

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

THIRD SECTION

CASE OF HELME v. ESTONIA

(Application no. 3023/22)

JUDGMENT

Art 6 (criminal) • Fair hearing • Conviction of applicant following explicitly sexual conversations with an undercover police officer purporting to be a 12-year-old girl in an online chatroom, and the use of the resulting evidence in the criminal proceedings against him • Alleged entrapment in an online context • Existence of good reasons for initiating undercover operation on the basis of information received on potential sexual enticement of minors on the relevant website • Feasibility of prior identification of possible suspects in online context prior to mounting an undercover operation • Lack of objective suspicion that it was the applicant specifically who had been involved in criminal activity or was predisposed to engage in such conduct not decisive • Existence of an objective suspicion that was specific to a defined and limited virtual space • Context of crimes against minors • Initiation of undercover operation did not imply an intention to entrap the applicant • Actions of the police did not constitute as such unlawful activity nor did they presume illegal actions on the part of the person they were communicating with • Undercover police officer did not abandon required passive attitude • Applicant not under any express or implied pressure to commit the impugned offence • Use of undercover police officer did not amount to incitement

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 October 2025

FINAL

09/02/2026

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.



In the case of Helme v. Estonia,

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

Ioannis Ktistakis*, President*,
Peeter Roosma,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Canòlic Mingorance Cairat,
Vasilka Sancin*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 3023/22) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Peeter Helme ("the applicant"), on 10 January 2022;

the decision to give notice to the Estonian Government ("the Government") of the complaint under Article 6 § 1 of online entrapment, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 9 September 2025,

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

INTRODUCTION

1. The application concerns the applicant's alleged online entrapment by an undercover police officer who, while using a pseudonym, engaged in conversations with the applicant in an online chatroom. The applicant complained that evidence resulting from that police operation had been used in criminal proceedings against him, in breach of his right to a fair trial.

THE FACTS

2. The applicant was born in 1978 and lives in Tallinn. He was represented by Mr R. Ainla, a lawyer practising in Tallinn.

3. The Government were represented by their Agent, Mr T. Kolk, Representative of Estonia to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. AUTHORISATION AND USE OF AN UNDERCOVER POLICE OFFICER

5. On 19 September 2019 criminal proceedings were initiated on the basis of information received earlier that year indicating that various persons had

used certain internet sites (www.facebook.com and www.armastusesaal.org) to engage in chats of a sexual nature with minors under the age of 14 and had sent them files containing sexual content. No additional information has been provided regarding the nature or source(s) of the above-mentioned information.

6. On the basis of the information described in the previous paragraph, on 27 September 2019, under Article 126^9 of the Code of Criminal Procedure (*kriminaalmenetluse seadustik*), the prosecutor's office authorised the use of an undercover police officer to gather information on the website www.armastusesaal.org (which translates as "hall of love").

7. Between 8 October 2019 and 8 December 2019 the police conducted a secret surveillance operation on that website. A police officer using the fictional identity of a 12-year-old girl named Marleen Ilus and the pseudonym "Marleen12" used online chatrooms on that site in order to collect information relevant to the proceedings.

8. During that operation a person with the username "m41tln" had explicitly sexual conversations via private messages with "Marleen12" on the website.

9. On the basis of the information obtained from the above-mentioned conversations, on 17 November 2019 separate criminal proceedings were initiated to investigate the possible commission of an offence by the person using the username "m41tln". The proceedings revealed that the applicant was the person behind that username. The transcripts of those conversations were included in a report on the secret surveillance operation. That report was subsequently used as evidence in the proceedings against the applicant.

10. The transcripts show that the applicant initiated chats with "Marleen12" on 8 October 2019 at 7.52 p.m., 9 October 2019 at 5.58 p.m., 14 October 2019 at 5.46 p.m., 3 November 2019 at 1.46 p.m., 10 November 2019 at 5.46 p.m., 11 November at 4.35 p.m., 17 November 2019 at 11.00 a.m., 22 November 2019 at 7.16 p.m., 30 November 2019 at 3.37 p.m., 1 December 2019 at 6.20 p.m., 4 December 2019 at 3.49 p.m. and 8 December 2019 at 6.12 p.m. During the chat on 8 October 2019, at 7.58 p.m. "Marleen12" stated that she was 12 years old. On a couple of occasions when "Marleen12" did not respond immediately, the applicant repeated his greetings. During those chats, the applicant brought up sex-related topics on numerous occasions. For example, on 9 October 2019 he noted that chats in the chatroom usually covered topics involving sex and asked "Marleen12" to give examples of issues she had seen being discussed. He followed this up by asking whether she already had "boobs" and whether she had heard that some people had sex with very young children. On 3 November 2019 he mentioned that he had visited a woman who had a very young daughter – younger than "Marleen12" – and that he had had sex with that girl, and he followed this up by asking whether "Marleen12" was interested in sex. On 17 November 2019 he asked "Marleen12" to remind him whether she had already had sex, whether she had watched porn, masturbated and had an orgasm, and whether she was sexually interested in girls or women.

II. COURT PROCEEDINGS AGAINST THE APPLICANT

11. On 30 November 2020 the Harju County Court convicted the applicant of attempted sexual enticement of a minor.

12. In response to a request by the applicant, the Harju County Court analysed the lawfulness of the above-described secret surveillance operation with a view to determining whether the report on that operation, which contained transcripts of the applicant's chats, could be admitted in evidence.

13. The court familiarised itself with the secret surveillance file. It confirmed that the use of an undercover police officer had been authorised by the prosecutor's office. The authorisation had concerned an offence in respect of which secret surveillance operations could be conducted under the Code of Criminal Procedure. Referring to two authorisation decisions in the file, the court considered that at the time of authorising the use of an undercover police officer, there had been a reasonable suspicion that an offence had been committed. The authorisation decisions had contained relevant reasoning and the principle of *ultima ratio* had been followed. Given the hidden nature of the crime under investigation, and as it had concerned an offence targeting minors, it had been justified and proportionate to use an undercover police officer. Such offences were often committed in a manner that made their discovery complicated, and offenders were likely to try to eliminate any kind of evidence of the offences.

14. The court concluded that the use of an undercover police officer had been lawful, and that the evidence thereby obtained was admissible.

15. As to the substance of the conversations between the applicant and "Marleen12", after examining the content of the chats, the court found that the police officer had not incited the applicant in any manner. The applicant had initiated the conversations and he had taken all the initiative in maintaining them.

16. Thereafter, on the basis of the manner in which the website in question operated, the pseudonym that the undercover officer had used and the content of the chats between the applicant and the police officer, the Harju County Court found that the applicant must indeed have thought that he was chatting to a 12-year-old girl. The court noted that the applicant, as a frequent user of the website, must have been aware that the site did not require confirmation that the person accessing it was an adult. The witnesses (who maintained the server and the website) also confirmed at the court hearing that the portal was not intended only for adults. The court also noted that the applicant had used his own age in his username and thus should have assumed that the other person had done the same. Therefore, the court did not find plausible the applicant's claims that in his opinion he had been playing a role-playing game and had believed that the person behind the computer had not been an underaged girl, but an adult with similar role-play interests. On the basis of the content of the conversations, the court found that the applicant had tried to arouse the interest of the undercover police officer, whom he had believed was a 12-year-old girl named Marleen, in topics of a sexual nature.

17. The applicant appealed. He argued that there had been no prior information about his possible criminal behaviour. He noted that the criminal proceedings against him had been initiated only after the police officer had incited him to commit an offence. He concluded that the secret surveillance authorisations had been issued not to target him specifically, but to incite "sexual enticers of [children] under 14 years old" to commit offences. The police had entered the chatroom with a specific purpose – to lure those who took an interest in children under 14 years old into conversation. The username "Marleen12" had been chosen deliberately to provoke people to have a conversation.

18. On 10 June 2021 the Tallinn Court of Appeal dismissed the appeal and upheld the first-instance judgment.

19. The Tallinn Court of Appeal agreed with the reasoning of the Harju County Court that the extracts of the conversations between the applicant and the undercover police officer did not indicate that the officer using the username "Marleen12" had in any way provoked the applicant to talk about sexual topics. The court found that it was clear from the extracts that the applicant was the one who had always initiated the conversations about sexual topics and that when the police officer posing as "Marleen12" had remained passive, the applicant had urged her to talk and ask about sex and express her sexual desires, and the undercover police officer had mostly given short answers in response.

20. The Court of Appeal found that the use of the police officer had not been aimed at inciting the applicant to commit a criminal offence, but verifying information received by the police indicating that various persons had used certain websites to engage in chats of a sexual nature with minors under the age of 14 and had sent them files containing sexual content. To that end, criminal proceedings under Article 179 § 1 of the Criminal Code had been initiated.

21. The applicant lodged an appeal on points of law. He repeated his arguments about having been incited to commit an offence (see paragraph 17 above). He added that the fact that he had initiated the conversations about sex-related topics and that the police officer had remained passive in those chats was irrelevant, as it was in any event illogical, in the context of enticement, that the minor himself or herself would have started conversations on sexual topics. The incitement stemmed from the fact that the police officer had assumed the role of a minor and had chosen a username which had led him to believe that it was a minor who was engaging in the chat.

22. On 17 August 2021 the Supreme Court decided not to examine the applicant's appeal on points of law and his conviction became final.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

23. Article 179 § 1 of the Criminal Code provides that handing over, displaying or knowingly making pornographic works or reproductions thereof available in some other way to a person under the age of 14, or showing sexual abuse to such a person, engaging in sexual intercourse in the

presence of such a person or knowingly sexually enticing such a person in any other manner, is punishable by a fine or up to three years' imprisonment.

24. Article 126^9 § 1 of the Code of Criminal Procedure provides that the term "undercover agent" means a person who uses a different identity to collect information for the reasons mentioned in Article 126^2 §§ 1 (1), (3) or (4) of the Code of Criminal Procedure.

25. In so far as is relevant, Article 126^2 §§ 1 (1) and (4) of the Code of Criminal Procedure provide that the Police and Border Guard Board may conduct a secret surveillance operation for the following reasons: if there is a need to collect information about the preparation of a criminal offence, for the purpose of detecting or preventing that offence; or if there is a need to collect information about a criminal offence, in the context of criminal proceedings.

26. Article 126^2 § 2 provides that a secret surveillance operation can be conducted for the reasons mentioned in Article 126^2 §§ 1 (1) and (4), provided that the case concerns a criminal offence mentioned in, among other things, Article 179 of the Criminal Code.

27. Article 126^9 § 2 of the Code of Criminal Procedure adds that authorisation to use an undercover agent must be granted by the prosecutor's office in writing. The authorisation is granted for up to six months and the time-limit in question may be extended by up to six months at a time.

II. RELEVANT DOMESTIC CASE-LAW

28. In judgment no. 3-1-1-110-04 of 2 December 2004, the Supreme Court explained that several offences required the person simulating an offence (the *agent provocateur*) to be the more active party in initiating contact (for example, in the case of buying narcotic drugs), and that his or her actions could not be limited to mere passive investigation. However, it was understandable that the actions of the person simulating an offence could not be unlimited and without legal restrictions. For example, it was impermissible to incite a person to commit an offence in circumstances where that person had absolutely no prior intention to do so and the investigating authorities had no prior information about his or her possible criminal behaviour. In order to assess whether the incitement to commit an offence was permissible or not, criteria such as the basis of the initial suspicion against the accused (for example, the credibility of the source) and the seriousness of the offence (for example, whether the offence was a minor offence or a serious criminal offence) had to be taken into account, as well as how and how much the *agent provocateur* influenced the person in question (for example, luring him or her with large sums of money or threatening him or her, or outlining courses of action which he or she could choose to take). It was also necessary to take into account that person's own readiness to act and the actions which he or she carried out of his or her own accord – in other words, the extent of his or her individual participation (whether he or she performed certain tasks without the leadership and initiation of the *agent provocateur*, and so on). In

doing so, it was important to note that these were not individual and independent evaluation criteria, and all the above-mentioned circumstances had to be weighed up as part of an overall assessment.

29. The above reasoning was repeated and referred to in judgment no. 1-16-1036 of 1 December 2017 of the Supreme Court.

III. RELEVANT INTERNATIONAL MATERIAL

30. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the Lanzarote Convention") entered into force on 1 July 2010, was ratified by Estonia on 11 November 2016 and entered into force with respect to Estonia on 1 March 2017. It lists various forms of "sexual exploitation and sexual abuse of children", compelling each Party to that Convention to take necessary legislative or other measures to ensure the criminalisation of such exploitation and abuse. One of those acts – solicitation of children for sexual purposes – is listed in Article 23 of that Convention, which provides as follows:

Article 23 – Solicitation of children for sexual purposes

> "Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting."

31. The relevant parts of the Explanatory Report to the Lanzarote Convention provide as follows:

Article 23 – Solicitation of children for sexual purposes

> "155. Article 23 introduces a new offence in the Convention which is not present in other existing international instruments in the field. The solicitation of children for sexual purposes is more commonly known as 'grooming'. The negotiators felt it was essential for the Convention to reflect the recent but increasingly worrying phenomenon of children being sexually harmed in meetings with adults whom they had initially encountered in cyberspace, specifically in Internet chat rooms or game sites.
>
> 156. The term 'grooming' refers to the preparation of a child for sexual abuse, motivated by the desire to use the child for sexual gratification. It may involve the befriending of a child, often through the adult pretending to be another young person, drawing the child into discussing intimate matters, and gradually exposing the child to sexually explicit materials in order to reduce resistance or inhibitions about sex. The child may also be drawn into producing child pornography by sending compromising personal photos using a digital camera, web-cam or phone-cam, which provides the groomer with a means of controlling the child through threats. Where a physical meeting is arranged the child may be sexually abused or otherwise harmed.
>
> 157. The negotiators felt that simply sexual chatting with a child, albeit as part of the preparation of the child for sexual abuse, was insufficient in itself to incur criminal

responsibility. A further element was needed. Article 23, therefore, requires Parties to criminalise the intentional 'proposal of an adult to meet a child who has not reached the age set in application of Article 18 paragraph 2' for the purpose of committing any of the offences established in accordance with Article 18 paragraph 1 a or Article 20 paragraph 1 a against him or her. Thus the relationship-forming contacts must be followed by a proposal to meet the child.

158. All the elements of the offence must be committed intentionally. In addition, the 'purpose' of the proposal to meet the child for committing any of the specified offences needs to be established before criminal responsibility is incurred.

159. The offence can only be committed 'through the use of information and communication technologies'. Other forms of grooming through real contacts or non-electronic communications are outside the scope of the provision. In view of the particular danger inherent in the use of such technologies due to the difficulty of monitoring them the negotiators wished to focus the provision exclusively on the most dangerous method of grooming children which is through the Internet and by using mobile phones to which even very young children increasingly now have access.

160. In addition to the elements specified above the offence is only complete if the proposal to meet 'has been followed by material acts leading to such a meeting'. This requires concrete actions, such as, for example, the fact of the perpetrator arriving at the meeting place."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant complained that he, a person who had had no criminal record prior to the secret surveillance operation, had been unlawfully entrapped online in violation of Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

33. The Government, relying on the same reasons as those advanced as regards the merits of the case, argued that the complaint was manifestly ill-founded.

34. The applicant disagreed.

35. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The applicant

36. The applicant asserted that the criminal investigation had been initiated on the basis of general information and without any specific knowledge of any identified individuals who were having chats with minors. Thus, the criminal investigation had been initiated with the clear aim of inciting people and collecting information on persons who might entice children under 14 years old.

37. The applicant stated that prior to the secret surveillance operation in question he had not had any criminal record and had not been suspected of any offence. He stated that the pseudonym "Marleen12" used by the undercover police officer – which clearly suggested that the person using that name was a minor – had obviously been chosen to incite him.

38. The criminal proceedings against him had been initiated only after such incitement.

39. The applicant did not submit any observations on how the conversations with the police officer using the name "Marleen12" had been conducted.

(b) The Government

40. The Government argued that the facts of the case revealed no issues as regards fairness, equality of arms or the adversarial nature of the proceedings against the applicant, or as regards manifest and flagrant arbitrariness in those proceedings. The Government addressed both the substantive and procedural tests for incitement.

41. The Government noted that two sets of criminal proceedings were relevant in the context of the present case. Initially, on 19 September 2019 criminal proceedings had been initiated on the basis of information received by the police earlier that year indicating that various persons had used certain websites to engage in chats of a sexual nature with minors under the age of 14 and had sent them files containing sexual content. Next, in the course of those proceedings, a secret surveillance operation authorised under Article 126^9 of the Code of Criminal Procedure had been conducted from 8 October 2019 to 8 December 2019. The Government agreed that the police officer had first entered the chatroom in question with no prior knowledge of or suspicions regarding the applicant.

42. During the operation, a person using the username "m41tln" had sexually enticed a fictional 12-year-old girl called Marleen (who had actually been an undercover officer using the pseudonym "Marleen12") via private messages sent on that website. On the basis of that information, separate criminal proceedings had been initiated on 17 November 2019. The object of

those proceedings had been to find out whether the person using the username "m41tln" had committed the criminal offence of sexual enticement of a minor. That person had turned out to be the applicant. Thus, the applicant's own behaviour had given rise to a concrete suspicion against him and the criminal proceedings against him had been initiated on the basis of the actions he had carried out while using the username "m41tln".

43. As to the use of the undercover officer, the Government argued that such a course of action had been justified and proportionate, given the hidden nature of the offence in question and the fact that it had been taking place online. The applicant had been able to question the existence and lawfulness of the authorisation to carry out that secret surveillance operation, and to challenge the admission in evidence of the transcripts resulting from the operation. The Harju County Court had addressed the applicant's arguments after familiarising itself with the secret surveillance file.

44. The Government emphasised that the applicant had not questioned the Harju County Court's conclusions about the lawfulness of the authorisation and the use of the police officer in his subsequent appeals. In the Government's opinion, the applicant could not therefore complain of the unlawfulness of the secret surveillance operation or about the police officer's presence in the chatroom in the proceedings at hand. Thus, the issue of whether there had been impermissible incitement could be assessed only with reference to the content of the applicant's conversation with the police officer in the chatroom.

45. The Government further noted that the applicant had been able to challenge the assessment of the transcripts of the chats and to put forward his own interpretation of them, including by raising arguments about improper incitement. The domestic courts had given due consideration to his arguments. There was no reason to depart from their well-reasoned assessment.

46. According to the Government, there was nothing in the present case to indicate that the applicant had been incited to commit a criminal offence. It was evident from the extracts of the conversations between him and the police officer that the officer had not incited him in any way. It had been the applicant alone who had initiated the conversations and brought up inappropriate topics, including urging "Marleen12" to ask about sex and express her sexual desires. The police had not exceeded the boundaries of essentially passive investigation.

2. The Court's assessment

(a) General principles

(i) Overall approach regarding undercover agents

47. The Court is aware of the difficulties inherent in the police's task of searching for and gathering evidence for the purpose of detecting and

investigating offences. To perform this task, they are increasingly required to make use of undercover agents, informers and covert practices, particularly in tackling organised crime and corruption. Accordingly, the use of special investigative methods – in particular, undercover techniques – cannot in itself infringe the right to a fair trial. However, on account of the risk of police incitement entailed by such techniques, their use must be kept within clear limits (see *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 49-51, ECHR 2008).

48. In this connection, it should be reiterated that it is the Court's task, in accordance with Article 19, to ensure the observance of the engagements undertaken by the States Parties to the Convention. The admissibility of evidence is primarily a matter for regulation by national law and, as a rule, it is for the national courts to assess the evidence before them. The Court, for its part, must ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair. In this context, the Court's task is not to determine whether certain items of evidence were obtained unlawfully, but rather to examine whether such "unlawfulness" resulted in the infringement of another right protected by the Convention (ibid., § 52, with further references).

49. More particularly, the Convention does not preclude reliance, at the preliminary investigation stage and where the nature of the offence may warrant it, on sources such as anonymous informants. However, the subsequent use of such sources by the trial court to found a conviction is a different matter and is acceptable only if adequate and sufficient safeguards against abuse are in place, in particular a clear and foreseeable procedure for authorising, implementing and supervising the investigative measures in question (ibid., § 53; see also *Khudobin v. Russia*, no. 59696/00, § 135, ECHR 2006-XII).

50. Furthermore, while the use of undercover agents may be tolerated provided that it is subject to clear restrictions and safeguards, the public interest cannot justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitively deprived of a fair trial from the outset (see, among other authorities, *Ramanauskas*, cited above, § 54; see also *Teixeira de Castro v. Portugal*, 9 June 1998, §§ 35-36, *Reports of Judgments and Decisions* 1998-IV; *Khudobin*, cited above, § 128; and *Vanyan v. Russia*, no. 53203/99, §§ 46-47, 15 December 2005).

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

prosecution (see *Ramanauskas*, cited above, § 55, and *Teixeira de Castro*, cited above, § 38).

52. In its extensive case-law on the subject the Court has developed criteria to distinguish entrapment breaching Article 6 § 1 of the Convention from permissible conduct in the use of legitimate undercover techniques in criminal investigations. Whereas it is not possible to reduce the variety of situations which might occur in this context to a mere checklist of simplified criteria, the Court's examination of complaints of entrapment has developed on the basis of two tests: the substantive and the procedural test of incitement. The relevant criteria determining the Court's examination in this context are set out in the case of *Bannikova v. Russia* (no. 18757/06, §§ 37-65, 4 November 2010). These criteria are summarised below (see *Matanović v. Croatia*, no. 2742/12, §§ 122-35, 4 April 2017).

(ii) Substantive and procedural tests of incitement

53. When examining the applicant's arguable plea of entrapment, the Court will attempt, as a first step, to establish on the basis of the available material whether the offence would have been committed without the authorities' intervention, that is to say whether the investigation was "essentially passive". In deciding whether the investigation was "essentially passive" the Court will examine the reasons underlying the covert operation, in particular, whether there were objective suspicions that the applicant had been involved in criminal activity or had been predisposed to commit a criminal offence (see *Furcht v. Germany*, no. 54648/09, § 51, 23 October 2014) and the conduct of the authorities carrying it out, specifically whether the authorities exerted such an influence on the applicant as to incite the commission of an offence that would otherwise not have been committed, in order to make it possible to establish the offence, that is, to provide evidence and institute a prosecution (ibid., § 52; see also *Morari v. the Republic of Moldova*, no. 65311/09, § 32, 8 March 2016).

54. In this connection, the Court has also emphasised the need for a clear and foreseeable procedure for authorising investigative measures, as well as for their proper supervision. It has considered judicial supervision to be the most appropriate means in cases involving covert operations, although with adequate procedures and safeguards, other means may be used, such as supervision by a prosecutor (see *Furcht*, cited above, § 53; see also *Bannikova*, cited above, §§ 49-50, with further references). Indeed, a lack of procedural safeguards in the ordering of an undercover operation generates a risk of arbitrariness and police entrapment (see *Nosko and Nefedov v. Russia*, nos. 5753/09 and 11789/10, § 64, 30 October 2014).

55. As a second step, the Court will examine the way the domestic courts dealt with the applicant's plea of incitement, which is the procedural part of its examination of the *agent provocateur* complaint (see *Bannikova*, cited above, §§ 51-65, with further references).

56. As the starting point, the Court must be satisfied with the domestic courts' capacity to deal with such a complaint in a manner compatible with the right to a fair hearing. It should therefore verify whether an arguable complaint of incitement constitutes a substantive defence under domestic law, or gives grounds for the exclusion of evidence, or leads to similar consequences. Although the Court will generally leave it to the domestic authorities to decide what procedure must be followed by the judiciary when faced with a plea of incitement, it requires such a procedure to be adversarial, thorough, comprehensive and conclusive on the issue of entrapment.

57. In particular, the questions to be addressed by the judicial authority when deciding on an entrapment plea were set out in *Ramanauskas*, cited above, § 71:

> "The Court observes that throughout the proceedings the applicant maintained that he had been incited to commit the offence. Accordingly, the domestic authorities and courts should at the very least have undertaken a thorough examination ... of whether or not [the prosecuting authorities] had incited the commission of a criminal act. To that end, they should have established in particular the reasons why the operation had been mounted, the extent of the police's involvement in the offence and the nature of any incitement or pressure to which the applicant had been subjected. ... The applicant should have had the opportunity to state his case on each of these points."

58. Moreover, the principles of adversarial proceedings and equality of arms are indispensable in the determination of an *agent provocateur* claim, as well as the procedural guarantees related to the disclosure of evidence and questioning of the undercover agents and other witnesses who could testify on the issue of incitement (*Bannikova*, cited above, §§ 58 and 65).

59. In this connection, the Court also reiterates that it falls to the prosecution to prove that there was no incitement, provided that the defendant's allegations are not wholly improbable. In practice, the authorities may be prevented from discharging this burden by the absence of formal authorisation and supervision of the undercover operation (ibid., § 48).

(iii) Application of the substantive and procedural tests of incitement

60. It follows from the Court's case-law that a preliminary consideration in its assessment of a complaint of incitement relates to the existence of an arguable complaint that an applicant was subjected to incitement by the State authorities. In this connection, in order to proceed with further assessment, the Court must satisfy itself that the situation under examination falls prima facie within the category of "entrapment cases" (see, for cases where this criterion was not met, *Trifontsov v. Russia* (dec.), no. 12025/02, §§ 32-35, 9 October 2012; *Lyubchenko v. Ukraine* (dec.), no. 34640/05, §§ 33-34, 31 May 2016; and *Matanović v. Croatia*, no. 2742/12, § 131, 4 April 2017).

61. If the Court is satisfied that the applicant's complaint falls to be examined within the category of "entrapment cases", it will proceed, as a first

step, with the assessment under the substantive test of incitement (ibid., § 132).

62. Where, under the substantive test of incitement, on the basis of the available information the Court could find with a sufficient degree of certainty that the domestic authorities investigated the applicant's activities in an essentially passive manner and did not incite him or her to commit an offence, that will normally be sufficient for the Court to conclude that the subsequent use in the criminal proceedings against the applicant of the evidence obtained by the undercover measure does not raise an issue under Article 6 § 1 of the Convention (see, for instance, *Scholer v. Germany*, no. 14212/10, § 90, 18 December 2014, and *Rymanov v. Russia* (dec.), no. 18471/03, 13 December 2016).

63. However, if the Court's findings under the substantive test are inconclusive owing to a lack of information in the file, the lack of disclosure or contradictions in the parties' interpretations of events (see *Bannikova*, cited above, §§ 52 and 67) or if the Court finds, on the basis of the substantive test, that an applicant was subjected to incitement, contrary to Article 6 § 1, it will be necessary for the Court to proceed, as a second step, with the procedural test of incitement (see *Matanović*, cited above, § 134).

64. The Court applies this test in order to determine whether the necessary steps to uncover the circumstances of an arguable plea of incitement were taken by the domestic courts and whether in the case of a finding that there has been incitement or in a case in which the prosecution failed to prove that there was no incitement, the relevant inferences were drawn in accordance with the Convention (see *Ramanauskas*, cited above, § 70; *Furcht*, cited above, § 53; and *Ciprian Vlăduț and Ioan Florin Pop v. Romania*, nos. 43490/07 and 44304/07, § 88, 16 July 2015; see also *Bannikova*, cited above, §§ 53-57, concerning the relevant inferences to be drawn from a successful plea of incitement). The proceedings against an applicant would be deprived of the fairness required by Article 6 of the Convention if the actions of the State authorities had the effect of inciting the applicant to commit the offence for which he or she was convicted and the domestic courts did not address appropriately the allegations of incitement (see *Ramanauskas*, cited above, § 73; *Constantin and Stoian v. Romania*, nos. 23782/06 and 46629/06, § 64, 29 September 2009; and *Sepil v. Turkey*, no. 17711/07, § 36, 12 November 2013).

(b) Application of the general principles to the present case

(i) Preliminary remarks

65. The Court notes that there is no dispute between the parties that the applicant, using the pseudonym "m41tln", had explicitly sexual conversations via private messages with an undercover police officer using the username "Marleen12" on the website www.armastusesaal.org. He was

subsequently convicted for this under Article 179 § 1 of the Criminal Code. The disagreement between the parties relates to whether the applicant was entrapped by the police.

66. Based on the criteria set out in its case-law and using the methodology for the examination of complaints of entrapment (see paragraphs 60-64 above) the Court considers that the case, in view of its factual circumstances, falls within the category of "entrapment cases".

67. The Court observes that the present case is the first one where it has been called upon to decide whether an individual was entrapped in a purely online context.

68. While the factual setting of *Eurofinacom v. France* ((dec.), no. 58753/00, ECHR 2004-VII (extracts)) also entailed an element of online communication and police officers acting under assumed identities, the suspect in that case – and the subsequent applicant in the application lodged with the Court – was not a person offering prostitution-related services online, but rather a company which was suspected to have acted as an "intermediary between a prostitute and the person using his or her services". More notably, in that case the Court established that the domestic police had already been in possession of information suggesting that the applicant company had been involved in unlawful activity because it had offered a communication platform.

69. The principal issue to be examined by the Court in the present case is whether the prosecuting authorities, when mounting and carrying out the undercover secret surveillance operation in the specific circumstances of the case at hand, confined themselves to "investigating criminal activity in an essentially passive manner". In answering this question, the Court has regard to the following considerations.

(ii) Whether there were good reasons for mounting the operation

70. One of the applicant's core arguments as to his alleged incitement by the police relates to the grounds for initiating the criminal investigation and authorising the use of an undercover police officer. He maintained that prior to the secret surveillance operation in question he had not had any criminal record and had not been suspected of any offence.

71. In that regard, the Court notes that the Government agreed with the applicant that there had been no prior knowledge of or suspicion regarding his reprehensible conduct. Instead, as explained by the Government, the criminal investigation had been initiated on the basis of information received by the police earlier that year indicating that various persons had used certain websites to engage in chats of a sexual nature with minors under the age of 14 and had sent them files containing sexual content.

72. The Court reiterates that in cases where the main evidence originates from a covert operation, the authorities must be able to demonstrate that they had good reasons for mounting the covert operation (see *Bannikova*, cited

above, § 40, and *Lagutin and Others v. Russia*, nos. 6228/09 and 4 others, § 91, 24 April 2014).

73. As to reasons underlying covert operations, the Court has previously emphasised the obligation of the authorities to verify criminal complaints or follow up on incriminating information which has been received (see *Volkov and Adamskiy v. Russia*, nos. 7614/09 and 30863/10, §§ 37 and 41, 26 March 2015, and *Matanović*, cited above, § 144). However, it has taken a critical stance where, in order to justify an undercover operation, the authorities have relied on mere claims that incriminating information exists (possibly information from anonymous undisclosed sources), where this information has not been addressed and scrutinised by the domestic courts, especially when the existence of such information has been challenged by the accused during trial (see *Bannikova*, cited above, § 40; *Vanyan*, cited above, § 49; and *Lagutin and Others*, cited above, §§ 103-106 and 109).

74. The Court further notes that in its case-law it has generally sought to verify "whether there were objective suspicions that the applicant had been involved in criminal activity or had been predisposed to commit a criminal offence" (see *Teixeira de Castro*, cited above, §§ 37-38; *Malininas v. Lithuania*, no. 10071/04, § 36, 1 July 2008; *Khudobin*, cited above, § 134; *Pyrgiotakis v. Greece*, no. 15100/06, § 21, 21 February 2008; *Lagutin and Others*, cited above, § 91; *Furcht*, cited above, § 51; and *Akbay and Others v. Germany*, nos. 40495/15 and 2 others, § 114, 15 October 2020 – all cases concerning drug-related offences).

75. In a previous case concerning the offence of forging identity documents, the police had placed an advertisement in a newspaper seeking help in obtaining passports, to which the applicant in that case had responded. The Court placed emphasis on the fact that it appeared that the authorities had not known that the applicant had previously been involved in producing and/or trading forged documents, and that they had had no objective evidence in this regard. After the applicant had established contact by responding to the newspaper advertisement, subsequent contact had been pursued by the relevant undercover agent, who had enquired about progress in the case, asked the applicant to act as an intermediary and promised him financial gain in return. Against that background, the Court concluded that the applicant had been incited to engage in criminal activity (see *Morari*, cited above, §§ 36-37).

76. Turning to the facts of the case at hand, the Court notes that the applicant did not challenge the Government's assertion that the domestic authorities had had prior information indicating that various persons had been having chats of a sexual nature with minors under the age of 14 on certain websites before launching the secret surveillance operation. He did not complain about the overall procedure for authorising the use of an undercover officer or allege that the operation had not been properly supervised. The core of his complaint was instead that there had been no pre-existing suspicion

against him specifically before the secret surveillance operation had been set up.

77. In any event, the Court observes that the Harju County Court examined the secret surveillance file and assessed the overall lawfulness of the secret surveillance operation, including by verifying that there had been a reasonable suspicion that an offence had been committed (see paragraphs 13-14 above; compare and contrast *Lagutin and Others*, cited above, §§ 103-106, where the domestic courts did not ask to see or examine the preliminary operational information about the applicants' prior involvement in drug trafficking which had allegedly existed). In his further appeals during the domestic court proceedings, the applicant did not raise any complaints regarding the general lawfulness of the secret surveillance operation (in terms of what pre-existing information, if any, the authorities had held, the overall necessity of an undercover operation, or how, by whom and for how long the operation had been authorised), nor did he complain of the inadequacy of procedural safeguards. However, throughout the domestic proceedings (see paragraphs 17 and 21 above) and before the Court, he did complain that an undercover police officer had entrapped him and that there had been no objective suspicion against him personally before that officer had been deployed. In that connection, the fact that there were two sets of criminal proceedings, as referred to by the Government (see paragraph 42 above), is not decisive, as the secret surveillance operation which the applicant challenged took place during both sets of proceedings.

78. When assessing the weight to be attached to the fact that prior to the undercover police operation there was no objective suspicion that it was the applicant specifically who had engaged in the unlawful sexual enticement of a minor or that he was predisposed to engaging in such activity, the Court cannot ignore the particular context in which the offence in question took place.

79. The Court notes that the Estonian legislature has decided to criminalise the act of knowingly sexually enticing a minor under 14 years of age (see paragraph 23 above). It appears that activity within the scope of that provision does not necessarily need to take place (either partially or entirely) in the physical world. As exemplified by the case at hand, all communication between the perpetrator and the victim may occur exclusively through electronic means and entirely within an online context, without the suspect ever suggesting or arranging an in-person meeting with the minor (compare Article 23 of the Lanzarote Convention, paragraphs 30-31 above). Indeed, in the present case, communication between the applicant and "Marleen12" took place via private messages in an online chatroom where both parties used pseudonyms.

80. The criminalisation of certain behaviour, in itself, has limited deterrent effect if there are no means to identify the actual offender and bring him or her to justice. In that connection, the Court has found that a State's

positive obligations under Article 8 of the Convention to safeguard an individual's physical or moral integrity may extend to questions relating to the effectiveness of a criminal investigation, even where the criminal liability of agents of the State is not at issue (compare *K.U. v. Finland*, no. 2872/02, § 46, ECHR 2008, which concerned a failure to compel a service provider to disclose the identity of a person wanted for placing an indecent advertisement about a minor on an internet dating site). Furthermore, an effective criminal investigation requires that practical and effective steps be taken to identify and prosecute the perpetrators (ibid., § 49). The Court acknowledges that where communication via the internet facilitates the commission of a crime or where all the criminal activity in question takes place online, the police must also make use of online means to investigate and prosecute those crimes.

81. The Court considers that in a context such as the one presented by the case at hand, it might not necessarily be feasible for the authorities, after receiving information about potentially unlawful activities on a website, to identify possible suspects prior to mounting an undercover operation, or to do so without potentially interfering disproportionately with the rights of others not involved in the investigation, particularly with the right to respect for private life. In that connection, it notes that people on certain websites, such as chatrooms, are not usually required to reveal their real or full identities, and often do not. Moreover, people can change their usernames, more than one person can "hide" behind the same username, and the same username can be used consecutively by different people. Where the unlawful activity in question takes place via private messages, albeit in an otherwise public chatroom, it might not be detectable (and thus reportable) by third parties.

82. Given the specific context of the case at hand, the Court finds that the domestic authorities had good reasons to initiate the secret surveillance operation. They had received information indicating that various persons had engaged in the potential sexual enticement of minors under the age of 14 on the website www.armastusesaal.org, and were under an obligation to follow up on that information. The Court does not consider it decisive that at that stage there was no objective suspicion that it was the applicant specifically who had been involved in criminal activity or was predisposed to engage in such conduct (compare and contrast *Morari*, cited above, §§ 36-37, where the Court took into account not only the fact that there had been no prior suspicion against the applicant, but also the manner in which the operation had been carried out). The Court accepts that the police had an objective suspicion that was specific to a defined and limited virtual space – an identified chatroom on a particular website – and this was confirmed by the Harju County Court and not contested by the applicant. Furthermore, in the circumstances of the case at hand the Court considers it relevant that the suspicion involved a crime against minors, who due to their vulnerable

position might not be in a position to understand being victimised and/or to report such offences.

(iii) Conduct of the authorities during the operation

83. The Court firstly observes that the fact that an undercover operation was set up did not, in itself, imply that there was an intention to entrap the applicant by inciting him to commit offences that he would not otherwise have committed. Such operations are, by their nature, set up with the aim of gathering information and evidence, and involve the adoption of false identities.

84. Secondly, the Court emphasises that the actions carried out by the police – setting up a user profile in a chatroom, logging on and chatting with other persons via private messages – did not, in themselves, constitute unlawful activity, nor did they presume illegal actions on the part of the person with whom the police were communicating (compare, for example, a situation where an undercover police officer approached a suspect with the intention of buying illegal drugs; see *Volkov and Adamskiy*, cited above, §§ 38-42; see also *Kuzmickaja v. Lithuania* (dec.), no. 27968/03, 10 June 2018). In response to the applicant's argument (see paragraph 37 above), the Court does not find that the use of the username "Marleen12" constituted unlawful incitement by the police. While the name could arguably have made reference to the relevant person's age (as noted by the domestic courts, the applicant's own username "m41tln" also referred to his age, see paragraph 16 above), it in no way invited communication of an explicitly sexual nature.

85. Furthermore, the Court notes that the applicant was free to choose whether or not to communicate with "Marleen12" (via private messages or in the general chat), and free to choose which topics to discuss. He was also free to make decisions in that regard after "Marleen12" stated early in the first chat on 8 October 2019 that she was 12 years old (see paragraph 10 above). Yet, the applicant repeatedly engaged in the chats with "Marleen12" between 8 October 2019 and 8 December 2019 and, as noted by the domestic courts, it was always the applicant who initiated the chats. Likewise, it was always the applicant who introduced topics of an explicitly sexual nature into the conversations between him and "Marleen12". The applicant did not complain in either the domestic proceedings or the proceedings before the Court about how the chats had progressed in terms of the topics discussed. Nor did he complain that the undercover police officer had encouraged him to discuss sex-related issues.

86. In view of the foregoing, the Court finds that throughout the operation the undercover police officer did not abandon the required passive attitude, and that the applicant was under no express or implied pressure to commit the offence.

(iv) Conclusion

87. The Court considers that the available material allows it to establish that the use of an undercover police officer in the case at hand did not amount to incitement as defined in the Court's case-law relating to Article 6 § 1 of the Convention. The subsequent use of the evidence obtained by the undercover measure in the criminal proceedings against the applicant does not therefore raise an issue under Article 6 § 1.

88. Accordingly, there has been no violation of Article 6 § 1 of the Convention as regards the applicant's plea of entrapment.

FOR THESE REASONS, THE COURT

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

2. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 7 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Pavli;
(b) dissenting opinion of Judge Mingorance Cairat.

CONCURRING OPINION OF JUDGE PAVLI

1. I have joined the majority, not without some hesitation, in finding that there has been no violation of Article 6 § 1 of the Convention in respect of the complaint concerning the police entrapment in this case.

2. Today's finding goes beyond the existing case-law by providing a new basis for *agent provocateur* operations in the online environment – namely, one that does not require the prior existence of an individualised suspicion against a targeted individual as part of the authorisation of the operation[1]. Under the new rationale, such operations would be possible in cases involving "a defined and limited virtual space" (see paragraph 82 of the present judgment).

3. I am doubtful that this criterion alone would be sufficient to prevent police abuse, notably in the form of fishing expeditions or other methods that amount to random "virtue testing" of internet users[2]. I share in this regard the concerns raised by Judge Mingorance Cairat in her dissenting opinion. This would be the case, in particular, where such defined virtual spaces are of a mixed nature: that is, where they are also used for lawful purposes, rather than purely or predominantly for criminal purposes.

4. At the very least, the authorities should be further required to show that, owing to the nature of the offence, its detection and prosecution presents particular investigative challenges that are capable of justifying the exceptional use of "a wider net". In this light, it is not simply "relevant" but a key consideration in my view that in the present case "the suspicion involved a crime against minors, who due to their vulnerable position might not be in a position to understand being victimised and/or to report such offences" as online grooming (see paragraph 82 *in fine*)[3]. It is on this basis, and taking account of the facts of the case as a whole, that I voted with the majority.

5. It will, in any event, be for future case-law to consider whether the *Helme* rationale has been sufficiently circumscribed to ensure adequate protection against entrapment in the online environment, or whether it will call for further fine-tuning or reconsideration.

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[1] This does not necessarily mean that the targeted individual should have been positively identified; it may be sufficient to link the suspicion, for example, to a specific telephone number or IP address, which is being used in illegal drug trading or other criminal activity.

[2] See *R v. Ahmad* [2020] 1 SCR 577 (Supreme Court of Canada), para. 43 ("In our view, entire websites or social media platforms will rarely, if ever, be sufficiently particularized to support reasonable suspicion. To permit police to target wide virtual spaces is inconsistent with *Mack* [governing precedent] and its threshold of reasonable suspicion, and disregards that legitimate communities exist as much online as they do in the physical world.")

[3] See *Regina v. Loosely* [2001] UKHL 53 (UK House of Lords), Lord Hoffman, para. 66 ("Consensual offences such as dealing in unlawful substances or offences with no immediate victim like bribery or offences which victims are reluctant to report are the most obvious candidates for such methods").

DISSENTING OPINION OF JUDGE MINGORANCE CAIRAT

(Translation)

The majority have held that there was no violation of Article 6 § 1 of the Convention, on the grounds that there had been no police incitement in that the undercover police officer had neither initiated the chats nor introduced topics of a sexual nature, and because the undercover operation had been approved by the prosecutor's office from the point of its authorisation and later subject to judicial supervision. I agree with this assessment.

However, my disagreement with the majority's decision to find no violation of Article 6 § 1 of the Convention does not concern the undercover officer's conduct, but rather whether there were valid reasons for mounting the operation. It should be noted that, in this respect, the present judgment departs from established case-law, which requires the existence of "objective suspicions that the applicant had been involved in criminal activity or was predisposed to commit a criminal offence" (see *Bannikova v. Russia*, no. 18757/06, 4 November 2010, and *Lagutin and Others v. Russia*, nos. 6228/09 and 4 others, 24 April 2014). Accordingly, it must be possible to verify any initial information concerning pre-existing criminal intent (see *Vanyan v. Russia*, no. 53203/99, 15 December 2005, and *Khudobin v. Russia*, no. 59696/00, ECHR 2006-XII (extracts)). In the present case, the investigation was initiated on the sole basis of the fact that "various persons had used certain internet sites (www.facebook.com and www.armastusesaal.org) to engage in chats of a sexual nature with minors under the age of 14 and had sent them files containing sexual content". At that stage, the case file did not contain any reference to suspicions in respect of a specific individual (even if unidentified), no particular conduct had been pinpointed and no victim had been identified, even under a pseudonym.

The prosecutor's decision authorising the undercover operation was limited to general information, and the applicant was provided with no further details. The information received concerned not only www.armastusesaal.org, but also www.facebook.com. When the special investigative method was approved, none of the three constituent elements of the offence had been made out, and the authorisation was based solely on a general awareness that this type of conduct occurred on those platforms. Moreover, these were not dedicated platforms or ones that particularly facilitated such conduct, as had been the case in *Eurofinacom v. France* (dec.), no. 58753/00, ECHR 2004-VII (extracts).

In the present case, the undercover officer acted as bait for potential unlawful conduct, and in that sense the investigation was exploratory and prospective (essentially, a fishing expedition).

Even taking into account the difficulty faced by minors in recognising that they are victims and reporting such offences, and the possible need to adapt traditional criminal investigative methods for the digital sphere, this should not lead to a relaxation of the requirements governing implementation of measures affecting fair-trial rights, the right to privacy and the secrecy of communications. I therefore wished to share my concerns, in order to avert the risk that special investigative methods – which are confined to criminal investigations – will be used as a tool for the general surveillance of online communications.