

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

FIFTH SECTION

DECISION

Application no. 30237/18
Aleksandrs GAPOŅENKO
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 23 May 2023 as a Chamber composed of:

Lado Chanturia*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 22 June 2018,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksandrs Gapoņenko, is a "permanently resident non-citizen" of Latvia, who was born in 1954 and lives in Riga. He was represented before the Court by Mrs I. Jansone, a lawyer practising in the same city.

2. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The facts of the case, as submitted by the Government and, in substance, not disputed by the applicant, may be summarised as follows.

4. The applicant is a political activist advocating for the rights of the Russian-speaking minority in Latvia.

A. The Facebook entries published by the applicant

5. During a period running approximately from 26 August 2017 until 17 April 2018, the applicant published on his Facebook page a series of entries concerning the relations between the Russian Federation and Latvia, between the Russian Federation and the West in general, and between Latvia and its Russian-speaking minority. The entries specifically singled out by the domestic authorities read as follows (with the respective dates of posting):

26 August 2017

"The centre for information warfare with Russians and Russia is worried about my article that ethnic discrimination in Latvia could escalate into an armed ethnic conflict. They do not deny such a possibility but assume that the situation will remain under control. In other words, they acknowledge that the presence of NATO in Latvia is not meant to counter the Russian army, but to quell possible rebellions by the Russian population in Latvia."

14 September 2017

"Why are the Baltic elites afraid of Russian army military exercises? Because their persecution of the Russian population provides Russia with grounds to intervene. Because of persecutions of Albanians, Kosovo was separated from Serbia. Now, is there anyone left who would request that Kosovo be returned to Serbia? To increase the feeling of safety, instead of digging pillboxes in forests, they should rather return to Russian population their stolen citizenship, cease the terror of state language inspections, and allow children to study in their own language".

4 October 2017

"I see that the state of things is leading towards a war, provoked by the West against Russia and the Russian diaspora. It will start with the language and children's right to study in their own language. It will end with tanks, artillery, and military helicopters. In these circumstances, the American ones."

10 October 2017

"Catalans have declared their independence because Spaniards had hindered the use of their language and cultural development. Spaniards, nevertheless, avoided any extremities. They did not enforce the Spanish language as the tutoring language in the schools. These are the benefits of democracy which have been completely denied to Russians in Latvia. What do we have? A National Socialist regime with an ideology of hatred. A State that is prepared to build concentration camps for unsatisfied ethnic minorities. And a Latvian ethnic genocide occurring at the same time, masked with Russophobic slogans. What a cannibalism!"

17 November 2017

"National Socialists intend to threaten ethnic minorities and are hiding behind American tanks and helicopters".

Sometime after 18 November 2017 (the Independence Day)

"The march had gathered approximately 20,000 participants. The marching column was spearheaded by young men with excellent military posture – obviously plain-clothed soldiers and officers of the Latvian Armed Forces and undercover agents of the Security Police. ... There is a project being implemented in Latvia to transform

ethnic Russians into anti-Russian-speaking and anti-Russia individuals. A similar project has already been implemented in Ukraine, where in the Ukrainian Armed Forces there are many ethnic Russians who are slaying Russians in Donbass. In Latvia, there are agents of the Security Police being infiltrated among the leaders of the Russian community. Some of them are blackmailed due to drug addiction, others due to smuggling related criminal charges, still others based on paedophilia charges. They are called to reject Russia and to embrace Europe – in the Latvian manner. To give up their birthright in exchange for a bowl of lentils".

17 December 2017

"The Latvian ruling elite considers Russians to be a second-class race. But now Latvians will have to pay a bloody tax. The annual depopulation rate will increase from 1% to 2%, and Latvians as a nation will cease to exist in 2040 – not in 2060 as initially expected."

22 December 2017

"Catalans have announced their separation from Spain. Repressions conducted by Madrid have reached the opposite effect. Latvian mass media are not covering the events in Catalonia, because the example of Catalans provides Russians with valid grounds to request autonomy. Initially, national and cultural autonomy but, in case of denial, even political autonomy."

29 January 2018

"Every morning, as I open Latvian news portals, I see predictions made by the high-ranking NATO generals about forthcoming attack of Russia against Latvia. It will occur after "angry" local Russians stage an armed uprising in [the region of] Latgale, declare its independence and ask for help from Moscow. Russia will base its actions on the Crimean scenario and will provide assistance to the Russian separatist groups. NATO will respond and send its mobile brigades. Afterwards, the Third World War will commence which Russia will shamefully lose. "The Evil Empire" will be destroyed once and for all. BBC recently made a documentary about the same scenario – it is called 'World War Three: Inside the War Room'. One could laugh about this documentary and the NATO predictions, but there are facts that confirm that such events and scenarios are quite possible. Consider for yourselves. Armoured vehicles of NATO brigades are already here. Military exercises involving NATO nuclear bombers are conducted on a regular basis. There are new military bases being built in the Latgale region. The reports of the Security Police contain full lists of "evil" Russians. The National Guard (*Zemessardze*) conducts "search and destroy" counter-terrorism exercises in the city suburbs with predominantly Russian population. Nobody has denied allegations that there are concentration camps being built in Latvia for non-citizens, namely, Russians. Except one thing: both the BBC documentary and the NATO generals avoid the question of what could encourage Russians to organise a resistance to the strong ethnic pressure by the Latvian government. Recently, this unclear part of their written scenario was clarified. The Cabinet of Ministers accepted the concept paper on the school reform. Pursuant to this concept paper education in the Russian language will be eliminated. During any protest activity, provocations might be staged, and Russian activists will be blamed for staging an armed uprising. There have been first signs of the activities of the state security agencies. During the search of the domicile of the well-known journalist [J.A.], the Security Police found two bags with live ammunition rounds. ... The centre of the events, of course, will not be in Latgale, but in Riga. Otherwise, the TV reporters would have to travel too far. On 16 March 2018, at 2 p.m., Parliament will adopt a law abolishing all education in Russian. On the same day, a Russian activist, infiltrated by local state security agencies,

will issue a call to assembly at the Freedom Monument. At 7 p.m., snipers will open fire upon those who will be gathered there. A few passers-by, including Latvians, will be killed. This will be on the news around the world. Snipers, as usual, will not be found. Next day, on 17 March 2018, fifteen teams of the Security Police will start arresting Russian activists in Riga. During the subsequent searches, small firearms and ammunition rounds will be found. ... Armed raid parties of the National Guard will start patrolling Russian-speaking suburbs to apprehend Russian teachers, doctors, and other intellectuals. They will arrest tens of thousands of people but will not be able to place them in the concentration camps, since the funding for those hidden concentration camps has already been stolen by high-ranking officials of the Ministry of Finance. So, instead, the detainees will be placed in the Olympic Sports Centre. ... At noon, additional NATO forces will start arriving by air. This will coincide with the presidential elections in the Russian Federation on 18 March 2018. To respond to the events in Latvia, the President of the Russian Federation will be forced to make a public statement condemning ethnic cleansings. However, he will be precluded from acting until the end of the vote count, that is, the evening of 20 March 2018. By the end of that day, the first NATO mobile brigade will be deployed in Riga; NATO amphibious assault ships will carry the second NATO mobile brigade to Liepāja, whereas the NATO strategic bombers located at the Lielvārde Airbase will be fitted with nuclear bombs. On 21 March 2018, reports on mass civilian casualties in Latgale will start to appear. [The Russian President] V. Putin will be forced to uphold his promises made on the election day and, on 22 March 2018, the Russian Armed Forces will invade. This will provide the NATO leadership with grounds to conduct pre-emptive nuclear strikes in Vidzeme, Latgale and in the eastern part of Lithuania, to prevent the movement of Russian military forces to Kaliningrad. Russia will retaliate with a nuclear strike against the Lielvārde Airbase and the Naval base in Liepāja. High-precision weapons will destroy the American *Patriot* missiles deployed throughout the Latvian territory, and the NATO amphibious assault ships will be intercepted by the Baltic Fleet of the Russian Navy near Kaliningrad. The scared Europeans will exert pressure on Washington and the nuclear exchange in the Baltic region will cease. The warfare will be transferred to the Pacific Basin, where the interests of the United States are being threatened by China. Pursuant to the agreement between Russia and the United States, the demilitarized zone will be created in the Baltic region, and those responsible for nuclear strikes will not be found. Russians living in Latvia will leave the areas polluted with nuclear waste and return to Russia. The suburbs of Riga will become empty. This is how "Latvia for Latvians with education in the State language only" will be created."

1 February 2018

"Riga slowly but inevitably becomes the second Stalingrad. There are no hopes for the creation of the Second Front as in WW2. Behind us, there are women and children, facing terrible spiritual death and assimilation into the new order. There is a necessity to defend our spiritual values till the end. Completely to the very end".

5 March 2018

"I intend to participate in the protest march, and I invite everyone to join me. Time has come for more decisive actions. Is there anybody willing to participate in civilian resistance actions? If there are at least few dozens of volunteers, I can prepare the draft for the plan of action."

B. The applicant's arrest and detention and the criminal proceedings against him

6. On 4 April 2018, the Security Police (*Drošības policija*, since 1 January 2019 renamed into State Security Agency – *Valsts drošības dienests*) initiated criminal proceedings regarding criminal offences of "actions directed against national independence, sovereignty, territorial integrity, State power or administrative order of the Republic of Latvia in a manner not provided for in the Constitution" (section 80(1) of the Criminal Law) and "incitement to national, ethnic or religious hatred or enmity using an automated data processing system" (section 78(2) of the same Law). Within the framework of this case, on 20 April 2018 the applicant was arrested and taken into custody.

7. On 21 April 2018, the Security Police declared the applicant suspect (*aizdomās turētais*) in the aforementioned case. According to the respective order, during a period running approximately from 26 August 2017 to 17 April 2018, the applicant had published on his Facebook page a series of entries supporting the policies of the Russian Federation in and towards Latvia, disseminating false allegations about the resurgence of Nazism in Latvia, inciting ethnic Russians in Latvia to stage violent resistance actions with a view to obtaining political autonomy, and announcing an imminent genocide of Russian-speaking inhabitants of Latvia and an imminent full-scale nuclear war between Russia and the NATO (including the United States and Latvia).

8. On the same day the investigating judge ordered the applicant's detention on remand. On 24 April 2018, the applicant appealed against the detention order to the Riga Regional Court. On 27 April 2018, the Regional Court held a hearing, with both the representative of the Security Police and counsel for the applicant being present and heard. At the hearing, the State Security Agency adduced such evidence as published material, material seized during the search of the applicant's home, and digital forensic evidence supporting the link between these publications and the profiles and IDs used by the applicant on various social media platforms, including Facebook. At the issue of the hearing the Regional Court rejected the appeal in the following terms:

> "...Having examined the case file of the criminal proceedings and without ruling on the guilt of the person [concerned], the judge [of the Regional Court] recognises that the precise facts gathered within the framework of the criminal proceedings create a reasonable suspicion that A. Gapoņenko might have committed the criminal offences defined in sections 80(1) and 78(2) of the Criminal Law, which, according to section 7 (4) of the Criminal Law, are considered as serious crimes punishable by imprisonment, and that [they] have been confirmed by the case material examined [by the judge]. This has been corroborated by such evidence as search protocols, documentary copies of A. Gapoņenko's publications and social network entries, [as well as] A. Gapoņenko's statements.

...

The investigating judge has assessed A. Gapoņenko's personality and found that there already is [one set of] criminal proceedings against A. Gapoņenko pending before the court, where he has been accused under section 78(2) of the Criminal Law ..., also in [another set of] criminal proceedings A. Gapoņenko has been declared a person against whom criminal proceedings have been instituted and investigation is pending in respect of several criminal offences, including under sections 78(2) and 80(1) of the Criminal Law; those criminal offences are similar [and] directed against the State. Therefore, the investigating judge has correctly concluded that the application of another procedural restrictive measure would not be able to ensure that, while remaining free, the suspect A. Gapoņenko would not commit new criminal offences of a similar nature.

The judge [of the Regional Court] recognises that the ground for detention on remand set out in section 272 of the Criminal Procedure Law has been correctly found to exist in the present case. The risk of committing new criminal offences is sufficiently high; A. Gapoņenko's actions are not occasional as, despite [several sets of] criminal proceedings already initiated for similar crimes (of which one case is already being adjudicated by a first instance court), A. Gapoņenko continues to spread similar publications.

The judge [of the Regional Court] considers that the detention on remand of the suspect is proportionate to the nature of the crimes and required by considerations of public security; therefore, A. Gapoņenko's human rights will not be unjustifiably restricted.

...

Upon the assessment of the facts established in the criminal proceedings, [it appears that] the possible lawless action by the suspect is more possible than impossible; therefore a quick and effective course of criminal investigation, as well as the public interests in this case should outweigh the rights of the individual, and that is a sufficient ground to prevent any risk.

..."

9. On 19 June 2018, the list of offences of which the applicant was suspected was supplemented with "assisting a foreign State in its actions against the national independence, sovereignty, territorial integrity, State power or administrative order of the Republic of Latvia" (section 81-1 of the Criminal Law). According to the Security Police, the applicant had maintained regular contacts with the former Third Secretary of the Russian Embassy in Latvia who was also alleged to be a high-ranking official of the Foreign Intelligence Service of the Russian Federation, receiving from him information and instructions with a view to harming the national interests of Latvia.

10. On 21 June 2018, the investigating judge extended the term of the applicant's detention on remand.

11. On 16 August 2018, the applicant was formally charged with the offences of which he had been previously declared a suspect.

12. On 23 August 2018, exercising the periodic review of the applicant's detention, the investigating judge decided that that detention was no longer

justified and ordered his immediate release, referring, *inter alia*, to the relevant case-law of the European Court of Human Rights. The relevant parts of the judge's order read as follows:

> "It appears from the case material of the criminal proceedings that A. Gapoņenko has been charged with criminal offences defined in sections 78(2), 80(1), and 81-1 of the Criminal Law, which, according to section 7(4) of the Criminal Law, are considered as serious crimes punishable by imprisonment. The judge recognises that the factual information gathered within the framework of the criminal proceedings (testimonies, copies of A. Gapoņenko's publications, social network entries, search protocols) create a reasonable suspicion that A. Gapoņenko might have committed the criminal offences of which he is being accused.
>
> When examining a request for detention on remand and assessing the necessity of a continuing detention, the investigating judge's duty is not an assessment of evidence and whether it is sufficient to establish the person's guilt. ... When examining a request for detention on remand, the investigating judge shall solely and exclusively assess the grounds for applying a detention, grounds that must be corroborated by the case file.
>
> ...
>
> The European Court of Human Rights has repeatedly drawn the attention to the [principle according to which] the longer a detention on demand, the more important must be the reasons allowing for and justifying the application of the most severe restrictive measure.
>
> The judge considers that the investigating authority has not indicated sufficient data confirming that, after having spent in detention four months during which he has had the opportunity to evaluate his own actions and to make the right conclusions, A. Gapoņenko would nevertheless keep committing new criminal offences, therefore risking more severe consequences that might arise for him. Furthermore, the investigating authority has failed to provide sufficient proof that the choice of another restrictive measure, not involving deprivation of liberty, would not be able to ensure that the goals of the criminal proceedings would not be attained. A procedural restrictive measure cannot have the purpose of a premature punishment. The nature and gravity of the criminal offence cannot, in itself, be considered as a ground for applying detention on remand.
>
> In the judge's view, the sole fact that the person [concerned] has been indicted in another set of criminal proceedings and that criminal proceedings have been initiated against him or her in [still] another case, cannot be used as a ground for continuing to believe that [this] person, once released, would commit new criminal offences, or for continuing to apply the most severe restrictive measure."

13. On 16 January 2019, the case file was sent to the Riga City Vidzeme District Court. The parties have provided no information as to the further progress of the case.

C. Other criminal proceedings against the applicant

14. Two other sets of criminal proceedings were initiated against the applicant and several other persons for similar offences. The first set of proceedings was instituted on 28 April 2015 and concerned the applicant's posts on social media during the period from 27 to 31 March 2015. They were

terminated in a final judgment of 7 April 2022 finding him guilty of incitement to hatred by using an automated data processing system and convicting him to a ten-month suspended prison term and a two-year probation period. The second set of proceedings was instituted on 18 April 2018; they were discontinued on 2 April 2020 for lack of constituting elements of a crime.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant provisions of the Criminal Law

15. The relevant sections of the Criminal Law (*Krimināllikums*) read as follows:

Section 78. Incitement to National, Ethnic, and Racial Hatred

"(1) A person who commits acts with a view to inciting national, ethnic, racial or religious hatred or enmity, shall be sentenced to the deprivation of liberty for a period up to three years or temporary deprivation of liberty, or community service, or a fine;

(2) A person who commits the same acts, if ... they have been committed using an automated data processing system, shall be sentenced to the deprivation of liberty for a period up to five years or temporary deprivation of liberty, or community service, or a fine;

..."

Section 80. Actions against the Republic of Latvia

"(1) A person committing an action against national independence, sovereignty, territorial integrity, State power or administrative order of the Republic of Latvia in a manner that is not provided for in the Constitution, shall be sentenced to the deprivation of liberty for a period of up to eight years, with probationary supervision for a period of up to three years;

..."

Section 81-1. Assistance to a Foreign State in Action Directed against the Republic of Latvia

"A person committing activities with the purpose to assist a foreign state or a foreign organisation to act against national independence, sovereignty, territorial integrity, State power or administrative order of the Republic of Latvia, shall be sentenced to the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with probationary supervision for a period of up to three years."

B. Relevant provisions of the Criminal Procedure Law

16. Pursuant to section 244 of the Criminal Procedure Law (*Kriminālprocesa likums*), the authority conducting the proceedings shall choose a procedural restrictive measure that infringes upon the basic rights of a person as little as possible and is proportionate. In selecting a security

measure, the authority conducting the proceedings shall take into account the nature and harmfulness of the criminal offence, the character of the suspect or accused, his or her family situation, health and other circumstances.

17. Section 272 (1) provides that a person may be detained on remand only if specific factual information obtained in the course of criminal proceedings creates a reasonable suspicion that he or she has committed a criminal offence, for which the law provides for a custodial sentence, and if no other security measure can ensure that they will not commit another criminal offence or obstruct or avoid the pre-trial proceedings, trial or execution of the sentence.

18. Under section 274 (1), the investigating judge decides the issue of detention by, *inter alia*, hearing the person concerned, examining the material in the case file and assessing the reasons advanced and grounds for ordering detention. Pursuant to section 274 (5), a detention order has to be justified by reference to specific considerations based on the material in the case file.

COMPLAINTS

19. The applicant complained under Article 5 §§ 1 and 3 of the Convention that, when ordering and extending his detention on remand, the domestic courts did not assess the reasonableness of the suspicion that he had committed the offences he was suspected of and did not give relevant and sufficient reasons for the detention.

20. Invoking Article 10 of the Convention, the applicant also complained that his detention on remand had constituted an unjustified interference with his freedom of expression and, in particular, with his right to impart information and ideas.

THE LAW

A. Alleged abuse of the right of application

21. The Government raised an objection as to the abuse of the right of petition, within the meaning of Article 35 § 3 (a) of the Convention. The relevant part of that Article reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is ... an abuse of the right of individual application; ..."

22. The Government claimed that the applicant had deliberately used offensive and insulting language against the Latvian State and its authorities. In this regard, the Government pointed to the following statement made in the application form submitted by the applicant:

[*Translation from original Russian*]

> "The essence of the activities of the S[ecurity] P[olice], according to many Latvian socio-political activists, is reflected by its being a historical successor of the Political Security Service of the Ministry of the Interior of the R[epublic of] L[atvia], the Political Directorate of the M[inistry of the] I[nterior], and the Directorate of Political Police, as this police structure was officially called in the R[epublic of] L[atvia] during the period of 1920-1940. This characteristic fact of succession has been emphasised in the historical information note on the website of the S[ecurity] P[olice] ...; however, it glosses over the fact that the current name of the S[ecurity] P[olice] coincides with the name of one of the repressive structures that was active in the territory of the R[epublic of] L[atvia] during the Nazi occupation. The applicant and many other opponents of the regime of *de facto* Latvian ethnocracy that is governing Latvia do not consider this a mere coincidence but consider it in the context of rehabilitation of Nazism for which the contemporary Latvia has been over many years consistently criticised by the world community, for example, by means of resolutions adopted by the General Assembly of the United Nations: '*Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance*', see the Resolution of the General Assembly No. A/RES/72/156, 19 December 2017."

23. The Government claimed that calling the political regime of the defendant State an "ethnocracy", comparing a Latvian State authority to an institution of Nazi Germany that had been responsible for reprisals and atrocities committed in the occupied territory of Latvia during the Second World War, accusing Latvian authorities of "rehabilitating Nazism" and falsely claiming that Latvia had been targeted for it by a resolution of the United Nations (which was patently untrue), were clearly inadmissible and amounted to an abuse of the right of individual application.

24. The applicant stood by his allegations and reiterated them. He argued that, by changing the name of the Security Police to "State Security Service", Latvian authorities had implicitly recognised the link between that institution and the repressive authority of Nazi Germany in the occupied "General District of Latvia" (*Generalbezirk Lettland*). The applicant claimed that the resolution of the UN General Assembly had to be understood as targeting Latvia; in this regard, he quoted a recital from the Resolution of the European Parliament of 28 October 2018 on the rise of neo-fascist violence in Europe 2018/2869(RSP), according to which "every year on 16 March thousands of people gather in Riga for Latvian Legion Day to honour Latvians who served in the *Waffen-SS*". As to the word "ethnocracy", he argued that it was a recognised scientific term used in many scientific publications and therefore could not be considered as abusive.

25. The Court reiterates that the use of particularly vexatious, insulting, threatening or provocative language by the applicant, in his or her correspondence with the Court – whether this be against the respondent Government, its Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof – may be considered an abuse of the right of petition within the meaning of Article 35 § 3 (a) of the Convention (see, among others, *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Miroļubovs and Others v. Latvia*, no. 798/05,

§ 64, 15 September 2009, and *Apinis v. Latvia* (dec.), no. 46549/06, § 15, 20 September 2011). Nevertheless, in the circumstances of the present case, the Court does not find it necessary to examine the Government's preliminary objection as to the alleged abuse of the right of application because the present application is in any event inadmissible for the reasons set out below.

B. Alleged violation of Article 5 §§ 1 and 3 of the Convention

26. The applicant complained under Article 5 §§ 1 and 3 of the Convention that his arrest and detention had not been based on a reasonable suspicion that he had committed a criminal offence and that sufficient and relevant reasons had not been given for his continued detention. The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial."

(a) The parties' submissions

27. As to the lawfulness of the applicant's detention, the Government submitted that it had been in conformity with the substantive and procedural rules of domestic law. The domestic authorities had been able to furnish sufficient facts and information to satisfy "the objective observer" test as defined by the Court's case-law (they relied on *O'Hara v. the United Kingdom*, no. 37555/97, §§ 34-35, ECHR 2001-X). In the initial detention order of 21 April 2018, the investigating judge referred to the evidence presented by the State Security Agency, namely, the published material, material seized during the search of the applicant's home, and digital forensic evidence supporting the link between these materials and the profiles and IDs used by the applicant on various social media platforms, including Facebook. Furthermore, the Government pointed out that, although the applicant had denied his guilt in inciting the national and ethnic hatred, he had acknowledged that he was indeed the author and the publisher of the comments at issue. In this regard, the Government emphasised the difference between the present case and the case of *Urtāns v. Latvia* (no. 16858/11,

28 October 2014), where the applicant had expressly denied that he had committed the facts of which he was accused. The investigating judge had also fulfilled her duty to give relevant and sufficient reasons for the detention (in addition to the persistence of reasonable suspicion) in the first decision ordering detention on remand. In the present case, she accepted one of the grounds brought forward by the law-enforcement authorities, namely, that the co-existence of mutually supporting and corroborating facts strongly indicated that the applicant—against whom two other sets of criminal proceedings had been opened for similar facts—would re-offend.

28. The Government further pointed out that the applicant was suspected of and later charged with very serious offences, targeting national independence, sovereignty, and territorial integrity of Latvia, in addition to incitement to hatred. Referring to the changing circumstances in Europe and the recent challenges to the national security of democratic States, the Government invited the Court "to use its dynamic approach when tailoring the scope of procedural safeguards in the light of the current situation, in particular, in view of protecting the ideals and values of democratic European State against large-scale systematic hostile information campaigns, forming a significant part of non-conventional hybrid threats, employed on many different levels—social, political, informational—by various actors."

29. The applicant maintained that the reasons advanced by the investigating judge to justify his detention on remand were not sufficient. According to him, the actions of which he was accused, namely the publications on his Facebook profile, constituted a legitimate exercise of his freedom of expression, especially in his capacity as a political activist.

(b) The Court's assessment

30. Article 5 § 1 (c) of the Convention must be read in conjunction with Article 5 § 3 which forms a whole with it (see *Urtāns*, cited above, § 29). The Court refers to the general principles under Article 5 § 1 (c) of the Convention regarding "reasonable suspicion" as a justification of an initial detention, as summarised in *Selahattin Demirtaş v. Turkey (no. 2)* [GC] (no. 14305/17, §§ 311-21, 22 December 2020), and under Article 5 § 3 of the Convention concerning the justification of a continuing detention, as set out in *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 87-91, 5 July 2016), and *Merabishvili v. Georgia* [GC] (no. 72508/13, §§ 222-25, 28 November 2017).

31. Turning to the instant case, the Court notes that on 21 April 2018 an investigating judge found, and on 27 April 2018 the Riga Regional Court agreed, that there was a "reasonable suspicion" that, by posting a series of Facebook entries, the applicant had committed the offences he had been suspected of, namely, "actions directed against national independence, sovereignty, territorial integrity, State power or administrative order of the Republic of Latvia in a manner not provided for in the Constitution" and

"incitement to national, ethnic or religious hatred or enmity using an automated data processing system". In this regard, the Court attaches particular importance to the fact that the applicant had never denied having written and posted the entries at issue, the only point of contention being their legal assessment. It appears that the Riga Regional Court established the existence of a "reasonable suspicion" against the applicant on the basis of evidence such as search protocols, documentary copies and the applicant's own statements (see paragraph 8 above). In the absence of any indication of possible arbitrariness, the Court is satisfied that there existed in the present case sufficient objective elements that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities (see, for example, *Selahattin Demirtaş v. Turkey (no. 2)*, cited above, § 322).

32. The Court further reiterates that the requirement on the judicial officer to give relevant and sufficient reasons for the detention—in addition to the persistence of reasonable suspicion—applies already at the time of the first decision ordering detention on remand, that is to say "promptly" after the arrest (see *Buzadji*, cited above, § 102). The risk of reoffending, relied upon by the Riga Regional Court as the sole ground for the detention, is among those found acceptable in principle by the Court (*ibid.*, § 88). The Court notes that that particular ground for detention is not adapted to a policy of general prevention directed against an individual or a category of individuals who present a danger on account of their continuing propensity to crime and that it does no more than afford the Contracting States a means of preventing a concrete and specific offence (see *Urtāns*, cited above, § 33). In the specific circumstances of the case, given the nature of the criminal offences of which the applicant was suspected (incitement to hatred and actions against national independence, sovereignty and territorial integrity of a Contracting Party allegedly committed by way of a continuing series of online publications), and the materials in the case-file, the Court does not see any sign of arbitrariness in the Regional Court's reasoning. Accordingly, it concludes that there is no appearance of a violation of Article 5 § 1 concerning the applicant's arrest and initial detention.

33. As to the guarantees of Article 5 § 3 of the Convention, the Court considers that the relevant period for the purposes of that article started on 20 April 2018, when the applicant was arrested and taken into custody, and ended on 23 August 2018, when the investigating judge ordered his release (see *Selahattin Demirtaş*, cited above, § 290). The applicant's detention therefore lasted four months and three days. The Court notes that the parties have not provided a copy of the investigating judge's order of 21 June 2018 extending the term of the applicant's detention for the first time (see paragraph 10 above); it cannot therefore establish whether it referred to the new charges brought against the applicant two days before for "assisting a foreign State in its actions against the national independence, sovereignty,

territorial integrity, State power or administrative order of the Republic of Latvia" on the account of his contacts with a former Russian diplomat (see paragraph 9 above), and whether those charges were cited as additional grounds for detention. However, on 23 August 2018, exercising the second periodic review of the applicant's detention, the investigating judge decided that, in the light of the investigating authority's submissions, the risk of the applicant's reoffending was not a valid ground anymore and ordered the applicant's release (see paragraph 12 above). In the light of the nature of the alleged criminal offences on the account of which the initial detention order was taken, given the relatively short duration of the applicant's detention, and noting that the applicant has never alleged the breach of the duty of special diligence on the part of the investigating authorities, the Court is satisfied that the obligation to be released pending trial has been fulfilled in the applicant's case (see, *mutatis mutandis*, *Fenech v. Malta* (dec.), no. 19090/20, §§ 93-97, 23 March 2021).

34. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 10 of the Convention

35. The applicant considered that his detention on remand had also entailed a violation of Article 10 of the Convention. To the extent that it is relevant in the present case, Article 10 reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

(a) The parties' submissions

36. The Government considered that the applicant's online writings constituted an activity aimed at the destruction of rights and freedoms set forth in the Convention, and were therefore removed from the protection of Article 10 by virtue of Article 17 of the Convention; consequently, they invited the Court to reject this complaint as incompatible *ratione materiae* with the Convention. Alternatively, the Government argued that there had been no interference with the applicant's rights under Article 10. They pointed out that, due to the inherent nature of detention on remand, it necessarily had a restrictive effect on several rights and freedoms enshrined

in the Convention; in particular, the inability of a detained person to fully exercise his or her right to freely impart information and ideas was an inevitable effect of deprivation of liberty. While it is true that the applicant was not able to post information on social media while in the remand prison, other means of communication, such as postal correspondence, remained accessible to him.

37. The applicant retorted that Article 17 of the Convention was not applicable in his case, as he had never called for the destruction of any human rights or fundamental freedoms; on the contrary, he had always taken the Latvian authorities to task for not respecting the fundamental rights of Russian-speaking residents of Latvia and even cooperated with some international organisations for that purpose. As to the merits of the complaints, the applicant argued that his detention as such had constituted reprisals against him as a human rights defender and an attempt at suppressing criticism of the Government's policies.

(b) The Court's assessment

38. Article 17 of the Convention reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

39. The Court reiterates that Article 17 is only applicable on an exceptional basis and in extreme cases (see *Paksas v. Lithuania* [GC], no. 34932/04, § 87, ECHR 2011 (extracts)). In cases concerning Article 10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, ECHR 2015 (extracts)). In the present case, the Court does not consider it necessary to rule on the applicability of Article 17 because the complaint is, in any event, inadmissible for the following reasons.

40. As to the applicant's complaint that his detention on remand constituted a retaliation for his social and political activities involving the exercise of freedom of expression, the Court has, on several occasions, held that certain circumstances which have a chilling effect on freedom of expression do in fact confer on those concerned – persons who have not been convicted by a final judgment – the status of victim of interference in the exercise of their right to that freedom (see, e.g., *Dink v. Turkey*, nos. 2668/07 and 4 others, § 105, 14 September 2010; *Altuğ Taner Akçam v. Turkey*, no. 27520/07, §§ 70-75, 25 October 2011; *Nedim Şener v. Turkey*, no. 38270/11, § 94, 8 July 2014; *Ragıp Zarakolu v. Turkey*, no. 15064/12, § 73, 15 September 2020; *Sabuncu and Others v. Turkey*, no. 23199/17, § 223, 10 November 2020; and *Tuncer Bakırhan v. Turkey*, no. 31417/19,

§ 70, 16 September 2021). The Court has also held that placement in pre-trial detention on charges related to statements or other form of expression not based on a reasonable suspicion that an offence had been committed within the meaning of Article 5 § 1 (c) of the Convention entailed a violation of Article 10 as well, and referred to that finding in concluding that the applicant's pre-trial detention amounted to an interference that had no basis in law within the meaning of Article 10 § 2 of the Convention (see *Ragıp Zarakolu*, cited above, §§ 75 and 79, and *Sabuncu and Others*, cited above, §§ 226 and 230).

41. In the present case, the Court considers that the applicant's detention on remand amounted to an "interference" with the exercise of his rights under Article 10. However, unlike in both previously cited Turkish cases, the Court has already found that the detention at issue was compatible with the requirements of Article 5 § 1 of the Convention, including the existence of a reasonable suspicion against the applicant that he might have, by his publications and statements, incited to hatred and acted against national independence, sovereignty, territorial integrity, and State authorities in an unconstitutional way; it has also found that, by citing the risk of repeating similar acts as the ground for the applicant's detention, the Riga Regional Court had not acted arbitrarily (see paragraphs 31-32 above). In these circumstances, the Court concludes that the impugned interference had a legal basis and that it pursued at least one legitimate aim under Article 10 § 2 of the Convention, namely, "prevention of disorder or crime".

42. As to the proportionality of that interference, the Court reiterates that one of the principal characteristics of democracy is the possibility it offers of resolving problems through public debate, and that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness. For this reason, criticism of governments and publication of information regarded by a country's leaders as endangering national interests should not, as a rule, attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda. Even where such serious charges have been brought, pre-trial detention should only be used as an exceptional measure of last resort when all other measures have proved incapable of fully guaranteeing the proper conduct of proceedings. In this regard, the Court has held that the pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty, will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices, even when the detainee is subsequently acquitted (see *Mehmet Hasan Altan v. Turkey*, no. 13237/17,

§§ 210-12, 20 March 2018, and *Şahin Alpay v. Turkey*, no. 16538/17, §§ 180-82, 20 March 2018).

43. Turning to the general context and the circumstances of the present case, the Court considers that they are substantially different from those in all the Turkish cases cited above. Firstly, without wishing to prejudge the merits of a possible future complaint under Article 10 (see paragraph 44 below), the Court notes the specific sensitive socio-political context underlying the applicant's publications. It appears that in his successive Facebook entries the applicant had spoken *inter alia* of allegedly imminent violent conflicts between the Latvian State and its Russian-speaking residents and international armed conflict escalating into a nuclear war between the member States of NATO (including Latvia) and the Russian Federation. In this regard, the Court cannot overlook the fact that Latvia is a neighbouring country of Russia which, by the material time, had already invaded parts of Georgia (see *Georgia v. Russia* (II) [GC], no. 38263/08, §§ 36-39, 21 January 2021) and acquired military and political control over parts of Ukraine (see *Ukraine v. Russia (re Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, §§ 315-49, 16 December 2020, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16, 43800/14, and 28525/20, §§ 690-97, 30 November 2022). In these circumstances, it should be noted that the exact purpose cited by the Regional Court as the ground for the applicant's detention was the need to prevent repetition of such publications which might *prima facie* constitute crimes defined by domestic law as serious, directed against the vital components of the State's constitutional order, and committed by means of online publications accessible to a large audience (see, *mutatis mutandis*, *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018). In the eyes of the Court, in the light of the specific circumstances of the case which must be viewed in their entirety (see paragraphs 5-9 above), this ground does not seem to be arbitrary or manifestly unreasonable. Secondly, the Court attaches particular importance to the relatively short duration of the impugned measure (four months and three days; compare and contrast with *Mehmet Hasan Altan*, cited above, § 198, *Tuncer Bakırhan*, cited above, § 78, and *Öğreten and Kanaat v. Turkey*, nos. 42201/17 and 42212/17, § 114, 18 May 2021), to the existence of a periodic judicial review, and to the fact that the applicant was immediately released after the investigating judge had found that the detention was no longer justified. In these circumstances, the Court accepts that the interference was "necessary in a democratic society" to attain its legitimate aim. This aspect of the applicant's complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

44. To the extent that the applicant is questioning the well-foundedness of the criminal charges levelled against him, and on the basis of the information provided by both parties, the Court notes that the parties have provided no

information as to the further progress of the case after 2019 (see paragraph 13 above). The Court must therefore presume that the criminal proceedings which are the subject of the present application are still pending before the court of first instance and the applicant has not been so far convicted for any criminal offence in those proceedings. This being so, this aspect of the applicant's complaint is both premature and manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

45. Finally, insofar as the applicant's complaint under Article 10 of the Convention may be understood as relating to his inability to consult social media platforms and to post on them while in prison, as well as to communicate his ideas to the outside world to the extent and in the manner he wished, the Court reiterates at the outset that detention necessarily entails inherent limitations on the exercise of some fundamental rights, and that some measure of control of the detainee's contacts with the outside world is called for and is not of itself incompatible with the Convention. Moreover, Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners (see *Kalda v. Estonia*, no. 17429/10, § 45, 19 January 2016; *Jankovskis v. Lithuania*, no. 21575/08, § 55, 17 January 2017, and, *mutatis mutandis*, under Article 8 of the Convention, *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 106 and 123, ECHR 2015, and *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, § 77, 6 December 2022). It is true that, in some circumstances, a restriction of a prisoner's use of the Internet may constitute an interference with his or her exercise of the right to receive information guaranteed by Article 10 (see *Kalda* and *Jankovskis*, cited above, *ibid*.). However, in the present case, the applicant has not indicated any instance of him requesting access to the Internet or to a specific website and of the prison authorities denying such a request. Moreover, pursuant to Article 35 § 1 of the Convention, the Court may only deal with the matter after all domestic remedies have been exhausted. It does not transpire from the case-file that the applicant has lodged any complaints with the domestic authorities regarding the possible restrictions of his information exchanges with the outside world.

46. Accordingly, this part of the application must be rejected in accordance with Article 35 §§ 1 and 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 15 June 2023.

Victor Soloveytchik Section Registrar	Lado Chanturia President