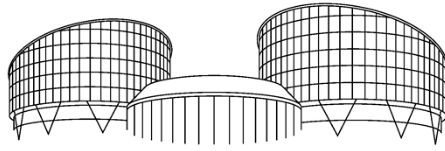

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OLEWNIK-CIEPLIŃSKA AND OLEWNIK v. POLAND

(Application no. 20147/15)

JUDGMENT

STRASBOURG

5 September 2019

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Olewnik-Cieplińska and Olewnik v. Poland,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 2 July 2019,

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

PROCEDURE

1. The case originated in an application (no. 20147/15) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Polish nationals, Ms Danuta Olewnik-Cieplińska and Mr Włodzimierz Olewnik ("the applicants"), on 14 April 2015.

2. The applicants were represented by Mr A. Legęncki, a lawyer practising in Łódź. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

3. The applicants alleged that the State had failed to protect Mr Krzysztof Olewnik's life from the illegal actions of third parties and that there had been no effective investigation into his kidnapping and death.

4. On 18 November 2015 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1974 and 1949 respectively and live in Drobin.

A. Disappearance of Krzysztof Olewnik

6. On the night of 26 October 2001 Mr Krzysztof Olewnik, the first applicant's brother and the second applicant's son, disappeared from his home in Drobin. He was twenty-five years old. He and his father were businessmen, the latter owning successful butchers' shops and meat

processing plants. On the day of his kidnapping Krzysztof Olewnik had held a garden party at his house, which was attended by four local police officers, two former police officers, his father and mother, and three of his friends. After the party, Krzysztof Olewnik drove his guests back to their homes and came back. A few hours later, he was kidnapped from his house by A, E, F and G.

7. The second applicant noticed that his son was missing on the morning of 27 October 2001 and informed the police.

8. At the same time he contacted a private detective, K.R., whose team arrived at the scene. K.R.'s team investigated the case independently of the police during the years that followed.

9. On 29 October 2001 the kidnappers contacted the applicants, asking for a ransom. The victim's family cooperated with the kidnappers, but several attempts to hand over the ransom failed as the kidnappers did not pick up the money. On numerous occasions they contacted the family by telephone and SMS, sent voice messages, and passed on letters handwritten by the victim. Many of those letters included messages indicating that Mr Olewnik might be harmed or killed. The applicant provided the following examples of them: "you put us at risk of being caught and Krzysiek being beaten up", "[it] will have brutal consequences for Krzysiek", "is a consent to Krzysiek's death". All the messages and communications received were immediately passed on to the police. On 24 July 2003 the first applicant handed over 300,000 euros (EUR) as a ransom to free her brother. However, the kidnappers did not release him.

10. Mr Krzysztof Olewnik was kept for almost two years by his kidnappers at three different nearby locations. He was hidden in an abandoned house, an underground garage, and an underground septic tank. According to the account made by the kidnappers at their trial, the victim was kept chained to the wall by his neck and his leg. He was drugged, beaten up on a few occasions, poorly fed and generally badly treated (see paragraph 39 below).

11. On 5 September 2003 Mr Olewnik was murdered in a forest near Dzbądz. The circumstances of his kidnapping and murder were discovered in November 2005 and the site of his death and burial of his body in October 2006.

12. His funeral took place on 4 November 2006.

B. Investigation into the kidnapping and murder

1. Police investigation

13. On 24 October 2001, prior to the kidnapping, the traffic police had stopped A whilst he was driving a car belonging to B. A was a repeat offender released from prison in June 2001.

14. After the second applicant had reported his son missing, the first police officers arrived at the latter’s house at 9 a.m. on 27 October 2001. The case was handled by the local police in Sierpiec. The house was searched and abundant blood samples belonging to the victim collected, as well as other evidence. The duty prosecutor arrived at the scene but did not enter the house to supervise the police and give them instructions.

15. A BMW car belonging to a friend of the victim was found burned out. It had been stolen on the night of the kidnapping after being left parked by the owner in the victim’s yard.

16. On 31 October 2001 the case was transferred to a special team led by police officer R.M. from the Radom Regional Police. The team consisted of twelve police officers, supplemented – following a confidential decision by the chief of that force – by K.K., a police officer who had attended the party at the victim’s house. The investigation was supervised by the Sierpiec District Prosecutor, L.W.

17. The team led by R.M. had four main working hypotheses. The first three posited that Mr Olewnik had been kidnapped by people linked to organised crime or by husbands of women he had dated. According to the fourth theory, of so-called “self-kidnapping”, the victim had faked his own kidnapping in order to extort money from his father. This was the version favoured by the investigating police.

18. In November 2001 the police interviewed B, a repeat offender living in the same village as the victim, and released him. In the same month the second applicant handed over to the police further evidence found in the victim’s house which had been overlooked, namely a blood-stained jacket and a mobile telephone.

19. In January and March 2002 the traffic police on four occasions stopped A driving the same car as before, twice in the presence of B and once in the presence of D (see paragraph 13 above).

20. The prosecutor L.W. supervised the investigation until 25 November 2002. From then until April 2004 the case was supervised by three consecutive prosecutors from the financial crime division of the Warsaw Regional Prosecutor’s Office (the case was transferred to the organised crime division in September 2004).

21. On 15 January 2003 the applicants received an anonymous letter alleging that the kidnappers were a certain D and C. The letter also indicated the geographical location where the victim was being kept and warned that his life was in danger. The applicants passed the letter on to the police, but the information contained therein was not considered meaningful and was not investigated further.

22. Between 11 March 2002 and 11 June 2003 the kidnappers did not contact the family. On the latter date they called the applicants and reiterated their request for a ransom in the amount of EUR 300,000. On

25 June 2003 the kidnappers sent the family a SIM card; they used the number for future communication with the applicants.

23. On 26 June 2003 the kidnappers called the applicants and later the Słubice police station. They called from a telephone booth and used a phonecard. The police were able to trace the card to other calls made by the kidnappers to the family. On 4 July 2003 the police established that the person who had called the police station using the phonecard in question had been B. Nevertheless, B was not investigated further or placed under surveillance.

24. On 24 July 2003 the first applicant handed over a ransom in the amount of EUR 300,000. The police failed to follow the first applicant and intercept the money or identify and arrest the individuals receiving it. The ransom was picked up by A, B, C, D and H.

25. Between 27 and 30 July 2003 R.M. and M.L. travelled to Berlin to investigate a possible sighting of Mr Olewnik. It turned out to be false information.

26. On 1 June 2004 the police arrested B in connection with the kidnapping of Mr Olewnik. They searched B's flat but failed to find EUR 40,000 of the ransom hidden under a sofa. Although the police by then had various pieces of evidence linking him with the kidnapping, B was released. The investigators did order that he be followed.

27. On 7 June 2004 an unmarked police car containing sixteen volumes of original documents comprising the investigation's main case file was stolen in Warsaw. The prosecutor subsequently charged two police officers in connection with the loss of the file (see paragraph 48 below).

28. Following the incident involving the loss of the file, the case was removed from the team led by R.M. On 18 August 2004 the Chief of Police in Warsaw created a special investigative team consisting of police officers from the Central Investigative Bureau in Warsaw (*Centralne Biuro Śledcze*, *CBŚ*) and from Płock. They were led by G.K.

29. The team led by G.K. proceeded to analyse the communications made from the mobile telephone of Mr Olewnik in the period after kidnapping (the telephone remained active for several months after October 2001).

30. On 15 April 2005 the police requested and received a CCTV recording from a supermarket showing that A had bought the mobile telephone used by the kidnappers for communication with the applicants on 28 October 2001. The prosecutor only decided to start monitoring the communications made from this number in May 2005, even though the IMEI number had been known from the start of the investigation. On 5 May 2005 the cashier who had sold the telephone to A was interviewed as a witness for the first time and a facial composite image was made. On the basis of photographs shown by the police, the cashier identified A as the person who had bought the telephone. The cashier also stated that the police

had already come to ask her about that telephone in 2001 and taken a CCTV tape. The original video recording was lost from the file on an unspecified date.

31. In June 2005 the police conducted searches of the homes of C, D and I, and arrested A. He was released after forty-eight hours without charge.

32. In November 2005 a witness, P.S., made a statement and gave the names of the individuals who had allegedly kidnapped Mr Olewnik.

33. Afterwards B and A were arrested on charges of the kidnapping alleged by the witness.

34. In January and February 2006 the biological (hair) and olfactory evidence collected at the house of Mr Olewnik directly after his kidnapping in October 2001 was sent for expert examination. A DNA examination of the hair was carried out in July 2006.

35. On 4 April 2006 the first applicant requested that the investigation be transferred to another prosecution service, alleging that the proceedings up until that point had been manifestly ineffective. On 14 May 2006 another investigative team took over the case, this time composed of officers specialising in organised crime from the Police Headquarters in Warsaw. On 13 June 2006, supervision of the investigation was handed over to the Olsztyn Regional Prosecutor.

36. On 27 October 2006, having been presented with the biological evidence found at the crime scene, B confessed to kidnapping Mr Olewnik. He indicated where the body was buried.

37. Afterwards other members of the gang were arrested by the police.

38. On 9 August 2007 the Olsztyn Regional Prosecutor lodged a bill of indictment with the Płock Regional Court against twelve individuals for participation in the kidnapping and murder of Mr Olewnik.

2. Judicial proceedings

39. On 31 March 2008 the Płock Regional Court convicted ten individuals of participation in a criminal gang set up with the intention of kidnapping Mr Olewnik, as well as other offences. Among those ten individuals, B and C were convicted of the murder of Mr Olewnik and sentenced to life imprisonment. Others were given prison sentences ranging from one to fourteen years (II K 119/07). The conviction was based to a large extent on detailed explanations provided by B, C, D and F, who pleaded guilty. They also described the conditions in which Mr Olewnik had been held (see paragraph 10 above). The court also accepted that the leader of the gang had been A; however, he died before the trial ended (see paragraph 74 below).

In addition, the trial court ordered that the seven main members of the gang pay the second applicant 1,200,000 Polish zlotys (PLN) in compensation for pecuniary damage (*odszkodowanie*) for the ransom which

had been paid by him on 24 July 2003 (under Article 415 § 1 of the Code of Criminal Procedure). The court allowed the applicant's request that interest be paid on that sum from the date of the civil claim being lodged, that is to say 11 October 2007. The court calculated the amount of compensation on the basis of the average exchange rate between 2003 and 2008 and considered that it equalled EUR 300,000.

The applicants participated in the proceedings as auxiliary prosecutors.

40. All parties appealed against the judgment.

41. On 8 December 2008 the Warsaw Court of Appeal amended the judgment but upheld the convictions and sentences of the accused (II Aka 306/08).

42. On 8 January 2010 the Supreme Court upheld the judgment (II KK 153/09).

43. The second applicant sought enforcement of the judgment as regards payment of the compensation ordered by the court. However, the court bailiff was unsuccessful in recovering the money from the debtors as they either had no assets or income or died before the enforcement proceedings ended (see paragraphs 74, 75 and 76 below).

3. Pending investigation

44. On 21 December 2009 the police discovered previously overlooked forensic evidence (blood) at the house of Mr Krzysztof Olewnik. The applicants submitted that there had by then been almost ten searches of the house, each revealing previously overlooked evidence.

45. In 2010 the body of Mr Olewnik was exhumed from his grave but his identity was later reconfirmed. In 2011 forensic experts prepared opinions answering the prosecutor's question regarding, in particular, errors committed during the first post-mortem examination (see also paragraph 71 below).

46. An investigation into the participation of other unidentified individuals in the kidnapping and murder of Mr Olewnik is pending before the Gdańsk Prosecutor of Appeal (Ap V Ds 11/09). The investigation is being carried out by a team of police officers from the Central Investigative Bureau at the Police Headquarters in Warsaw. It appears that in the course of the investigation the police questioned and briefly detained J.K., a friend and business partner of Mr Krzysztof Olewnik.

47. The Government, having been asked, did not provide any significant information pertaining to the course of the investigation that followed. They submitted that information pertaining to the ongoing investigation was confidential. The applicants submitted that no meaningful steps had been taken by the authorities to clarify the circumstances of the kidnapping and death of Mr Olewnik.

C. Investigation into the alleged incompetency of the authorities

1. Loss of the case file

48. Following the loss on 7 June 2004 of the entire sixteen-volume case file, which had been left by two police officers in a car in Warsaw, the prosecutor opened an investigation against them. The investigation was discontinued on 7 September 2004.

49. On 7 February 2005 that decision was quashed by the State Prosecutor, who ordered an investigation into possible negligence on the part of the police officers, which had resulted in the loss of the file.

50. On 14 May 2005 this investigation was discontinued by the Warsaw District Prosecutor. The Government submitted that the issue remains under examination in the ongoing investigation (see paragraph 47 above).

2. Proceedings against police officers

(a) M.G.

51. On 22 March 2006 police officer M.G. was arrested and charged with passing on information from police databases to unauthorised persons. The Government submitted that the proceedings were still pending, but were not directly connected to the case of Mr Olewnik.

(b) Decision of 31 December 2013

52. On 31 December 2013 the Gdańsk Prosecutor of Appeal (Ap V Ds 12/09) discontinued an investigation into allegations of negligence by various police teams in dealing with the kidnapping of Mr Olewnik; including instances of hampering the pending investigation by introducing false IMEI numbers to the police database. The prosecutor discontinued as time-barred an investigation into the search of the victim's house being conducted in breach of the relevant standards. The prosecutor further investigated the correctness of the supervision of the investigative team – at various levels within the police – and considered that no offence had been committed. The prosecutor discontinued an investigation concerning the period between May 2006 and May 2008 on the grounds that the investigation against A, B, C and other members of the gang had been terminated too early and in breach of the relevant provisions, and that no offence had been committed.

(c) R.M. and M.L.

53. On 27 June 2007 the Olsztyn Regional Prosecutor opened an investigation into possible negligence on the part of the police officers and prosecutors in the years 2001 to 2005 during the handling of Mr Olewnik's case (Ap Ds 12/09). The investigation was opened in response to a formal

notification made by the second applicant that an offence had been committed.

54. On 24 April 2008 the Olsztyn Regional Prosecutor took the decision to arrest three police officers: R.M., M.L. and S.C. They were arrested on 28 April 2008 but released following a decision of a court. On 29 April 2008 the police officers were charged with, *inter alia*, negligently performing their duties

55. The investigation was transferred to the Gdańsk State Prosecutor and later the Gdańsk Prosecutor of Appeal.

56. On 21 December 2012 the Gdańsk Prosecutor of Appeal (Ap V Ds 54/12) issued an indictment against R.M. and M.L. The police officers were charged with several counts of abuse of power (proscribed by Article 231 of the Criminal Code), allegedly committed between 31 October 2001 and 17 August 2004 when they had been in charge of the investigation into the kidnapping of Krzysztof Olewnik. The prosecutor also considered that the offences amounted to subjecting a person to a risk of danger, an offence proscribed by Article 160 § 1 of the Criminal Code. The bill of indictment itself was 333 pages long and relied on the statements of 655 witnesses who had been interviewed in the course of the investigation. The prosecutor sought the examination by the court of 909 pieces of evidence and the hearing of seventy-one witnesses. The applicants participated in the proceedings as auxiliary prosecutors.

57. The police officers were charged with abuse of power , in particular: failing to gather evidence that could have been provided by the sales assistant from the supermarket who had been able to identify A; failing to investigate the anonymous letter of January 2003 which had named the individuals involved in the kidnapping as B and C; delays in analysing the calls made by the kidnappers using a known telephone SIM card, which would have linked them to A and C; failing to supervise the handover of the ransom on 24 July 2003; and the destruction of two pieces of evidence resulting from the monitoring of a mobile telephone related to the kidnapping.

58. On 10 December 2013 the Płock Regional Court acquitted both police officers. The court considered the charges under Article 160 of the Criminal Code to be ill-founded and, moreover, time-barred since September 2013. As regards the offence of abuse of power under Article 231 of the Code, the court held that the actions and omissions attributed by the prosecutor to the two accused could only be examined from the perspective of unintentional recklessness or carelessness. Such an offence would fall under Article 231 § 3 of the Criminal Code. The court was of the view that the events with which the defendants had been charged should have been taken as individual offences, which − as such − would have become time-barred on various dates in 2013. In defence of the police officers the court noted, among other things, that the investigation should

have been led by the prosecutor, who should have been instructing the police as to what action to take. In the investigation the prosecutors had mostly been passive. The court further analysed the evidence against the defendants as regards each charge brought against them and concluded that they had not caused essential damage, as required by Article 231 § 3 of the Criminal Code.

59. On 14 October 2014 the Łódź Court of Appeal upheld the judgment. The offences became time-barred on 17 August 2014, which precluded the court from assessing the case on the merits. The applicant received a copy of that judgment on 1 December 2014.

(d) H.S.

60. On 25 January 2013 the Gdańsk Prosecutor of Appeal (Ap V Ds 12/09) discontinued an investigation against H.S., another police officer from Płock who had dealt with the case between 29 October 2001 and May 2006, as no offence had been committed. The police officer had been charged with abuse of power in breach of Article 231 of the Criminal Code for, in particular, failing to adduce as evidence items found by the burned out BMW car, the video recording from the supermarket obtained in November 2001 showing one of the kidnappers, and the video recording from the petrol station where the kidnappers had abandoned the telephone that had been used in their communications with the family, which had delayed the discovery of the perpetrators and hindered the release of Mr Olewnik, and had consequently resulted in his death on 5 September 2003. The officer had also been charged with failing to take any action following the anonymous letter of 15 January 2003 which had named the true perpetrators of the crime and described the circumstances thereof.

61. In the opinion of the prosecutor, the police officer in question either had no information about the events on which the charges were based or his omissions had not been intentional. Given the circumstances of the case, the police officer could not be held criminally liable for the final outcome of the case, namely the murder of the victim by other individuals.

62. On 22 August 2013 the Płock District Court dismissed an appeal lodged by the first applicant against the decision of 25 January 2013 and upheld it. The court agreed that many mistakes and omissions had taken place in the case, however there had not been enough evidence to consider that police officer H.S. had committed an offence.

3. Proceedings against prosecutors

(a) Main investigation

63. On 18 December 2012 the Gdańsk Prosecutor of Appeal decided to discontinue investigations concerning several prosecutors who had dealt

with the case (ApV Ds 12/09). In that set of proceedings no charges had been brought against the prosecutors.

64. The following allegations of abuse of power, prohibited by Article 231 of the Criminal Code and allegedly committed by various prosecutors, to the detriment of Krzysztof Olewnik and the public interest, were not pursued owing to the statute of limitations:

(i) Negligence on the part of A.N. on 27 October 2001 for failing to personally oversee the inspection of the property and supervise the collection of evidence by the police, which he was obliged to do by law.

(ii) Negligence on the part of L.W. in the period from 29 October 2001 to 25 November 2002 for, in particular, incorrectly analysing the case, failing to supervise the police's actions, and following incorrect procedures after obtaining evidence from telephone conversations, leading to substantial delays in the discovery and arrest of the perpetrators of the kidnapping;

(iii) Negligence on the part of the Płock Regional Prosecutor, who supervised the work of L.W. in the period from 31 October 2001 to 25 November 2002, for not following the rules of correct supervision, which contributed to many of the mistakes that had been committed.

Allegations of negligence on the part of other prosecutors who had been involved in the case throughout the years were also investigated and dismissed.

65. As regards point (i) above, concerning the actions of prosecutor A.N., who was on duty when the kidnapping was discovered, the investigation revealed that he had committed numerous acts of negligence on 27 October 2001. The seriousness of those acts, in spite of clear legal provisions requiring prosecutors to take the initiative in such circumstances, did not allow them to be classified as unintentional. However, the proceedings to finally establish the criminal liability of A.N. had to be discontinued owing to the statute of limitations regarding the offences in question.

66. As regards point (ii) above, concerning the actions of prosecutor L.W. for a period of over one year, the investigators noted, on the one hand, his low level of involvement, multiple mistakes, and omissions. On the other hand, they acknowledged that he had acted within a legal and organisational framework which had made his work more difficult. L.W. was a district prosecutor with a long list of pending cases, to which even more had been added during the time he had been working on the Olewnik case. When district prosecutors were assessed, particular attention was paid to their output and the number of cases completed. The internal organisation of the prosecution service was such that this prosecutor had received no support from his superiors, even though he had not had any experience of this type of case.

67. The decision of 18 December 2012 ended with the following conclusion:

> "Summing up the above analysis, one cannot ignore the fact that the causes behind the failures of the police and prosecution service, resulting in the dramatic consequence of the death of Mr Olewnik, lay much deeper than individual errors committed by particular prosecutors (as was also noted by the Parliamentary Committee). The whole system of operation of the prosecution service, as well as the legislative and executive powers, should be held responsible for this failure. They had failed to create a proper legal and financial structure for the prosecution service in which events as important as kidnappings would immediately be transferred to prosecutors and police officers who were prepared for dealing with them. Such a structure would concentrate all measures and attention on freeing the imprisoned victim. The law-enforcement organisation failed in the case of Mr Olewnik, and that assessment cannot be ignored, despite the ultimately successful outcome of the work of prosecutor R.W. and the team from the Central Investigative Bureau of the Police Headquarters, who were able to initiate, and to a large extent finalise, the discovery and capture of the perpetrators of his kidnap and murder."

(b) Other information

68. On 30 October 2009 the Disciplinary Court within the Prosecutor General's Office acquitted C.K., the Olsztyn Regional Prosecutor. The disciplinary proceedings had been initiated at the second applicant's request.

4. Investigation against central authorities

69. On 16 April 2013 the Gdańsk Prosecutor of Appeal discontinued an investigation (Ap V Ds 12/09) into allegations of negligent performance of official duties in breach of Article 231 of the Criminal Code (*niedopełnienie obowiązków służbowych*) in the period between 27 October 2001 and 10 August 2007. The investigation had been directed against representatives of the central administrative authorities of the Republic of Poland, in particular the President, the Prime Minister, Minister of Justice, the Prosecutor General, Minister of Internal Affairs and Administration, and members of both chambers of Parliament, on account of their failure to take action aimed at attaining an effective termination of the criminal proceedings in the case of the kidnapping of Krzysztof Olewnik in accordance with the provisions of the Code of Criminal Procedure and other laws. Their lack of action had been to the detriment of Mr Olewnik and his closest relatives and against the public interest, as it had hindered the release of Krzysztof Olewnik, delayed the discovery and arrest of the perpetrators of the kidnapping and murder, and had resulted in the loss of certain pieces of evidence.

70. The prosecutor concluded that, in the light of the facts and the law, there were no grounds for charging the highest-ranking civil servants with any criminal offence. In particular, there were no grounds for examining

whether the Minister of Justice could be held criminally liable for the flawed investigation.

5. *Forensic experts*

71. On 28 December 2012 the Gdańsk Prosecutor of Appeal indicted a forensic expert, J.D., and the head of the forensic laboratory in Olsztyn, B.Z., before the Elbląg District Court (Ap V Ds 63/12). The charges concerned flaws discovered in 2006 concerning the examination and identification of the body of Krzysztof Olewnik. In particular, the bone and tissue samples taken for DNA testing to confirm the identity of the deceased had afterwards disappeared. All attempts to find those pieces of evidence had failed and it had been necessary to exhume the body in 2010 in order to confirm that it was Krzysztof Olewnik (see paragraph 38 above).

72. The proceedings are pending, with the second applicant participating as an auxiliary prosecutor.

D. Other matters

1. *Deaths and suicides*

73. On 12 December 2006 P.S., the main witness who had named the kidnappers, died (see paragraph 26 above). Before his death he had complained about receiving threats which, in the way they were worded, showed that the details of his statements to the authorities could have been leaked to the perpetrators. An investigation was opened into the threatening of a witness, but no action was taken to trace any possible leak from within the investigative team. The witness apparently died of a long-term illness, so his death was not investigated.

74. On 18 June 2007 A, the alleged leader of the kidnapping gang and owner of the house in which Mr Olewnik had been kept, committed suicide while detained in Olsztyn Remand Centre. Earlier that day he had consulted his case file and had been searched upon returning to his cell; he had been behaving normally.

A was found hanged in his single cell (in a half-sitting position resembling someone watching television, with one finger of his left hand raised – it had been taped with sellotape to the window bars). He left a will and a letter to his family. The post-mortem examination revealed traces of amphetamine and alcohol in his body.

On 31 July 2008 the Olsztyn District Prosecutor decided to discontinue an investigation into the sudden death of A and possible negligence on the part of the prison guards. On 8 March 2010 the Minister of Justice, the Prosecutor General, decided to reopen the investigation into the death. The investigation was eventually discontinued on 29 April 2011.

75. On 4 April 2008 B, who had been sentenced to life imprisonment for the murder of Mr Olewnik, committed suicide while detained in Płock Prison. The doctor performing the post mortem noted injuries on the deceased's arms which could have been sustained if he had been held by his arms and forced into a certain position, or caused by blows inflicted just before his death. On 31 December 2010 the Ostrołęka Regional Prosecutor discontinued an investigation into the sudden death of B and possible negligence on the part of the prison guards. B's family did not appeal and the decision became final.

76. On 19 January 2009 C, who had been sentenced to life imprisonment for the murder of Mr Olewnik, committed suicide while detained in Płock Prison. On 13 January 2011 the Ostrołęka Regional Prosecutor discontinued an investigation into the sudden death of C and possible negligence on the part of the prison guards. It was concluded, for instance, that a rib fracture sustained by C could have had happened while attempts were being made to resuscitate him. C's family did not appeal and the decision became final.

77. A, B, and C had been declared so-called "dangerous detainees" and had been subjected to various limitations in their contact with other detainees and many other security measures. In particular, they were detained in single cells monitored by CCTV, their contact with other detainees was severely limited, they were subjected to strip searches every time they left the cell and their cells were searched daily.

78. While detained, B and C refused to go out for their daily walks and remained in their individual cells; it appears that B had refused to go for daily walks since September 2006. C was transferred to Płock Prison only ten days before his death. They indicated to the authorities that they were in fear of their lives.

79. On 12 July 2009 M.K. committed suicide. He was the prison officer at Olsztyn Remand Centre on duty on the day A committed suicide.

2. *Dismissals*

80. On 20 January 2009 the Prime Minister accepted the resignation of Mr Z. Ćwiąkalski from the post of Minister of Justice, who "as the head of the services responsible for investigating the case of the kidnapping and murder of Mr Olewnik, [bore] direct responsibility for the omissions and failures of those services".

81. At the same time the following people were dismissed: the State Prosecutor, the Deputy Minister responsible for the Prison Service, the Head of the Prison Service and the Governor of Płock Prison.

3. *Parliamentary Inquiry Committee*

82. On 13 February 2009 the Polish Sejm set up a Parliamentary Inquiry Committee into the correctness of the actions of the public authorities in the

criminal proceedings concerning the kidnapping and death of Mr Krzysztof Olewnik (*Komisja Śledcza do zbadania prawidłowości działań organów administracji rządowej w sprawie postepowań karnych związanych z uprowadzeniem i zabójstwem Krzysztofa Olewnika*). The Committee held 136 sessions at which it interviewed 109 individuals, some of them several times. The Committee requested information from various ministries and other State entities as well as various intelligence agencies. It also examined 395 volumes of case files collected in the case into the kidnapping of Mr Olewnik. Lastly, it examined expert opinions on the police's work (methodology, cooperation between services, evidence) and on issues relating to the Prison Service.

83. At the session of 17 May 2011 the Sejm adopted an extensive final report (235 pages) which, in so far as relevant, stated:

> "The Sejm outlined to the Committee the following tasks, thereby setting out its remit:
>
> 1) examination of the correctness of the actions of the prosecution service and the police in the criminal proceedings concerning the kidnapping and murder of Krzysztof Olewnik;
>
> 2) examination of the correctness of the actions of the [Prison Service], police and prosecution service as regards the execution of the pre-trial detention and prison sentence in the criminal proceedings referred to in point 1 above;
>
> 3) examination of the correctness of the actions of the public administration bodies when dealing with the criminal proceedings referred to above under point 1 and the execution of the pre-trial detention and prison sentence in the criminal proceedings in question."

84. As preliminary remarks the Committee stated:

> "The Committee is aware that procedural and operational activities that are ongoing may change some elements that had been established by the investigators or the courts. They may not challenge however the fact that, beyond any doubt, Krzysztof Olewnik was held hostage in order to force [his father] to pay ransom, [that] his deprivation of liberty involved particular torment, and [that] after ransom money had been transmitted by the family, he had been murdered."

85. Concerning the initial reaction of the police to the disappearance of Mr Olewnik, the Committee noted the following main shortcomings: the police officer leading the forensic team had been inexperienced, had not secured the perimeter of the crime scene, had collected blood samples carelessly, had not fully examined the property and had overlooked many pieces of evidence. As an example of this incompetence the Committee observed that, eight years after the events, a blood sample from an unidentified man had been found under the sofa in the victim's living room. A further shortcoming was the fact that some of the officers who had attended the party at Mr Olewnik's house on the night of his kidnapping had been part of the investigation team.

86. The Committee examined the work of the team led by R.M., who had been appointed to deal with the case between 31 October 2001 and 18 August 2004. The analysis, which extended to over forty pages, revealed a multitude of omissions, including basic mistakes in modern policing and the total passivity of the team led by R.M. The police had not used the technical and operational methods available to trace people (for instance by searching police databases), communications (for instance monitoring mobile and landlines) and items (such as marking and tracing the banknotes handed over as a ransom). Some of the shortcomings attributed to the team included:

(a) failure to make use of the witness who had sold the telephone to A and of the CCTV footage from the supermarket until May and June 2005. Even many years later the witness had still been able to identify A, because he had reminded her of a famous singer. The original video recording had been obtained by police officer M.L. in 2001 but had later been lost in unknown circumstances;

(b) no real examination of the phonecards and SIM cards used by the kidnappers;

(c) no meaningful follow-up of the anonymous letter received in January 2003;

(d) no support offered to the victim's desperate family, who had been left to negotiate with the kidnappers on their own;

(e) "improvised and uncontrolled" supervision of the handover of the ransom money on 24 July 2003 even though the police had known since 11 June 2003 and had had time to prepare for the operation. Moreover, the family had made copies of the banknotes handed over as a ransom, but the police had failed to secure this evidence, so on several occasions when 500 euro notes had been presented in banks or exchange kiosks, they could not be traced to the case; the serial numbers of the banknotes had not been transferred to the Banking Central Supervision Authority until 21 December 2004, when the case had been taken over by a different police team;

(f) failure to investigate and prosecute those responsible for the loss of the entire case file when the car in which it had been placed had been stolen on 7 June 2004; and

(g) two documented cases of destruction of important pieces of evidence.

87. The Committee also commented that the team led by R.M. had not been supervised in any meaningful way by M.K., the Deputy Chief of the Radom Regional Police, even though this had been required by law. Other levels of supervision within the police had also been "indifferent" and tainted by personal friendships and business links.

88. The work of the police should be supervised by a prosecutor, who must direct the investigation. In the instant case, the first few years, in particular, had been characterised by the passivity of the various

prosecutors. Prosecutor L.W., who had supervised the investigation while it had been handled by the team led by R.M., had been particularly at fault. The Committee concluded that the prosecutor "[had not had] a thorough knowledge of the information collected in the course of the investigation", "[had been] unaware that the team [had] also included police officers who had attended the party at the victim's house", "[had] not check[ed] that his instructions were being carried out", and had "failed to monitor the handover of the ransom". He had never visited the victim's house, had been unaware of the existence of the recording from the supermarket, and so forth. In general terms, he had been inexperienced in cases of this type, and had remained passive.

89. The Committee also examined the level of supervision within the prosecution service and considered it weak. The case had overwhelmed even the superior prosecutors, who had wanted it to be removed from their sphere of responsibility.

90. The prosecutors who had taken over the case from L.W. had committed further errors. These included failure to take any action following the anonymous letter of 14 January 2003, a lack of supervision of the actions relating to the handover of the ransom, a six-month delay before private operators had been asked for the numbers of the telephone cards used in communications by the kidnappers, and so forth.

91. The Committee further examined the actions carried out by the second police team led by G.K., which was appointed on 18 August 2004 to investigate the case and which dealt with it until 14 May 2006. It appears that this team was influenced by the theory that Mr Olewnik had faked his own kidnapping in order to extort money from his father. In general terms the Committee noted that the investigation had clearly speeded up and that the new prosecutors who had taken over the case had been diligent. At this stage the prosecutor had examined two theories: one in which Mr Olewnik had been kidnapped by an organised criminal group or a group linked to the police, and a second which posited his "self-kidnapping".

92. As regards the subsequent prosecutors and supervising prosecutors, the Committee observed that they had carried out many actions aimed at correcting the errors committed earlier. However, as one of them stated before the Committee: "in this case the majority of the errors were committed in the initial stages, which in a criminal case of this nature had a decisive impact on the outcome of the case. We will never know what would have happened if all the initial actions had been carried out correctly, starting with the examination of the place [of kidnapping] and the securing of the evidence."

93. The Committee also examined how the case had been supervised by the Minister of Justice, the Prosecutor General and the Minister of Internal Affairs, who remain the official supervisors of the police. It noted that the family of the victim had met many ministers and politicians in order to

attract their attention to the case. The Committee noted that the system of hierarchical supervision was tainted by "misguided corporate solidarity". On one occasion, high-ranking prosecutors examining the case on behalf of the Minister of Justice criticised the ongoing investigation as "dramatic and embarrassing", and yet no disciplinary or penal consequences followed. As regards the control of the Minister of Internal Affairs over the police force, the Committee noted that the first of the ministers concerned had been unaware of the extent of his authority in this respect. Subsequent ministers had likewise failed to make use of the legal instruments of control over the police which they had had at their disposal.

94. The Committee concluded its report by stating that the actions of the police and the prosecutors between 2001 and 2004 had to be "assessed negatively". The report stated:

> "We find that the police officers who led the investigation and the supervising prosecutors bear legal and moral responsibility for the errors [in the investigation] which were clearly committed during this period.
>
> In the Committee's opinion, there were no decisive actions on the part of the investigative authorities in the period immediately after the kidnapping of Krzysztof Olewnik. Visible sluggishness, errors, recklessness, and a lack of professionalism on the part of the investigators resulted in the failure to discover the perpetrators of the kidnapping, and consequently to the unjustifiable and unimaginable suffering to which [the victim] was subjected, and ultimately, in his death.
>
> The high number and the nature of the omissions and errors made by some police officers and prosecutors investigating the case led the Committee to explore a hypothesis positing that there had been intentional and purposeful actions by public officials aimed at covering their tracks, destroying evidence, creating false operational versions and, consequently, that some of them had cooperated with the criminal gang which kidnapped and murdered Krzysztof Olewnik. However, this hypothesis can only be verified in criminal proceedings carried out by the Gdańsk Prosecutor of Appeal.
>
> ... taking the so-called Olewnik case as an example of the actions of the central administration could undermine people's trust in the State.
>
> The Committee is persuaded that the behaviour of the central administration could have breached people's constitutional rights.
>
> Moreover, it pointed to a lack of skill on the part of those responsible for the security of individuals, revealed shortcomings in procedures concerning the monitoring of law enforcement in Poland, and engendered a sense of helplessness and weakness as regards the State authorities in their attitude to the perpetrators of crime, as well as a sense of injustice."

In its conclusions the Committee also suggested that the question of the criminal liability of some public servants should be examined, but that in most cases the offences would be time-barred.

95. The Commission lastly welcomed the changes in law and practice following scrutiny of the Krzysztof Olewnik case. In particular, it welcomed the creation of a Council for Victims of Crime, under the auspices of the

Minister of Justice, and of the Charter of Victims' Rights. Moreover, the Prosecutor General decided that all cases concerning kidnappings would automatically be transferred to the investigative branches of the regional prosecution services and examined from the outset with the help of a forensic specialist. A joint team for handling cases of kidnapping involving a ransom was created, grouping together representatives of the Minister of Internal Affairs, Chief of Police and Head of the Internal Security Agency. The Commission also proposed a general reform of the system, with the aim of assisting and protecting witnesses in criminal proceedings.

96. Lastly, the Commission made a series of proposals for systemic reforms regarding the police and prosecution service. Improvements were needed as regards the manner in which the work of prosecutors was supervised internally. It reiterated the need for prosecutors to specialise to a certain degree and recommended that the divisions dealing with organised crime under the Prosecutor of Appeal should have more independence and be attached directly to the Prosecutor General. It considered that in cases involving the disappearance and abduction of individuals, the police and prosecution service should have a common action plan, with formalised guidelines detailing the recommended action to be taken, which would be distributed to all entities in the country. One of the elements of the plan would be to ensure that when certain criteria were met, the case would immediately be transferred to a specialist prosecutor. The Commission recommended that there should be clear rules regulating when a prosecutor could be removed from a case. The Commission also noted that the prosecutor did not have at his disposal, either before or at the current time, any legal instrument that would allow him to compel the police, or any other service, to carry out particular investigative (operational) activities or examine their results.

The recommendations for the police included training courses, increased supervision, and a restructuring of the internal organisation of the police force and its support services, such as forensic laboratories.

97. The Commission also presented conclusions regarding the recommended reform of the functioning of the Prison Service so as to offer an effective form of protection to prisoners and to prevent suicides. Lastly, the Commission examined confidentiality laws, finding that far too often the pretext of classification as a "State secret" had been invoked to "protect corrupt and incompetent civil servants".

4. *Civil proceedings instituted by the applicants*

98. 17 November 2011 the Gdańsk Prosecutor of Appeal's Office issued two press releases concerning the pending investigation into the death of Mr Olewnik (see paragraph 46 above). The applicants considered that they included statements which hinted that the family had been withholding evidence from the authorities. Both applicants brought civil actions for

compensation from the State Treasury for breach of their personal rights in connection with those statements. Both actions were dismissed.

II. RELEVANT DOMESTIC LAW

99. The relevant provisions of the Criminal Code provide as follows:

Article 160 (exposure to danger)

"1. Anyone who exposes a human being to an immediate danger of loss of life, serious bodily injury, or a serious impairment of health shall be subject to the penalty of deprivation of liberty for up to three years.

2. If the perpetrator has a duty to take care of the person exposed to danger, he shall be subject to the penalty of deprivation of liberty for a term of between three months and five years."

Article 231 (abuse of power)

"1. A public official who, overstepping his powers or not fulfilling his duties, acts to the detriment of public or private interests shall be liable to a prison term of up to three years.

...

3. If the perpetrator of the act specified in [paragraph] 1 acts unintentionally and causes serious damage, he shall be liable to a fine, or the penalty of restriction of liberty, or deprivation of liberty for up to two years."

Article 101 (statute of limitations)

"1. Punishment for an offence shall be subject to limitation if, from the time of commission of the offence, the [following] period has expired:

1) Thirty years – if an act constitutes the serious offence (*zbrodnia*) of homicide;

2) Twenty years – if an act constitutes another serious offence;

2a) Fifteen years – if an act constitutes an offence rendering the offender liable to a prison term exceeding five years;

3) Ten years – if an act constitutes an offence rendering the offender liable to a prison term exceeding three years;

4) Five years – in respect of other offences ..."

100. Pursuant to Article 102, if during the limitation periods referred to in the above provision an investigation against a person has been opened, punishment for the offences specified in Article 101 § 1 (1) to (3) is subject to limitation after ten years and for other offences after five years from the end of the relevant periods.

101. Article 415 § 1 of the Code of Criminal Procedure, as in force at the material time, provided that in the event of a conviction, the trial court could allow or dismiss a civil claim.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

102. Relying on Articles 2, 3, and 13 of the Convention, the applicants complained that Mr Krzysztof Olewnik's death had resulted from the domestic authorities' failure to effectively investigate his kidnapping and, ultimately, protect his life. They also complained that the domestic authorities had failed to carry out an effective investigation into the circumstances surrounding the death.

103. The Court considers that the applicants' complaints should be examined solely from the standpoint of the substantive and procedural aspects of Article 2, bearing in mind that, since it is master of the characterisation to be given in law to the facts of the case, it is not bound by the characterisation given by an applicant or a government (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, ECHR 2018). Article 2 of the Convention provides in so far as relevant:

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

A. Admissibility

104. The Court notes that the parties did not contest the admissibility of the case. Nevertheless, the Court would reiterate some pertinent principles established in its case-law.

105. The Court observes that Mr Olewnik was kidnapped in 2001, which was the starting point of the investigation into his disappearance. After identifying the members of the gang that kidnapped, held captive and killed Mr Olewnik, the authorities charged, tried and convicted them of those offences (the final judgment of the Supreme Court being given in 2010).

106. The Court reiterates that in the normal course of events, a criminal trial must be regarded as furnishing the strongest safeguards of an effective procedure for the finding of facts and the attribution of criminal responsibility (see *McKerr v. the United Kingdom*, no. 28883/95, § 134, ECHR 2001-III). However, later events or circumstances may arise which cast doubt on the effectiveness of the original investigation and trial or which raise new or wider issues, and an obligation may arise for further investigations to be pursued (see *Hackett v. the United Kingdom* (dec.), no. 34698/04, 10 May 2005). The Court has also held that where there is a plausible, or credible, allegation, piece of evidence or item of information relevant to the identification, and eventual prosecution or punishment of the perpetrator of an unlawful killing, the authorities are under an obligation to take further investigative measures (see *Brecknell v. the United Kingdom*, no. 32457/04, § 71, 27 November 2007).

107. In the present case the investigative activity of the authorities did not stop during the criminal proceedings against the alleged perpetrators. In consequence, the investigation into the participation of other unidentified individuals in the kidnapping and murder of Mr Olewnik has remained open since at least December 2009 before the Gdańsk Prosecutor of Appeal. The Court cannot speculate what new evidence or hypothesis has been investigated by the authorities for the last ten years as the Government, despite having been asked, failed to provide details pertaining to the matter.

108. The Court thus considers that the examination of the applicants' complaints that the State had failed to fulfil its obligations to secure the right to life of Mr Olewnik and investigate his death must cover the entire period from the day of his disappearance in 2001 until today.

The Court is therefore not called to examine whether, and in what form, the procedural obligation to investigate was revived (compare and contrast *Brecknell*, cited above, § 66). Nor does the case raise doubts as to its compliance with the six-month requirement.

Moreover, the Court notes that in the period between 2007 and 2013 the domestic authorities attempted to establish the individual criminal liability of some police officers and prosecutors, and the Parliamentary Inquiry Committee carried out an extensive assessment of the various State institutions involved in the case. The Court considers that the conclusions and findings reached in those proceedings provide a valuable insight into the manner in which the State has discharged themselves of their obligations under Article 2 of the Convention.

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

B. Merits

1. Substantive aspect of Article 2 of the Convention

(a) The parties' submissions

(i) The applicants

110. The applicants submitted that the State authorities had been responsible for mistakes and omissions which had made it impossible to identify the perpetrators of the kidnapping and, in consequence, to prevent Mr Olewnik's murder. Already at the initial stages of the investigation evidence had been overlooked, police work had not been supervised, and A, B and C had not been investigated, in spite of evidence of their involvement in the kidnapping. The evidence from the seller of the mobile telephone used in communications with the family and the anonymous letter from 2003 had been disregarded. If the police had taken the appropriate action, it

would have offered a realistic possibility of identifying the perpetrators and freeing Mr Olewnik from their hands before the ransom had been handed over. Those omissions of the authorities had resulted in exposing Mr Olewnik to torture and inhuman treatment at the hands of the kidnappers and had ultimately led to his murder.

111. The applicants maintained that the State could reasonably assume that the victim had been held in difficult conditions. The long period of detention and the several failed attempts to hand over the ransom had made it more probable that the kidnappers would hurt or kill Mr Olewnik; the letters passed by the kidnappers to the family had contained such threats. Moreover, the anonymous letter from 2003 had clearly indicated that Mr Olewnik's life had been in danger. In those circumstances, it had to be concluded that the State had been aware of the actual and direct threat to life of the kidnapped victim.

112. Despite knowing of the threat to Mr Olewnik's life, the authorities had failed to take the action which could reasonably have been expected from them. The negligence and omissions which had taken place clearly showed that the State had failed to take reasonable action to prevent his death. The applicants further stated that between 1995 and 2000 there had been 151 kidnappings registered in Poland, mostly for ransom, and that that trend had not changed afterwards. Kidnappings for ransom had therefore not been a rarity but a known phenomenon and by 2001 the authorities should have been prepared for dealing with them. Basing on their own statistics the authorities had clearly been aware of the realistic threat to kidnapped people.

113. Lastly, the applicants argued that at the time of events the legal regulations and procedures had been limited and had developed after the conclusions of the Inquiry Committee. Nevertheless, they had existed and could have been sufficient to protect the rights of a kidnapped person and his family. In the present case, however, they had not been implemented to a sufficient degree in the investigation or had been ignored altogether.

(ii) The Government

114. The Government contested the applicants' submissions. They submitted that the scope of the positive obligations under Article 2 of the Convention had to be interpreted in a way that did not impose a disproportionate burden on the authorities. In cases of kidnapping for ransom, the State authorities took into account as a rule the possibility of a threat to life of the victim. However, in the instant case, the authorities had had no knowledge that an actual threat to the victim's life had existed. The conditions in which Mr Olewnik had been held and the circumstances of his death had been disclosed by the perpetrators themselves after his death and, due to the lapse of time, it had no longer been possible to verify their account. The Government submitted that the kidnappers' behaviour during

the ransom negotiations had not indicated their intention to treat the victim inhumanely or kill him.

115. The Government submitted that the Polish legislative regulations guaranteed protection of human life in the Constitution and the Criminal Code. Many other laws regulated police work including surveillance methods, police operations, and cooperation in cases of kidnappings for ransom. Moreover, the relevant provisions regulating the actions of the police and prosecutors contained regulations aimed at protecting the life of victims of kidnappings. The Government acknowledged that a number of safeguards had been introduced into the law and into practice after the murder of Mr Olewnik. In particular the Law on the protection and assistance to victims and witnesses had been introduced on 28 November 2014. Furthermore, the Criminal Code had increased the punishment for the offence of kidnapping. The Government also described new regulations relating to the functioning and operation of different law-enforcement agencies.

116. In sum, the State had fulfilled its obligations to implement the relevant provisions of domestic law but also to conduct an investigation to identify the individuals responsible for Mr Olewnik's death and punish them. The Government concluded that it had not been possible to foresee a risk to Mr Olewnik's life, and thus the State had not been responsible for a substantive breach of Article 2 of the Convention.

(b) The Court's assessment

(i) General principles

117. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

118. The State duty to take appropriate steps to safeguard the lives of those within its jurisdiction also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII, and *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 90, ECHR 2001-III). In such cases, the Court's task is to determine whether the authorities knew or ought to have known of the existence of a real and immediate risk and, if so, whether they did all

that could have been required of them to prevent the life of the individual concerned from being, avoidably, put at risk (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-III and *Uçar v. Turkey*, no. 52392/99, § 86, 11 April 2006).

119. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 111, 31 January 2019). For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention (see *Osman*, cited above, § 116).

(ii) Application to the present case

120. The Court observes that the core of the applicants' allegation was that the domestic authorities were responsible for Mr Olewnik's death in that they had not correctly investigated his disappearance in October 2001, which resulted in him being subjected to serious ill-treatment and ended in his murder in September 2003.

121. The Court reiterates that since *Osman*, it must be established that the authorities knew or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116).

122. The Court notes in this connection that the Government agreed that in cases of kidnapping for ransom it must be assumed that the life and health of the victim is at risk. The Polish statistics provided by the Government from the year 2001 onwards show that a great number of kidnappings involved particular torment, and included cases of damage to health, and cases of death of the victim. The sudden disappearance of Mr Olewnik was investigated as a kidnapping from the beginning and abundant blood samples belonging to the victim were found at his home.

123. Moreover, such a serious risk to a victim's well-being, health and life is not necessarily dependent on whether or not the kidnappers communicated their intention to harm him or her. The Court would nevertheless address the Government's assertion that in the present case the risk to Mr Olewnik had not been clear as the kidnappers had not indicated their intention to harm him. The negotiations with the kidnappers, which started directly after his kidnapping, had lasted for four years, varying in their intensity, and culminated with the handing over of a substantial sum of ransom money. The letters received from the kidnappers by the family, all passed on to the police, clearly contained threats to Mr Olewnik's life and health (see paragraph 9 above). The police received an anonymous letter on 15 January 2003 which clearly indicated that the life of the victim was in danger (see paragraph 21 above). Those facts contradict the Government's assertion.

124. The Court considers that in the circumstances of the case the immediacy of the risk to Mr Olewnik's life should be understood as referring mainly to the gravity of the situation and the particular vulnerability of the victim of kidnapping. It did not diminish with time. To the contrary, the fact that the situation endured for years increased the torment of the victim and the risk to his health and life. The Court thus considers that the real risk to his life remained imminent throughout the entire period of his imprisonment by the gangsters.

125. In those circumstances, the Court finds that in the case of the kidnapping of Mr Olewnik, the authorities knew or should have known of the existence of a real and immediate risk to his health and life from the moment of his disappearance. In such situations the States' positive obligations under Article 2 of the Convention require the domestic authorities to do all that could reasonably be expected of them in order to find Mr Olewnik as swiftly as possible and identify the perpetrators of the kidnapping (see, for example, *Osman*, cited above, § 116; and *Mastromatteo*, cited above, § 74; *Maiorano and Others*, cited above, § 109, and *Choreftakis and Choreftaki*, cited above, § 55).

126. When examining whether the domestic authorities complied with those positive obligations, it must be borne in mind that they have to be interpreted in such a way as not to impose an excessive burden on the authorities (see paragraph 119 above).

127. At present the Court has at its disposal extensive evidence regarding what action the police and the prosecutors took during the period under consideration. This evidence includes a very detailed description of the action that was taken after the kidnapping of Mr Olewnik in 2001 until the discovery of his body in 2006. Putting aside the judgment convicting the perpetrators and the available information pertaining to the ongoing investigation (see paragraphs 39 and 47 above), the Court would rely in particular on the conclusions of the Parliamentary Inquiry Committee (see

paragraph 85 above). Without repeating those conclusions, the Court considers that the facts established by the Committee were highly significant. The allegations made by the Committee with respect to the first years of the investigation show clear examples of the disengagement and incompetency of the police (see paragraph 86 above).

128. The mistakes committed by the police first in Mr Olewnik's house and then by the group led by R.M. were also subject to criminal investigations. Although they did not end in establishment of the guilt of the officers concerned, the bill of indictment and the judgments issued nevertheless offer a valid description of the police's actions (see paragraphs 57 and 60 above).

129. On the basis of the file before it and agreeing with the assessment of the above mentioned authorities, the Court would list a few, the most serious, errors on the part of the police that directly led to a failure in the investigation of Mr Olewnik's kidnapping between 2001 and September 2003, the probable date of his death. These were:

(i) failure to correctly gather all forensic evidence at the house of the victim directly after his kidnapping;

(ii) failure to take evidence for three-and-a-half years from the sales assistant from the supermarket who had been able to identify A;

(iii) a lack of any meaningful investigation of the anonymous letter of January 2003 which named the individuals involved in the kidnapping as B and C;

(iv) delays in analysing the calls made by the kidnappers using a known telephone SIM card, which would have linked them to A and C; and other instances where identifying the location and tracing of calls made by the kidnappers would have been technically possible; and

(v) failure to supervise the handover of the ransom on 24 July 2003 which was picked up by the kidnappers themselves. Moreover, the serial numbers of the banknotes, although passed by the family onto the police, were only registered with the Banking Central Supervision Authority seventeen months later.

The Committee concluded that: "visible sluggishness, errors, recklessness, and a lack of professionalism on the part of the investigators resulted in the failure to discover the perpetrators of the kidnapping, and ... ultimately, in [Mr Olewnik's] death" (see paragraph 94 above).

130. The Court considers that the above facts, among others, clearly indicate that the domestic authorities failed to respond with the level of commitment required in a case of kidnapping and prolonged abduction. While the Court cannot speculate what the outcome of the case would have been had the authorities been more diligent, there had clearly been a link between the long list of omissions and errors perpetuated over the years and the failure to advance the investigation while Mr Olewnik had still been

alive (compare and contrast *Van Colle v. the United Kingdom*, no. 7678/09, § 99, 13 November 2012).

131. Against the above background, the Court concludes that the identified series of failures in dealing with the kidnapping of Mr Olewnik for which the domestic authorities must be considered responsible disclose a breach of the State's obligation to safeguard his right to life. There has accordingly been a violation of Article 2 of the Convention under its substantive aspect.

132. Lastly, the Court would reiterate that the conclusions reached in the present case of kidnapping for ransom take into account the particularly high risk factors in the case, as Mr Olewnik had been brutally kidnapped, ransom money had been exchanged, and years had passed without him obtaining liberation (see other cases where the risk had also been considered high, *Kontrová v. Slovakia*, no. 7510/04, §§ 50-54, 31 May 2007, and *Opuz v. Turkey*, no. 33401/02, § 134, ECHR 2009). Moreover, the extent to which the domestic system malfunctioned, as established by the Polish authorities themselves, had also been particularly large.

2. *Procedural aspect of Article 2 of the Convention*

(a) The parties' submissions

133. The applicants maintained that there had been no effective investigation into Mr Olewnik's death. As a result, the circumstances of his death had not been clarified and the individuals responsible not punished. The applicants stressed that the obligation under Article 2 of the Convention entailed a duty to establish who had been responsible for the death of the person and to promptly bring those individuals to account.

As regards the perpetrators of the crime, the applicants maintained that they had been identified and judged after a substantial delay. This proved the ineffectiveness of the system, which did not offer individuals sufficient protection from violent acts.

Moreover, the State also had to guarantee that people who committed negligent acts which led to the death of a person were held responsible. In the present case the prosecutors had started investigating the police's actions after a substantial delay, which had led to their impunity owing to the statute of limitations.

134. The Government refrained from making submissions on the merits of the complaint under the procedural aspect of Article 2 of the Convention. They nevertheless pointed out that the authorities had been and still were verifying different elements of the case: the criminal liability of the police officers and prosecutors, possible involvement of third parties, irregularities in the work of court experts, corruption of public officials, irregularities in police work, and so forth.

Although at many instances the authorities concluded that no offence had been committed, they nevertheless still sought to examine all circumstances of the events connected to the case of Mr Krzysztof Olewnik. The Government argued that in the course of all the investigations it had not been shown that the public officials had intentionally assisted the perpetrators of the kidnapping.

Lastly, the Government pointed out that the criminal trial of the members of the gang that had kidnapped Mr Olewnik had been concluded rapidly and efficiently.

(b) The Court's assessment

(i) General principles

135. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be an effective official investigation when a person dies in suspicious circumstances (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 102, 17 December 2009, and *Lari v. the Republic of Moldova*, no. 37847/13, § 34, 15 September 2015). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards*, cited above, § 69, ECHR 2002-II).

136. The investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015). This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 165, ECHR 2011). Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the next of kin of the victim must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011).

137. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports*

1998-VI, and *Adalı v. Turkey*, no. 38187/97, § 224, 31 March 2005). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Mikayil Mammadov*, cited above, § 105).

(ii) Application to the present case

138. Turning to the circumstances of the present case, the Court notes that the applicants complained that the investigation into Mr Olewnik's death carried out by the domestic authorities had been inadequate.

139. Mr Olewnik most probably died on 5 September 2003. However, his death did not become known until over two years later and his body was discovered in October 2006. The first stage of the investigation, aimed at finding Mr Olewnik and freeing him from the hands of his kidnappers, has already been examined above and gave rise to a violation of the substantive limb of Article 2 of the Convention (see paragraph 131 above).

140. The investigation into the kidnapping of Mr Olewnik took a turn when in November 2005 a witness, P.S., named the kidnappers (see paragraph 32 above). Two of them were arrested and one year later confessed to having killed the victim. In 2007 the prosecutor indicted members of the gang, who were swiftly convicted (see paragraph 39 above). The Court cannot ignore the fact that the criminal conviction of the members of the gang was based mostly on their confessions. At the same time, the alleged gang leader, A, and the two other main kidnappers, B and C, died before or just after their trial. Although their deaths were classed as suicides, after being investigated, they nevertheless led to the resignation of the Minister of Justice and a wave of dismissals in the prosecution service and Prison Service (see paragraph 80 above).

141. In addition to the proceedings against the members of the gang, there were several other attempts to clarify the events pertaining to the case.

142. In particular, in 2009 the Sejm set up a Parliamentary Inquiry Committee which was vested with a wide mandate to examine the correctness of the actions of the prosecution service and the police but also of the public administration bodies and the Prison Service (see paragraph 83 above). After undertaking an impressive investigation, which involved interviewing over a hundred people and holding 136 sessions, the Committee was able to trace the errors and omissions of the authorities involved in the case, its conclusions far reaching general recommendations. The Committee critically assessed the work of the police which "resulted in the failure to discover the perpetrators of the kidnapping, and consequently led to the unjustifiable and unimaginable suffering to which [the victim] was subjected, and ultimately, in his death" (see paragraph 94 above).

The sheer scale of errors made the Committee explore the hypothesis that "there had been intentional and purposeful actions by public officials aimed at covering their tracks, destroying evidence, creating false operational versions and, consequently, that some of them had cooperated with the criminal gang which kidnapped and murdered Krzysztof Olewnik" (ibid.).

143. The Court further acknowledges the effort of the prosecutors from the Gdańsk Prosecutor of Appeal's Office, who directed the investigation into the criminal liability of the police officers and prosecutors in the years 2009 to 2012 (see paragraphs 52-70 above). As regards the proceedings concerning criminal charges against the police officers R.M. and M.L., they ended in 2014 – when the offences alleged had been time-barred. Other investigations led by that team did not lead to the individual liability of the police officers or prosecutors being established. Nevertheless, the decisions to discontinue investigations on 18 December 2012, 25 January, 16 April and 31 December 2013 (see paragraphs 52, 67, 60 above) offer a valuable insight into the authorities' actions. In particular the decision of 18 December 2012, although formally discontinuing the proceedings, included the assessment that "the causes behind the failures of the police and prosecution service ... lay much deeper than individual errors committed" (see paragraph 67 above). The prosecutors concluded that the State had "failed to create a proper legal and financial structure for the prosecution service" in order to effectively deal with such type of offences as kidnappings (ibid.).

144. Despite the positive developments aimed at investigating Mr Olewnik's death which took place in the years 2009 to 2013, the Court nevertheless notes that the proceedings into his murder are still pending (see paragraph 47 above). In the course of recent proceedings his body was exhumed and a new post-mortem examination carried out. The involvement of new individuals has been investigated. The Government, having been asked, however failed to provide any significant information pertaining to the pending proceedings, stating that it was confidential.

145. To sum up, some seventeen years after the kidnapping of Mr Olewnik on 26 October 2001, the circumstances of the events have not been fully clarified. The applicants, who actively participated in all the proceedings, lodged appeals and instigated some of those procedures, still have questions and uncertainty. This, as noted by the Inquiry Committee, could "undermine people's trust in the State" and shows the weakness of the State authorities "in their attitude to the perpetrators of crime" (see paragraph 94 above).

146. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of Mr Olewnik. It accordingly holds that there has been a violation of Article 2 under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The second applicant claimed some 613,000 euros (EUR) in respect of pecuniary damage, comprising the EUR 300,000 handed over as a ransom and EUR 313,640 in interest. In addition, the two applicants claimed EUR 2,500,000 for non-pecuniary damage.

149. The Government contested these claims, arguing that there was no causal link between the damage and the alleged violations. As to the pecuniary damage claimed, they stated that the domestic courts had awarded the second applicant the equivalent of EUR 300,000 and that the authorities had attempted to enforce this order. The Government admitted that the enforcement had not been effective because the convicted individuals had had no assets. The Government also submitted that the applicants could claim payment from "the heirs of one of the accused who had died".

150. As regards pecuniary damage, the Court observes that it did not find the State directly liable for the ransom money paid by the second applicant to the kidnappers. Accordingly, as no direct causal link may be found between the violation found under Article 2 of the Convention and the damage incurred by the second applicant on account of having paid the ransom, no award is made in this respect.

151. The Court further accepts that the applicants have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation of Article 2 of the Convention. Making its assessment on an equitable basis, the Court awards jointly to the two applicants EUR 100,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

152. The applicants, who were represented by a lawyer, did not make any claim for the costs and expenses incurred before the domestic courts or the Court.

C. Default interest

153. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds*
   (a) that the respondent State is to pay the two applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 100,000 (one hundred thousand euros), plus any tax that may be chargeable, in respect of non‑pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 5 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Ksenija Turković President