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

FIRST SECTION

DECISION

Application no. 3613/19
Aivars LEMBERGS
against Latvia

The European Court of Human Rights (First Section), sitting on 6 May 2025 as a Chamber composed of:

Ivana Jelić, President,
Erik Wennerström,
Alena Poláčková,
Frédéric Krenc,
Stéphane Pisani,
Alain Chablais,
Artūrs Kučs*, judges*,

and Liv Tigerstedt, Deputy Section Registrar,

Having regard to the above application lodged on 8 January 2019,

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 Aivars Lembergs, is a Latvian national who was born in 1953 and lives in Ventspils novads. He was represented before the Court by Ms I. Nikuļceva, a lawyer practising in Rīga.

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

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background information

4. The applicant is the leader of the For Latvia and Ventspils (*Latvijai un Ventspilij*) political party and has been the chairperson of Ventspils City Council since 1988.

5. On 14 March 2007 he was charged with bribery, money laundering, unlawfully participating in property transactions, and providing false information in his tax returns. It appears that he was also later charged with forgery of documents and abuse of public office.

6. The criminal proceedings against the applicant were pending before the Riga Regional Court from 2008 onwards.

7. On 22 February 2021 the Riga Regional Court sentenced the applicant to five years' imprisonment with confiscation of property and a fine of 20,000 euros (EUR) for fraud, money laundering, forgery of documents and unlawfully participating in transactions (19 counts in total) and acquitted him on the other 21 counts.

8. On 27 September 2023 the Riga Regional Court, acting as a second-instance court, delivered a summary judgment partly overturning the first-instance judgment. In particular, the applicant was sentenced to four years' imprisonment with confiscation of property for 9 counts in total, and he was acquitted on 10 additional counts (in total, the applicant was sentenced in relation to 9 counts and acquitted on 31 counts).

9. It appears that on 17 December 2024 proceedings on points of law were instituted.

2. Impugned statements and ensuing civil proceedings

10. On 16 October 2012 the applicant and the Minister of Environmental Protection and Regional Development, who oversees the work of local municipalities, participated in a live television broadcast. The debate focused on a procedure initiated by the Minister to suspend the applicant from his duties as chairperson of Ventspils City Council. The procedure was based on allegations that the applicant had taken a large number of decisions despite there being a conflict of interest, as substantiated by documents provided by the Office of the Prosecutor General which had been obtained during the investigation. During this interview, the Minister made the following statements:

> "... for twenty years Mr Lembergs has been ... spitting in the face of every Latvian resident, clearly demonstrating that the laws in this country are not the same for everyone ..., that Mr Lembergs is, in essence, the biggest boil on the Latvian system of municipalities ..."

> "And in particular, owing to your impunity, which you buy with public taxpayers' money, including the money of the inhabitants of Ventspils, a lot of Latvian municipalities have turned into academies for the misappropriation of public funds, instead of ... working in the interests of [their] inhabitants [and] in the interests of developing [their] territories."

"Mr Lembergs' time is up ... You should receive ... a fair punishment; a thief, just like in the film [a popular film from the 1980s], should sit in prison. This era is over in Latvia."

"One of the reasons why I got involved in politics, why my colleagues got involved in politics, was so that there would be some rule of law in Latvia and some transparency, including in the municipality processes. I have been entrusted with ... municipalities, with such chairpersons of city councils, who work with impunity like Mr Lembergs. I cannot work with the remainder of the system, because how can I blame any municipality for anything if in the other corner of Latvia I have Mr Lembergs, who does ..., who simply manages the municipality as though it is his own and his family's pocket."

"If we are speaking about Latvian development ... much more significant are those 200,000 [inhabitants] who ... have left Latvia; you should take responsibility for every one of them ... because you have robbed those people of the hope that there will ever be order in this country and that anything will ever be resolved."

11. On 27 May 2013 the applicant brought civil proceedings for defamation against the Minister. His claim was based on section 2352[1] of the Civil Law (the right to bring proceedings protecting honour and dignity; see paragraph 22 below) and Articles 92 and 95 of the Constitution (the right to compensation, and the right to honour and dignity respectively; see paragraph 21 below). Referring to the Court's judgments in *Daktaras v. Lithuania* (no. 42095/98, ECHR 2000-X) and *Peša v. Croatia* (no. 40523/08, 8 April 2010), among other authorities, the applicant emphasised that he had not been found guilty of any offence and referred to the presumption of innocence, but did not lodge a separate claim in that regard.

12. On 29 May 2014 the Jūrmala City Court dismissed the applicant's claim. It considered that the impugned statements should be regarded as the Minister's opinion, intended to initiate a public debate, rather than statements of fact; that the applicant had been criticised as a politician, rather than as a private individual; and that the debate had concerned an issue that was important to the public. The opinions expressed had had a factual basis – the information received from the Office of the Prosecutor General indicating that the applicant had taken numerous decisions despite there being a conflict of interest. While the expressions used by the Minister had been harsh and critical, his opinions could not be regarded as rude or excessively offensive. In comparing the applicant to a thief in a film, the Minister had used a comparison and a metaphor as a means of expression, to enhance the message behind the political speech. In addition, it could not be concluded from the Minister's statements that the applicant had been accused of committing any particular criminal offence.

13. The applicant appealed against that judgment. He repeated his arguments about the violation of his honour and dignity and referred again to the Court's judgments he had cited in his initial claim (see paragraph 11 above), without referring to the presumption of innocence.

14. On 4 February 2015 the Riga Regional Court granted the applicant's claim in part. It found that the impugned statements had been the Minister's opinion, and none of them had contained information that could be verified. The court found that the Minister had had a sufficient factual basis to make statements about the applicant and his actions, namely to criticise the applicant as the chairperson of Ventspils City Council. It also found that all of the statements made by the Minister, with the exception of two – "you should receive ... a fair punishment; a thief, just like in the film, should sit in prison", and "owing to your impunity, which you buy with public taxpayers' money, including the money of the inhabitants of Ventspils" – had been made within the limits of permissible criticism and were not excessively offensive.

15. The court also held:

> "The appellate court finds that by making the two above-mentioned statements, [the Minister] exceeded the limits of permissible criticism. ... It is a known fact that criminal proceedings in which [the applicant] has been charged with criminal offences are pending before a court. [The Minister], by stating that [the applicant] was a thief and should sit in prison, made a neutral observer conclude that [the applicant] was guilty of the criminal offences he had been charged with and should be punished accordingly. A neutral observer would reach such a conclusion on the basis of [the Minister's] statement that he had the relevant material from the prosecution at his disposal. Therefore, a neutral observer would conclude that [the Minister] had material that undoubtedly suggested that [the applicant] had committed criminal offences. This is supplemented by [the Minister's] statement that [the applicant] had bought his impunity with public taxpayers' money, including the money of the inhabitants of Ventspils. A neutral observer would conclude that [the applicant] had not yet been punished for [his] criminal offences at that point because he had bought his impunity. A neutral observer would conclude that he had paid the judicial authorities to achieve his desired result, and that now [the Minister] had the relevant documents.
>
> Such statements clearly damage one's honour and dignity. [The Minister], by making such statements, exceeded the limits of permissible criticism. In accordance with the [Court's] case-law referred to by [the applicant], it was not permissible that the opinion expressed by [the Minister] as a public official would encourage the public to believe that [the applicant] was guilty of a criminal offence."

16. When determining the amount of compensation to be awarded, the court noted as follows:

> "The appellate court finds that [the Minister] has to pay [the applicant] monetary compensation for expressing an opinion that was excessively rude and offensive, exceeded the limits of permissible criticism, and damaged [the applicant's] honour and dignity. [In that regard, the appellate court relied on Article 95 (the right to honour and dignity) and Article 92 (the right to commensurate compensation).]
>
> ...
>
> The amount of compensation to be awarded ... is to be fixed at EUR 2,000 ... an amount [which] will not have such an effect as to preclude the protection of freedom of speech and discourage the press or other individuals from speaking about matters of public concern.

Furthermore, the court sets the amount of compensation on the grounds that [the Minister's] opinion was related to a breach of the presumption of innocence. The statements were made by [the Minister] as a public official in charge of supervising municipalities. [His] opinion was expressed on the morning [television] programme '900 seconds'. The statement referring to [the applicant] as a thief who had to be punished was republished in the newspapers *Dienas Bizness* and *Neatkarīgā Rīta Avīze Latvijai* ... Therefore, the offensive opinion expressed by [the Minister] that overstepped the limits of permissible criticism was heard by as large a part of society as possible. An opinion emerged among [that section of society] that [the applicant] was guilty of criminal offences and had to be punished accordingly."

17. The appellate court concluded:

"[The appellate court] has allowed [the applicant's] claim in part, by finding that [the Minister] overstepped the limits of permissible criticism. His opinion constituted a breach of [the applicant's] right to honour and dignity ... and [the Minister] has to pay [the applicant] compensation in the amount of EUR 2,000 ..."

18. On 5 October 2017, following an appeal on points of law lodged by the Minister, the Supreme Court quashed that judgment in full and sent the case back to the appellate court for fresh examination. It found that the appellate court had carefully assessed the Court's case-law and had examined the facts of the case and the evidence, but its conclusions had been contradictory. In particular, it found as follows:

"[10.2] In the judgment which was appealed against, the court recognised that where it was a known fact that the [applicant's] criminal case was pending before a court, the impugned statements encouraged the public to believe that [the applicant] was guilty of the criminal offence of which he had been accused – theft.

The [Supreme Court] can agree with the appellate court that the fact that there are criminal proceedings [pending] against [the applicant] in relation to [the charges brought against him] is a fact known to the Latvian public. Information related to those criminal proceedings has been widely reported by various media over the course of several years, ... revealing the full range of publicly available information about those criminal proceedings, including the essence of the charges brought [against the applicant]. However, the appellate court did not deal with the fact that in the present case it was also common knowledge [in Latvia] that none of the charges brought against [the applicant] in those criminal proceedings – proceedings which have been widely reported in the media – related to any accusations of theft.

Therefore, the [Supreme Court] cannot agree with the appellate court that an average reasonable viewer, from the statement 'you should receive ... a fair punishment; a thief, just like in the film, should sit in prison', would make a hasty conclusion that [the applicant] was guilty of the offences he was accused of.

[11] The appellate court, when analysing the [Court's] case-law, rightly quoted its findings emphasising the important role of freedom of expression in a democratic society, [and] the duty of State institutions to refrain from any interference in the field of freedom of expression, emphasising its importance in relation to politicians, who must have a greater tolerance of criticism. At the same time, 'protection of the right to dignity also applies to politicians, even if they are not acting in a private capacity; however, in such cases, the necessity of the protection has to be weighed against the interests of open political debate' [the Supreme Court referred to *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103]. This means that the protection of the dignity of a

politician is always reconcilable with the interests of the public, in respect of which open political debate has a special role.

...

[11.2] It should be noted that [the applicant], as a highly experienced politician who had gained skills in similar discussions, had to be aware that the political rhetoric on live television would be especially sharp when he agreed to a discussion in this format, considering the importance of the topic. It is normal to expect that each participant in a debate like this would use all the literary expressions in his or her arsenal to substantiate and highlight [his or her] views.

...

[13] It has been recognised in doctrine that 'when assessing the gravity of an offence, it is necessary to consider the person in relation to whom the opinion has been expressed ... It is also necessary to consider the factual circumstances in which the public figure is acting, as well as [his or her] form or style of expression. For example, [a person's] aggressive or expressly provocative behaviour [means that his or her opinion may] also be expressed in a similar manner'.

[13.1] The judgment which was appealed against does not indicate that the court evaluated the form and style of [the applicant's] speech on the television programme in question, including the fact that [he] himself clearly and directly called [the Minister] a thief.

[13.2] Moreover, in order to assess the form and style of expression used by [the applicant], the entire discussion between the parties has to be assessed, considering the emotional swings of the discussion, without specific statements being taken out of context."

19. On 22 January 2018, having re-examined the case, the Riga Regional Court held that the applicant's appeal was unfounded and had to be dismissed. The crux of the case was whether the two impugned statements were statements of fact whose truthfulness could be verified or opinions. The appellate court examined whether there had been a sufficient basis for the impugned statements, and how a neutral observer could perceive them:

"[16.10.1] Having analysed the evidence, the [appellate court] considers that a neutral reader could not have had the impression that [the Minister's] statements could be perceived as information [that could be verified], since [the applicant's] activities over the course of many years have regularly been reported in the media. Moreover, it is a known fact that for ten years a court has been dealing with a criminal case in which [the applicant] has been accused of criminal offences, including bribery involving large amounts [of money], the laundering of criminally acquired financial proceeds and other property, forgery of official documents, unlawful participation in transactions, abuse of public office and other offences.

...

[18.10] Having assessed the impugned statements grammatically and [in terms of] their overall meaning, the [appellate court] considers that [the Minister] did not literally call [the applicant] a thief. [The Minister] used a metaphor to highlight his thought, by referring to a popular film ...

[18.10.1] ... It is also notable that [the applicant] himself directly and unambiguously called [the Minister] a thief during the political discussion, and added that this was a universally known fact.

[18.10.2] It can therefore be concluded that in [the context of] the political rhetoric of the programme, both participants in the discussion used different strong means of expression to amplify their opinion.

...

[18.11] ... Having assessed [the second impugned statement], the [appellate court] finds that it was also made in the context of political rhetoric and was not intended to accuse [the applicant] of a specific criminal offence in violation of the presumption of innocence. Furthermore, as noted above, the right to express a harsh and critical opinion is one of the fundamental rights provided for in Article 100 of the Constitution.

...

[18.13] In summary, the court concludes that the statements made in the discussion [contained] the opinion of [the Minister], which had a sufficient factual basis. An opinion cannot be subject to verification as to its truth, as it can be neither true nor false, however unacceptable it may seem to some. Therefore, [the applicant's] claim of a breach of his right to honour and dignity is dismissed in full ...

[18.14] Having examined all the impugned statements in the context of the format of the discussion, the [appellate court] has not [identified] any information or statements that are false or offend [the applicant's] honour and dignity. Therefore, it must be concluded that there are no grounds to retract [those statements] and the claim must be dismissed as unfounded. In these circumstances, the claim for compensation in respect of non-pecuniary damage must also be dismissed ..."

20. The applicant lodged an appeal on points of law, arguing that the judgment was contrary to the presumption of innocence. By a final decision of 9 November 2018, the Supreme Court refused to institute proceedings on points of law.

RELEVANT LEGAL FRAMEWORK

21. The relevant Articles of the Latvian Constitution (*Satversme*) provide:

Article 92

"Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with the law. Everyone whose rights are violated without justification has the right to commensurate compensation. Everyone has the right to the assistance of counsel."

Article 95

"The State shall protect human honour and dignity. Torture or other inhuman or degrading treatment of a person is prohibited. Nobody shall be subjected to cruel or degrading punishment."

Article 100

"Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited."

22. Sections 1635, 1779 and 2352[1] of the Civil Law (*Civillikums*) provide as follows:

"1635. Any infringement, that is, any unlawful act which by its nature has caused damage (including non-pecuniary damage), gives the victim the right to seek compensation from the person who has caused it, in so far as he or she may be held responsible for that act.

Non-pecuniary damage should be understood to mean any physical or mental suffering resulting from the infringement ...

1779. Everyone has a duty to compensate for losses caused by his or her acts or omissions.

...

2352.1 Everyone has the right to bring proceedings to have information which offends his or her honour and dignity retracted if the disseminator of the information cannot prove that the information is true.

If information that offends a person's honour and dignity has been published in the press, in the event that such information is not true, it shall also be retracted in the press. If information that offends a person's honour and dignity has been included in a document, that document shall be replaced. In other cases, a court shall determine the procedure for retraction.

Anyone who unlawfully offends a person's honour and dignity orally, in writing or by an act shall provide financial compensation. A court shall determine the amount of such compensation."

23. Section 19 of the Criminal Procedure Law (*Krimināl*procesa likums*) guarantees the presumption of innocence. Subsection 4 thereof entered into force on 25 October 2018 and provides as follows:

...

(4) If a public official who is not a person involved in criminal proceedings has made a public statement concerning the guilt of an accused person in violation of the presumption of innocence, the person responsible for the criminal proceedings shall, upon a reasoned application by the accused person, publicly announce that there has been a violation of the presumption of innocence and send a copy of the [application] to the authority which is able to decide on that official's liability, for evaluation.

24. The Annotation to the amendments made to section 19 of the Criminal Procedure Law, notably subsection 4, provides as follows:

"2. Article 4(1) of Directive [EU] 2016/343 [of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65)] provides that until the guilt of a suspect or accused person has been established in accordance with the law, public statements by public authorities and judicial decisions which do not establish guilt must not refer to that person as guilty. ...

The presumption of innocence in criminal proceedings may be violated by a public statement made [on behalf of] public authorities by persons who are involved in the criminal proceedings, or by third parties who represent a public authority but are not involved in the criminal proceedings, such as officials from the State Police, the KNAB [the Bureau for the Prevention and Combating of Corruption], [and] the Financial Police Authority who did not initiate the criminal proceedings in question; public officials in a position of responsibility; civil servants; journalists; or any other person.

...

However, ... persons who represent a public authority but are not involved in the criminal proceedings, such as minister[s], high-ranking public official[s] or member[s] of parliament, [and who] violate a person's right to be presumed innocent by making a public statement [on behalf] of a public authority must be divided into two [categories]. Namely:

(1) persons who may influence criminal proceedings by their public statement[s] about a person's guilt; and

(2) persons who cannot influence criminal proceedings by their public statement[s], that is, [persons who] do not pose a risk to the interests of the criminal proceedings, but only prejudice the honour, dignity and reputation of the person [concerned].

[Persons] in the first [category] are any high-ranking public officials, such as high-ranking officials of an investigative body, ministers [and] high-ranking officials of ministries whose duties and area of competence are relatively close to the field of criminal law and its processes. Public statements by such persons may thus have an impact on particular criminal proceedings and the person conducting the proceedings.

[Persons] in the second [category] are any other third parties whose statements cannot influence the criminal proceedings or the person conducting the proceedings, since these persons are in no way connected to the field of criminal law and its processes (investigation[s], court[s]) by their activities and powers. Public statements by persons [in this category] could only be considered defamatory.

In [relation to] both [categories], a person who considers that a public statement by a public authority has violated his or her right to be presumed innocent may have recourse to civil proceedings and claim compensation for damage.

The obligation and responsibility of any public official or employee of a public administration or investigative body not to refer to suspects or accused persons as guilty in public statements made by a public authority is laid down in Article 92 of the Constitution, which provides that everyone shall be presumed innocent until proven guilty in accordance with the law.

Therefore, a person who has made a public statement [on behalf of] a public authority may be subject to disciplinary proceedings and disciplinary sanctions on the basis of a breach of Article 92 of the Constitution.

However, a civil remedy only and a disciplinary offence [with regard to persons in the] first [category] are insufficient, where public figures other than those involved in criminal proceedings make a public statement in violation of a person's right to be presumed innocent, indicating his or her guilt before a final decision has taken effect. Consequently, a criminal procedural remedy is also necessary, taking into account the impact on the interests of criminal proceedings. It is therefore concluded that there is no adequate remedy in the present case.

The European Court of Human Rights has also concluded that ... a civil action before a national court for breach of the presumption of innocence does not constitute an effective remedy [see *Konstas v. Greece*, no. 53466/07, § 29, 24 May 2011, and *Shuvalov v. Estonia*, nos. 39820/08 and 14942/09, § 73, 29 May 2012], since such an action is civil in nature, which in turn means that it will not be dealt with in the context of the specific criminal proceedings brought against the individual, and the outcome of the civil proceedings, even if favourable to the individual, cannot in any way affect, let alone remedy, the situation which has arisen in the context of the criminal proceedings. The civil remedy can therefore only serve as a supplementary element through which an individual can obtain compensation for the violation of his or her rights, but the fact that such compensation is granted cannot in itself remedy the harm caused to the interests of criminal proceedings, including the fairness of the criminal proceedings.

Similarly, [the Court], when assessing the effectiveness of remedies in cases where individuals have complained of violations of the presumption of innocence (Article 6 § 2 of the Convention), has noted that the presumption of innocence is one of the key elements for a criminal trial as a whole to be considered fair under Article 6 § 1 of the Convention [see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308]. According to [the Court], therefore, in order for a remedy for an alleged violation of the presumption of innocence to be effective, an individual must be able to lodge a complaint in the context of the criminal proceedings against him or her [see *Shagin v. Ukraine*, no. 20437/05, § 71, 10 December 2009, and *Dovzhenko v. Ukraine*, no. 36650/03, § 42, 12 January 2012].

At present, there is no remedy under the Criminal Procedure Law in cases where a public official violates an individual's right to be presumed innocent by making a public statement, thereby affecting the criminal proceedings. ...

Consequently, the remedy available under the Criminal Procedure Law for a public statement made by a third party (a public authority) must be provided to suspects or accused persons whose right to be presumed innocent has been violated by a public statement about a person's guilt, so that they are placed in the same position as they would have been had the violation not occurred. [This is done] by the person who initiated the proceedings making a public statement (in response) providing objective information on the status of the person in the particular case, indicating that the violation of the fundamental principle of the presumption of innocence is not acceptable. This solution ... has been chosen because the remedy in the event of a breach of the presumption of innocence must be such as to be capable of remedying the prejudice to the interests of criminal procedure, including the fairness of the criminal proceedings. Therefore, an immediate public statement in response by the person conducting the proceedings remedies the prejudice caused by the criminal proceedings and [means that] the interests of the criminal proceedings in question are no longer put at risk. Otherwise, if the remedy were to be applied at the end of the criminal proceedings at the time of sentencing, the prejudice caused during the criminal proceedings would call into question the conduct and impartiality of the entire criminal proceedings.

In view of the above, and in compliance with the requirements of Directive 2016/343, it is proposed to add a new fourth subsection to section 19 of the Criminal Procedure Law providing that if a public official who is not involved in the criminal proceedings has made a public statement expressing his or her opinion about a person's guilt in violation of the presumption of innocence, the person conducting the proceedings shall, on the basis of a reasoned application by the person [concerned], publicly announce that the violation referred to in this section is not acceptable.

> This means that the person conducting the proceedings is required to make a public statement only after receiving a reasoned application from the person [concerned]. The public statement may be made ... through either the institution's communication service or the available media (for example, a statement on the institution's website or a communication to the National Information Agency).

25. The relevant parts of EU Directive 2016/343 are set out in *Rimšēvičs v. Latvia* ((dec.), no. 31634/18, § 32, 10 October 2023).

COMPLAINT

26. The applicant complained under Article 6 of the Convention that his right to be presumed innocent had been violated by the Minister's public statements. The relevant parts of Article 6 of the Convention read as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ..."

THE LAW

A. The parties' submissions

1. The Government

27. The Government submitted that the applicant's complaint was inadmissible on several grounds.

28. Firstly, it was incompatible *ratione materiae*, as the impugned statements had referred to a theft, that is, a different criminal offence from the one for which the applicant had been indicted.

29. Secondly, the applicant had failed to exhaust all available remedies. Namely, he had failed to raise the complaint within the criminal proceedings against him, in particular in compliance with section 19(4) of the Criminal Procedure Law, which provided an effective domestic remedy. The remedy in question had been introduced before the applicant had lodged his application with the Court and at the time when his case had been pending before the Riga Regional Court, and it provided no time-limit for lodging a complaint. As the criminal proceedings against the applicant were still ongoing, he could still make use of the remedy in question. In addition, an accused could initiate defamation proceedings and seek compensation. However, a defamation claim was not in itself an effective remedy and it was insufficient for the purposes of Article 35 § 1 of the Convention, as it was examined only in civil proceedings and even if the outcome were favourable to the applicant it could not affect the criminal proceedings.

2. The applicant

30. The applicant submitted that at the time when the impugned statements had been made there had been no established procedure for raising his complaint of a breach of the presumption of innocence within the criminal proceedings, given that the relevant provision of the Criminal Procedure Law, section 19(4), had entered into force on 25 October 2018 (see paragraph 23 above). He had therefore made use of a civil claim, which had been the only available and accessible domestic remedy at the time, and one capable of providing him with redress, as proved by the appeal court judgment of 4 February 2015 (see paragraphs 14-17 above). He also maintained that the remedy provided for in section 19(4) was not effective, but was instead meant to supplement a civil claim. He submitted that even if it were established in such proceedings that there had been a violation of the presumption of innocence eight years earlier, it would be meaningless and could not provide him with appropriate satisfaction. In any event, even if there had been several potentially effective remedies, he had been required to use only one of them, and had been dispensed from using another one.

B. The Court's assessment

1. Compatibility ratione materiae

31. The Court notes that the applicant's complaint concerns the statements of the Minister of Environmental Protection and Regional Development made in the context of the procedure to suspend the applicant from his position as chairperson of Ventspils City Council (see paragraph 10 above). The procedure to suspend the applicant was based on allegations that he had taken a large number of decisions despite there being a conflict of interest, as substantiated by documents provided by the Office of the Prosecutor General which had been obtained during the investigation against him (ibid.). The Court considers that the reliance of the domestic authorities, notably the Minister, on the pending criminal proceedings against the applicant in the suspension proceedings created a "link" between the criminal proceedings and the suspension proceedings, which justifies the extension of the scope of Article 6 § 2 to cover the latter (see, *mutatis mutandis*, *Hrdalo v. Croatia*, no. 23272/07, § 53, 27 September 2011, and *Ispiryan v. Lithuania*, no. 11643/20, § 76 *in fine*, 27 June 2023; compare also *Güç v. Turkey*, no. 15374/11, § 33, 23 January 2018).

32. The Government's objection in this regard must therefore be dismissed.

2. Exhaustion of domestic remedies

33. The relevant principles as regards the exhaustion of domestic remedies are set out in *Communauté genevoise d'action syndicale (CGAS)*

v. Switzerland [GC], no. 21881/20, §§ 138-45, 27 November 2023). In particular, it is a fundamental feature of the machinery of protection established by the Convention that it is intended to be subsidiary to the national systems safeguarding human rights (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69 *in limine*, 25 March 2014). It is therefore appropriate that the national courts should initially have the opportunity to determine questions of the compatibility of domestic law with the Convention and that, if an application is nonetheless subsequently brought before the Court, it should have the benefit of the views of the national courts, as being in direct and continuous contact with the forces of their countries (see, among many other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 42 *in fine*, ECHR 2008). The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see *Vučković and Others*, cited above, § 70; *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 221, ECHR 2014 (extracts); and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015).

34. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available, in practice and in law, in respect of the alleged violation (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Konstas v. Greece*, no. 53466/07, § 28, 24 May 2011). Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, § 157 *in fine*).

35. The relevant principles as regards effective domestic remedies in respect of Article 6 § 2 complaints and, more particularly, on the question in which circumstances civil or criminal remedies or a combination of both are to be regarded as effective are set out in *Rimšēvičs v. Latvia* ((dec.), no. 31634/18, §§ 48-49, 10 October 2023). The question of which remedies need to be exhausted in respect of allegations about a violation of the presumption of innocence depends inevitably on the particular facts of and the domestic law applicable to the case (ibid, § 50).

36. The Court has already found, in a comparable case in the Latvian context, that a complaint under section 19(4) of the Criminal Procedure Law, through which an applicant can obtain an acknowledgment of an infringement of the presumption of innocence, together with a civil claim for compensation under the Civil Law, can be considered an effective domestic remedy for an alleged breach of the presumption of innocence (ibid., § 53, in which the applicant also complained under Article 6 § 2 of the Convention that his right to be presumed innocence had been violated by public statements made outside of the criminal proceedings by various high-ranking State officials).

37. The Court reiterates that the nature and structure of remedies in the domestic legal order, as well as the nature of the applicant's complaint (of a breach of the right to a fair trial or an attack on his "reputation" by the impugned statements) are the relevant factors taken into account by the Court when assessing the effectiveness of remedies available in the context of a criminal trial and/or separate civil proceedings (see, for instance, *Lakatoš and Others v. Serbia*, no. 3363/08, § 113, 7 January 2014; see also, for illustrative purposes, *Ringwald v. Croatia* (dec.) [Committee], no. 25405/15, §§ 54-58, 22 January 2019).

38. Although there may be exceptions justified by particular circumstances of a case, the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)).

39. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Vučković and Others*, cited above, § 77, and the authorities cited therein).

40. Turning to the present case, the Court notes that there was no action or decision taken by the trial judge in the course of the trial itself which had an impact on the applicant's right to be presumed innocent (compare *Hajnal v. Serbia*, no. 36937/06, § 121, 19 June 2012). The applicant's complaint focused solely on the various statements made by the Minister outside of the trial (see paragraph 10 above).

41. The Court observes that the Government submitted that the applicant could and should have raised his complaint within the criminal proceedings under section 19(4) of the Criminal Procedure Law (see paragraph 23 above). The Court notes that under this provision, a complaint alleging that the presumption of innocence has been violated by statements made by those not involved in criminal proceedings can be submitted by the individual concerned in the course of the ongoing criminal proceedings (contrast *Lakatoš and Others*, cited above, § 113 *in fine*, and *Okropiridze v. Georgia*, nos. 43627/16 and 71667/16, § 114, 7 September 2023). It can be done so without waiting for the adjudication of the case (contrast *Peša v. Croatia*, no. 40523/08, §§ 132-33, 8 April 2010). The authority in charge of the criminal proceedings can, on the basis of a reasoned application by the individual concerned, acknowledge a violation of the presumption of innocence and ensure that that acknowledgement is publicised (see paragraph 23 above; contrast *Neagoe v. Romania*, no. 23319/08, § 27, 21 July 2015). A

copy of the application shall also be submitted to the authority which can decide on the liability of the official in question, for evaluation (see paragraph 23 above). Therefore, depending on the circumstances, the remedy can also lead to the punishment of the official who made the impugned statement. The Court further observes that this provision was specifically introduced in order to provide an effective domestic remedy for alleged violations of the presumption of innocence caused by statements made by those not involved in criminal proceedings, in accordance with the relevant EU Directive requirements and having regard to the Court's case-law (see paragraph 24 above).

42. As noted above, the requirement for the applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (see paragraph 38 above). The Court also accepts that there may be exceptions justified by the particular circumstances of a case (see paragraph 36 above) and observes that in *Rimšēvičs* it considered that the applicant should have used this remedy even in a situation in which the application had been lodged shortly before section 19(4) entered into force (see *Rimšēvičs*, cited above, § 54). In that regard, the Court notes that section 19(4) entered into force on 25 October 2018 (see paragraph 23 above) and had been in force for more than two months when the applicant in the present case lodged his application with the Court on 8 January 2019. At the time, the criminal proceedings against the applicant were pending before the Riga Regional Court sitting as a first-instance court (see paragraphs 6-7 above). Therefore, the applicant could have raised his complaint before that court under section 19(4) and thus afforded the national authorities the opportunity to acknowledge the alleged violation (see paragraph 33 above). Given that there are no time-limits for making use of that remedy, the applicant could also have done so in an appeal against the first-instance judgment of the trial court (see *Czajkowski v. Poland* (dec.), no. 6809/03, 16 October 2007). In fact, he can still avail himself of that remedy, given that the criminal proceedings are still ongoing (see paragraph 9 above). Furthermore, if there were an acknowledgement by the authority in charge of the criminal proceedings under section 19(4) of the Criminal Procedure Law, the applicant could also seek compensatory redress before the civil courts, in accordance with the relevant provision of the Civil Law (see paragraph 22 above).

43. As regards the nature of the applicant's complaint (see paragraph 37 above), the Court notes that the applicant's claim at domestic level, by which he initiated civil proceedings, indicates that he brought civil proceedings for defamation, and which was primarily formulated as being linked to his right to honour and dignity, as enshrined in section 2352^1 of the Civil Law (see paragraph 11 above). The domestic courts examined the case precisely from that angle (see *Rodina v. Latvia*, nos. 48534/10 and 19532/15, § 81, 14 May 2020). Although the applicant also referred to the presumption of innocence,

he did not properly rely on it, that is he did not lodge a separate claim in that connection (see paragraph 11 above). Aside from the fact that the judgment of 4 February 2015, to which the applicant referred (see paragraph 30 above), was quashed in full by the Supreme Court (see paragraph 18 above), the Court notes that even in that judgment all the impugned statements of the Minister were examined in the context of whether they exceeded the limits of permissible criticism and whether they breached the applicant's right to honour and dignity (see paragraphs 15-17 above). The Court reiterates in this regard that in so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted. It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies". It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Vučković and Others*, cited above, § 75, and the authorities cited therein).

44. As the applicant did not complain to the domestic authorities of a breach of his right to be presumed innocent – in the course of the criminal proceedings, as discussed above, and subsequently in civil proceedings to seek redress – the Court, reiterating the subsidiary character of the Convention machinery, finds that the applicant failed to exhaust domestic remedies in respect of his complaint under Article 6 § 2 of the Convention (see paragraph 34 *in fine* above; see, also, *Rimšēvičs*, cited above, § 56). The Court sees no exceptional circumstances in the present case which could have absolved the applicant from the obligation to avail himself of those remedies. In this regard, it reiterates that the existence of mere doubts on the part of an applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it (see *Vučković and Others*, cited above, §§ 74 and 84).

45. Accordingly, the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 June 2025.

Liv Tigerstedt Deputy Registrar	Ivana Jelić President