants' allegations were sufficiently addressed by the domestic authorities (see paragraphs 107, 114 et seq. below).

100. In view of the information provided by the Government, the Court accepts that the interference was intended to prevent crime and to protect the rights of others – both of which are legitimate aims.

(iii) Necessary in a democratic society

(α) General principles

101. Under the Court's settled case-law, the notion of "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" the Court will take into account the fact that a certain margin of appreciation is left to the Contracting States. However, the exceptions provided for in paragraph 2 of Article 8 are to be interpreted narrowly, and the need for them in a given case must be convincingly established (see *Smirnov v. Russia*, no. 71362/01, § 43, ECHR 2007-VII, with further references).

102. With regard to, in particular, searches of premises and seizures, the Court has consistently held that the Contracting States may consider it necessary to resort to such measures in order to obtain physical evidence of certain offences. The Court will assess whether the reasons adduced to justify such measures were "relevant" and "sufficient" and whether the aforementioned proportionality principle was adhered to (ibid., § 44).

103. As regards the latter point, the Court must first ensure that the relevant legislation and practice afford individuals adequate and effective safeguards against abuse (see *Funke v. France*, 25 February 1993, § 56, Series A no. 256-A, and *Société Colas Est and Others v. France*, no. 37971/97, § 48, ECHR 2002-III). Secondly, the Court must consider the particular circumstances of each case in order to determine whether, in the concrete case, the interference in question was proportionate to the aim pursued. The criteria that the Court has taken into consideration in determining this latter issue includes: the severity of the offence in connection with which the search and seizure were effected; the manner and circumstances in which the order was issued – in particular whether any further evidence was available at that time; the content and scope of the order, having particular regard to the nature of the premises searched and the safeguards implemented in order to confine the impact of the measure to reasonable bounds; and the extent of possible repercussions on the reputation of the person affected by the search (see, among many other authorities, *Buck v. Germany*, no. 41604/98, § 45, ECHR 2005-IV; *Smirnov*, cited above, § 44; and *K.S. and M.S. v. Germany*, no. 33696/11, § 44, 6 October 2016).

104. Moreover, the fact that a search is based on a warrant issued by a judge does not necessarily amount to a sufficient safeguard. It also matters whether that judicial scrutiny was properly carried out: whether the judge duly examined the existence of a reasonable suspicion justifying the search, drawing up the search warrant in such a way as to keep its impact within reasonable bounds, and sought to satisfy himself or herself that a search in the place in respect of which the warrant was sought could yield relevant evidence (see *Posevini v. Bulgaria*, no. 63638/14, § 70, 19 January 2017, with further references).

(β) Application of these principles to the present case

105. With regard to the safeguards against abuse and arbitrariness set out in Latvian law, the Court notes that the search at the applicants' home was carried out on the basis of a warrant issued by the Riga City Ziemeļu District Court. The search was therefore subject to prior judicial scrutiny (contrast *Taraneks v. Latvia*, no. 3082/06, § 104, 2 December 2014, and *Bože v. Latvia*, no. 40927/05, § 75, 18 May 2017).

106. The investigating judge of the Riga City Ziemeļu District Court issued the search warrant following an application to that effect lodged by an official authority – namely, the VID FPP. It was based on a suspicion that the first applicant had been involved in a large-scale tax-evasion and money-laundering scheme involving more than six dozen companies. That suspicion was based on the criminal case material, and the criminal proceedings themselves were preceded by an operational investigation into those facts. The criminal case material was reviewed by the investigating judge (see paragraph 18 above).

107. The lawfulness of the search warrant of the applicants' home was also examined by the President of the Riga City Ziemeļu District Court; he confirmed that there had been sufficient grounds to carry out the search at the applicants' home (see paragraph 38 above). However, he did not directly address the first applicant's main argument – that the search had been unjustified on account of him not being connected to any of the companies involved. The Court is not in a position, based on the material made available to it by the parties, to determine whether the first applicant's allegations were well-founded. While the Court is aware of the fact that there has been a criminal investigation against the first applicant, it has been pending for more than ten years in the pre-trial stage before the police unit, which was the very authority that carried out the search (the VID FPP). The Court will proceed to examine whether there were adequate and effective safeguards against possible abuse in such circumstances, including whether the applicants' allegations were sufficiently addressed by the domestic authorities (see paragraphs 114 et seq. below). Such an assessment is particularly important in a case such as the present one, where the first applicant provided information in a criminal case against the officers of the police unit that requested the assistance of the Omega anti-terrorism unit and where the police unit itself carried out the search.

108. As to the question of whether the scope of the search warrant was reasonably limited, the Court considers that the warrant was couched in relatively broad terms. Whilst the search warrant was issued in respect of specific items relating to sixty-six companies, it also authorised the search for and seizure of "other documents and items that may serve as relevant evidence in the case". It was in fact under that wider authorisation that numerous documents and items belonging to other companies, which had not been listed in the search warrant, were seized.

109. However, the specificity of items subject to seizure varies from case to case, depending on the nature of the offence being investigated (see *Sher and Others v. the United Kingdom*, no. 5201/11, § 174, ECHR 2015 (extracts)). In the instant case, as the Government have pointed out, the search warrant was issued in respect of money laundering, which involved the establishment and dismantling of new companies over a relatively short period of time. In this respect, the Court takes note of the concerns expressed by international experts that Latvia was vulnerable to being used for money laundering purposes and that a large number of legal persons were involved in such schemes (see paragraphs 59-60 above).

110. The search warrant was issued also in respect of tax evasion, which is an offence that affects States' resources and their capacity to act in the collective interest. As such, tax evasion constitutes a serious offence (see *K.S. and M.S. v. Germany*, cited above, § 48), particularly in a case such as this where it was suspected that more than EUR 7,000,000 had been illicitly transferred. Furthermore, in this field States encounter serious difficulties owing to the scale and complexity of banking systems and financial channels and the immense scope for international investment, made all the easier by the relative porousness of national borders (compare *Crémieux v. France*, 25 February 1993, § 39, Series A no. 256-B; *Miailhe v. France (no. 1)*, 25 February 1993, § 37, Series A no. 256-C; and *Funke*, cited above, § 56, all of which concern searches and seizures carried out by customs authorities within the context of the prevention of capital outflows and tax evasion).

111. The Court finds that – in view of the specific nature of the offences under investigation and the fact that numerous companies were allegedly involved in the large scheme under investigation – the scope of the search warrant was sufficiently reasonable, as it was limited by the reference to the nature of those offences (tax evasion and money laundering) and by the reference to the type of items to be seized (accounting documents, powers of attorneys, bank cards, digital passwords, and company stamps). The Court can therefore accept that the discretion of the officers who carried out the search was sufficiently circumscribed by the terms of the search warrant itself. It is true that a number of other items, which were not specifically listed in the search warrant (including computers, hard drives, USB flash drives, and cell phones – see paragraph 18 above), were also seized. Bearing in mind the fact that those electronic devices could be seen as potentially connected with the economic crimes under investigation, the Court can accept that their seizure was necessary.

112. The Court will now address the second applicant's allegation that her personal belongings were seized during the search and were not returned. The Court notes that the applicants' submissions are contradictory. While the first applicant alleged that all seized items belonged to an acquaintance of his (see paragraphs 36 and 91 above), the second applicant submitted that some of the seized items belonged to her (see paragraphs 50 and 52 above). The Court notes that the supervising prosecutor, having examined the second applicant's complaint, noted the discrepancy between the allegations made by both applicants and indicated that the second applicant had to prove ownership of those items (see paragraph 53 above). In the absence of any further information, the Court finds that the decision not to return the above-mentioned items to the second applicant was justified, given the circumstances of the present case. There is nothing in the case material to indicate that the second applicant would not have been able to obtain her personal belongings had she proved that those items belonged to her and had they not had any connection with the offences under investigation.

113. As to the manner in which the search was carried out, the Court observes that the assistance of the Omega anti-terrorism unit was requested by the VID FPP as part of a larger operation, which involved nineteen simultaneous searches. However, the assistance of these specially trained and armed men was requested only for two searches, one of which was of the applicants' home. Only weighty reasons could justify such a serious intrusion into the applicants' private space as forced entry by breaking through the windows into the applicants' home by armed men, who used restraint measures and guns on the applicants and on the second applicant's teenage daughter in the early hours of the morning. In that regard, the Government relied on six factors which had allegedly been taken into account by the VID FPP (see paragraph 87 above). The Court considers that it is not its task to second-guess the elements relied on to justify the necessity of the involvement of the Omega anti-terrorism unit in the search of the applicants' home. However, it notes that the allegations that there were several armed individuals or guard dogs on the premises appear to have been unsubstantiated by the case material as made available to the Court. Likewise, any references to registered firearms (see, for example, paragraph 49 above) were made in relation to another suspect, whose premises were also searched. It was in those premises, not the applicants' home, where a number of firearms were indeed found and seized (see paragraph 88 above).

114. A risk of abuse of authority and violation of human dignity is inherent in a situation such as the one which arose in the present case, where the applicants were confronted in their home early in the morning by a number of specially trained policemen of the anti-terrorism unit, who had been called by and then followed by the officers of the VID FPP. As indicated previously, those officers were colleagues of the officers under investigation for corruption-related offences against whom the first applicant had testified (see paragraph 107 above). In the Court's view, there must be safeguards in place in order to avoid any possible abuse in such circumstances and to ensure the effective protection of persons' rights under Article 8 of the Convention. Such safeguards might include the adoption of regulatory measures which both confine the use of special forces to situations where ordinary police intervention cannot be regarded as safe and sufficient and prescribe additional guarantees (see and compare *Kučera v. Slovakia*, no. 48666/99, § 122, 17 July 2007).

115. The Court notes that certain safeguards are enshrined in the Latvian domestic law, most notably, the prior authorisation by the investigating judge and its subsequent review by the President of the relevant court (see paragraphs 62 and 65 above). In the present case, while the investigating judge reviewed the case material presented to him, he did not indicate those factors which linked the first applicant to the companies under investigation. The President of the relevant court did not address the first applicant's concerns in that regard although he specifically raised them (see paragraphs 37-38 above). Accordingly, the Court cannot consider that the judicial authorisation for the search and its subsequent review ensured effective protection in the present case.

116. The Court will now examine the subsequent review by prosecutors at different levels of hierarchy, as enshrined in the Criminal Procedure Law (see paragraph 65 above). In that regard, the Court notes that prosecutors on several occasions examined the case material and requested additional information from the VID FPP and the State police authorities. Although they did require further information from those authorities, there is little information available about

any assessment carried out upon receipt of that information by the prosecutors themselves. In their replies to the applicants, the prosecutors largely relied on the conclusions provided by those very authorities, whose actions they were supposed to review, and found that the assistance of the special police unit had been justified (see paragraphs 43 and 48 above) and that the Omega officers had acted in accordance with internal regulations and "taking into account the circumstances" (see paragraph 49 above). No further reasons, such as those indicated by the Government before the Court, were disclosed to the applicants. In the absence of reasons answering specific allegations made by the applicants and any further information, the Court can only conclude that the prosecutorial review of the special police unit's assistance did not ensure effective protection in the present case.

117. As to the legal regulation concerning the involvement of the special police unit, the Court notes that it was in fact the VID FPP that made the request to have the special police unit's assistance in carrying out the search. The parties offered no comment as regards legal grounds for such a decision to be made. The Court considers that a mere reference to general provisions regulating coordination between various State authorities (see paragraphs 46 and 66 above) or to the internal regulations of the Omega anti-terrorism unit to the extent that it provides assistance to law-enforcement authorities in difficulties (see paragraph 49 above) does not suffice to establish a legal framework capable of offering adequate and effective safeguards against abuse and arbitrariness.

118. To sum up, the Court reiterates that the States, when taking measures to prevent crime and to protect the rights of others, may well consider it necessary, for the purposes of special and general prevention, to resort to measures such as searches and seizures in order to obtain evidence of certain offences in a sphere in which it is otherwise impossible to identify a person guilty of an offence. In addition, the involvement of special police units may be considered necessary in certain circumstances. However, having regard to the severity of the interference with the right to respect for private life of persons affected by such measures, adequate and effective safeguards against abuse must be put in place. Given the particular circumstances of this case (see paragraphs 114-17 above), the Court finds that the available safeguards, as applied in the present case, failed to ensure effective protection of the applicants' right to have respect for their private life. Therefore, the interference with the applicants' right to have respect for their private life cannot be regarded as proportionate to the aim pursued.

119. Accordingly, there has been a violation of Article 8 of the Convention in the present case in respect of both applicants.

ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

120. The applicants also complained that they had been deprived of an effective remedy in respect of the alleged breach of Article 8 of the Convention. They relied on Article 13 of the Convention:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

121. The Government contested that argument.

The parties' submissions

122. The Government submitted that the complaint under Article 8 of the Convention was not arguable and that Article 13 did not therefore apply (they referred to *Keipenvardecas v. Latvia* (dec.), no. 38979/03, 2 March 2010, and *Ruža v. Latvia* (dec.), no. 33798/05, 11 May 2010). In the alternative, they argued that the applicants had had an effective remedy in respect of the searches and seizures, as laid down in the Criminal Procedure Law. Firstly, the President of the Riga City Ziemeļu District Court had examined the lawfulness of the search warrant. Secondly, the prosecution authorities had examined the lawfulness of the actions taken by the officers of the VID FPP and the special police unit.

123. Referring to the Constitutional Court's ruling of 11 October 2004 (case no. 2004-06-01), they argued that the prosecution authorities constituted an institution exercising a judicial function in Latvia. The relevant prosecutors had examined the case material and had requested additional information from the relevant authorities (the VID FPP, the State police authorities and the KNAB); they had then examined and meticulously verified that information. They had also examined the use of the special investigative techniques employed. Furthermore, the prosecution had opened a criminal investigation into the first applicant's allegations concerning the actions of Officer S.S. Thus, the prosecution had examined every facet of the applicants' complaint regarding the search of 16 June 2009; there was no doubt that the search had been carried out in accordance with the domestic law and the Convention.

124. The applicants laid particular emphasis on the fact that the first applicant's complaint regarding the actions of the VID FPP officers had been examined by the director of that very authority – and not by a supervising prosecutor – in breach of section 337(2)(2) of the Criminal Procedure Law. Moreover, the director's reply had been sent to the first applicant's home address and had not been issued to him while he was in custody (see paragraph 41 above). Thus, the first applicant had been deprived of his right to lodge an appeal against it. In sum, he considered that – while being in custody – he had not had an effective mechanism through which to defend his rights and that, accordingly, there had not been a "fast and effective investigation". The second applicant, without providing any further argument, also considered that there had not been a "fast and effective investigation" in so far as her rights were concerned.

The Courts' assessment

125. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

126. Having regard to the finding relating to Article 8 (see paragraphs 118-119 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, among other authorities, *Bože*, cited above, § 89).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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."

Damage

128. The first applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage for the violation of his rights, as protected by Article 8 of the Convention. The second applicant claimed, without providing any further details, EUR 500 for broken windows and EUR 2,500 for her personal belongings (one stationary and one portable computer, three mobile phones, two hard drives, flash drives, a memory card, and a new briefcase), which had been seized and not returned, in respect of pecuniary damage. The second applicant also claimed EUR 30,000 in respect of non-pecuniary damage for the violation of her rights, as protected by Article 8 of the Convention.

129. As regards pecuniary damage, the Government pointed out that the second applicant had failed to submit any evidence. As regards non-pecuniary damage, the applicants' had failed to show a causal link between the claimed damages and the alleged violation. Nevertheless, should the causal link be established, the Government was of the opinion that the finding of a violation in itself would be adequate and sufficient (they referred to *Amann v. Switzerland* [GC], no. 27798/95, § 94, ECHR 2000-II). In the alternative, the Government considered that the amount claimed by the applicants was unjustified, excessive and exorbitant. The Government considered that the cases of *Zubal' v. Slovakia* (no. 44065/06, § 49, 9 November 2010) and *Sorvisto v. Finland* (no. 19348/04, § 128, 13 January 2009) were similar to the instant case. Any award in the present case should not exceed the awards made in those cases (EUR 3,000 and EUR 2,500, respectively).

130. As regards pecuniary damage, the Court refers to its finding that the decision not to return certain specific items was justified (see paragraph 112 above) and, accordingly, dismisses the second applicant's claim in that respect. It also dismisses as unsubstantiated her claim in relation to broken windows.

131. The Court considers that the applicants must have sustained non-pecuniary damage on account of the violation of Article 8 of the Convention. Ruling on an equitable basis, the Court awards each of the applicants EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

132. The applicants did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court will not award them any sum on that account.

C. Default interest

133. 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,

Declares the remainder of the application admissible;

Holds that there has been a violation of Article 8 of the Convention;

Holds that there is no need to examine the complaint under Article 13 of the Convention;

Holds

(a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 1,500

(one thousand five hundred 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;

Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Síofra O'Leary
RegistrarPresident