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

FIFTH SECTION

DECISION

Application no. 31634/18
Ilmārs RIMŠĒVIČS
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 10 October 2023 as a Chamber composed of:

Georges Ravarani*, President*,
Carlo Ranzoni,
Mārtiņš Mits,
María Elósegui,
Mattias Guyomar,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 26 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:

INTRODUCTION

1. The case concerns the applicant's complaint under Article 6 § 2 of the Convention that his right to be presumed innocent was violated by public statements made by various high-ranking Latvian officials.

THE FACTS

2. The applicant, Mr Ilmārs Rimšēvičs, is a Latvian national who was born in 1965 and lives in Ropaži Municipality. He is represented before the Court by Mr S. Vārpiņš, a lawyer practising in Riga.

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

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

5. The applicant held the post of Governor of the Central Bank of Latvia at the material time.

6. On 15 February 2018 the Bureau for the Prevention and Combating of Corruption (*Korupcijas novēršanas un apkarošanas birojs* – "the KNAB") initiated criminal proceedings against the applicant on suspicion of bribery. On the following day his home and workplace were searched in his absence.

7. On 17 February 2018 the applicant returned to Latvia from abroad and at around 6 p.m. arrived at the KNAB, where he was immediately detained. Representatives of the media were already waiting by the building.

8. At 7.29 p.m. that evening the Minister for the Economy, A.A., who was also a leader of the Unity (*Vienotība*) party, posted a message on his Twitter account stating that the "Unity" party was inviting the Prime Minister to call an extraordinary meeting of the Cabinet of Ministers and that, in the light of such serious suspicions against him, the Governor of the Central Bank of Latvia should step down from office at least while the investigation was ongoing.

9. On 18 February 2018 the Minister for the Economy stated in an interview that the charges brought against the applicant were so serious that he should consider stepping down from office. At that time, no formal charges had been brought against him.

10. On the same day the Prime Minister, M.K., informed the media that the KNAB had detained the applicant as part of the criminal proceedings. He also stated that the KNAB worked professionally and accurately and that the Cabinet fully trusted it and was prepared to provide it with all the necessary support, without prejudicing its work.

11. Later the same day the Minister of Finance, D.R.O., also urged the applicant to leave office. She refused to comment on the reasons for the applicant's detention.

12. On the morning of 19 February 2018 the Prime Minister gave an interview on national television. He was asked to comment on whether it would be acceptable for the applicant not to resign. He responded that he did not consider it necessary to accept such a situation as restrictive measures were also available. He could not imagine that Governor of the Central Bank of Latvia, after being detained, could arrive for work at 8 a.m. in the morning and "sit in his bank". He also noted that the law protected people holding such a position and that the procedure for dismissal was cumbersome. However, he could not imagine how the Governor of the Central Bank of Latvia could continue working after being detained on such "very serious accusations". He invited the applicant to take the initiative to resign.

13. Later that day the Prime Minister informed the media that a restrictive measure would be imposed on the applicant that day and that "as a minimum"

he would be banned from holding office as Governor of the Central Bank of Latvia.

14. Shortly afterwards the KNAB held a press conference. Its head, J.S., stated that criminal proceedings had been initiated in relation to the soliciting and accepting of a bribe of at least 100,000 euros (EUR) and that the official responsible had been detained for forty-eight hours. He further stated that the KNAB would not be requesting that he be remanded in custody but would be imposing bail and other restrictive measures.

15. On 19 February 2018 the KNAB issued a decision officially declaring the applicant a suspect in the criminal proceedings and imposed several restrictive measures on him: a ban on holding office as Governor of the Central Bank of Latvia; an obligation to pay bail of EUR 100,000; a ban on leaving the country without prior authorisation; and a ban on approaching certain individuals. He was subsequently released.

16. Later that afternoon I.L.E., chair of the National Security Commission of Parliament, was interviewed on a television programme. In response to the question "Why can we say before a conviction that [the applicant] has caused harm?", she replied: "I would say that he has caused harm to the reputation of Latvia ... If a person has held such an important position for a long time and during his office has carried out extortion from credit institutions within a criminal group, and during those criminal proceedings that person is held in pre-trial detention, then in every democratic State we can speak of huge harm to reputation. It is very important that these criminal proceedings are completed. Today, during the commission meeting, we asked this [question] repeatedly to the head of the KNAB and Prosecutor General, and they confirmed that the body of evidence was sufficient and they believed that the proceedings could be completed within a sufficiently short period of time."

17. On 21 February 2018 the Prime Minister stated on national television: "The [KNAB] has arrested, as we know, and will also bring charges, serious charges of bribery, against the Governor of the Central Bank of Latvia ..." When asked whether he was convinced that there was evidence in the case, he replied: "In any event, I am relying on the [KNAB], I am also relying on the Office of the Prosecutor General. Their assertions are still that the case has grounds and that they are prepared to bring charges."

18. On 22 February 2018 a prosecutor of the Office of the Prosecutor General, V.J., when asked whether there was sufficient evidence to bring the charges and send the case to trial, responded that there was currently sufficient evidence to declare the persons concerned as suspects. The investigators of the KNAB were continuing their work of gathering evidence, but "there were no signs that the case would not be sent to the prosecutor's office for charges."

19. On 26 February 2018 the Prime Minister told the media that, as several restrictive measures had been imposed, including a ban on leaving the country and on holding office, the applicant would not be attending the meeting of the

Governing Council of the European Central Bank (ECB), nor would he continue to head the Central Bank of Latvia. "Rimšēvičs is currently not the Governor of the Central Bank of Latvia", he said. At that time, the applicant's appeal against the restrictive measures was still pending before the domestic courts; however, the following day the measures were upheld by the investigating judge.

20. On 8 March 2018 the Prime Minister, in an interview with Reuters, reiterated his call for the applicant to resign. He stated: "Crooks and thieves will be prosecuted in due process. He should step down."

21. On 10 April 2018, in an interview on national television, he said: "I am quite certain that the proceedings will not be protracted ... Our law-enforcement service is working and the charges will be brought ..."

22. On 13 April 2018, during an interview on national television, the head of the KNAB stated that both the investigator in charge of the investigation and the supervising prosecutor had indicated that they were sufficiently certain that the case would be sent to the prosecutor's office for charges.

23. On 18 June 2018 the KNAB referred the case for prosecution.

24. On 28 June 2018 the prosecutor's office brought charges against the applicant for aggravated bribery.

25. On 26 February 2019 the Court of Justice of the European Union (CJEU), ruling on direct actions brought by the applicant and the ECB, annulled the decision of 19 February 2018 of the KNAB in so far as it had banned the applicant from performing his duties as Governor of the Central Bank of Latvia.

26. On 9 July 2019 the prosecutor's office sent the criminal case file to the Riga District Court for trial.

27. Between 9 and 31 July 2019 the case was transferred from one court to another but was eventually returned to the Riga District Court. On an unspecified date thereafter the judge appointed to deal with the case decided to end her employment and on 17 October 2019 Parliament released her from her position as judge.

28. On 20 December 2019 the applicant's trial was suspended following a request by the Riga District Court for a preliminary ruling of the CJEU on issues relating to the immunity from legal proceedings of the governor of a central bank of a Member State (see *Rimšēvičs v. Latvia*, no. 56425/18, §§ 24 and 27, 10 November 2022). On receipt of the CJEU's preliminary ruling, the applicant's trial resumed in December 2021. On the date of the most recent correspondence with the Court (14 September 2020), the case against the applicant was still pending before the first-instance court.

RELEVANT LEGAL FRAMEWORK

29. The relevant provisions of the Latvian Constitution (*Satversme*) provide as follows:

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. No one 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."

30. 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 ...

Where the unlawful act under the second paragraph of this section takes the form of a criminal offence against the life, health, morals, sexual integrity, freedom, honour or dignity of a person, against the family or against a minor, it is presumed that the victim has suffered mental harm as a result of such an act. In all other cases the victim must prove the existence of non-pecuniary damage.

Note: the concept of an act is understood in the broad sense and encompasses not only actions but also omissions.

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 deed shall provide financial compensation. A court shall determine the amount of such compensation."

31. Section 19 of the Criminal Procedure Law (*Kriminālprocesa likums*) guarantees the presumption of innocence. Paragraph 4 entered into force on 25 October 2018. The relevant section provides as follows:

> (1) No one shall be considered guilty until his or her guilt for committing a criminal offence has been determined in accordance with the procedures laid down in this Law.
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> (2) A person who is accused of committing a criminal offence does not have to prove his or her innocence.
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> (3) Any reasonable doubts regarding a person's guilt which cannot be eliminated shall benefit the person who has the right to defence.
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> (4) If a public official who is not 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 conducting the criminal proceedings shall, on the basis of a reasoned application by the accused person, publicly announce that there has been a violation of the principle of the presumption of innocence, and a copy of the request shall be submitted for evaluation to the authority which can decide on the liability of the official.

32. The relevant parts (recitals and articles) of EU Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings read as follows:

> "[Recital] 16. The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that that person is guilty. This should be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided that the rights of the defence are respected. This should also be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements.
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> [Recital] 17. The term 'public statements made by public authorities' should be understood to be any statement which refers to a criminal offence and which emanates from an authority involved in the criminal proceedings concerning that criminal offence, such as judicial authorities, police and other law enforcement authorities, or from another public authority, such as ministers and other public officials, it being understood that this is without prejudice to national law regarding immunity."
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> **Article 4. Public references to guilt**
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> "1. Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the

prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.

2. Member States shall ensure that appropriate measures are available in the event of a breach of the obligation laid down in paragraph 1 of this Article not to refer to suspects or accused persons as being guilty, in accordance with this Directive and, in particular, with Article 10.

3. The obligation laid down in paragraph 1 not to refer to suspects or accused persons as being guilty shall not prevent public authorities from publicly disseminating information on the criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest."

Article 10. Remedies

"1. Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.

2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings are respected."

33. The Annotation to the amendments made to section 19 of the Criminal Procedure Law provides as follows:

2. Article 4(1) of Directive 2016/343 provides that it must be ensured that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements by public authorities and judicial decisions which do not establish the guilt of a person do not refer to that person as being guilty ...

The presumption of innocence in criminal proceedings may be violated by a public statement by public authorities by persons who are parties to the criminal proceedings or by third parties who represent a public authority but are not parties to the criminal proceedings, such as the State Police, the KNAB, Financial Police Authority officials who are not conducting the criminal proceedings in question (*konkrētā kriminālprocesa virzītāji*), public officials occupying a position of responsibility, civil servants, journalists or any other person.

If a person who is a party to criminal proceedings has violated a person's right to be presumed innocent by a public statement, the remedies specified in the Criminal Procedure Law shall apply.

For example, under Chapter 24 of the Criminal Procedure Law, a person involved in the proceedings, as well as a person whose rights or legitimate interests have been violated by a particular action or decision, may lodge a complaint about the action or decision of an official conducting criminal proceedings. [Under section 16[(2) and (3)] of the [Criminal Procedure Law], the person who is conducting the defence, the victim, the victim's representative and the official who is authorised to conduct criminal proceedings but is not the person conducting the proceedings have the right to apply for a recusal in the following circumstances: for officials conducting criminal proceedings, interpreters and specialists must refuse to participate in criminal proceedings if they have a personal interest in the outcome or there are circumstances which give the persons involved in the proceedings reasonable grounds for believing that such an interest may exist. Similarly,] evidence obtained in violation of a person's right to be

presumed innocent shall be declared inadmissible and unusable pursuant to section 130(2) of the [Criminal Procedure Law].

At the same time, under sections 569 and 572 of the [Criminal Procedure Law], a person has the right to appeal in cassation against the lawfulness of a decision of an appellate court which has not yet entered into force in order to have it set aside in whole or in part or to have it modified on legal grounds, [that is to say] by basing the cassation appeal on an infringement of substantive or procedural rules. Furthermore, under section 655(1) of the [Criminal Procedure Law], criminal proceedings may be reopened based on the circumstances set out in the second paragraph of that section ...

However, a case in which a person who is representing a public authority but is not a party to the criminal proceedings, such as a minister, high-ranking public official or member of parliament, violates a person's right to be presumed innocent by a public statement of a public authority must be divided into two situations. Namely:

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

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

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

In the second case, they are any other third parties whose statements cannot influence the criminal proceedings and the person conducting the proceedings, since these persons in their activities and competences are in no way connected to the field of criminal law and its processes (investigation, court). In this case, public statements by such persons can only be considered defamatory.

In both cases, a person who considers that a public statement by public authorities has violated his or her right to be presumed innocent may initiate civil proceedings and claim compensation.

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

Therefore, a person who has made a public statement by a public authority may be subject to disciplinary proceedings and disciplinary sanctions for a breach of Article 92 of the Constitution.

However, the remedy in civil proceedings only and as a disciplinary offence at first instance, where public persons 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 the final decision has entered into force, is insufficient. Consequently, a criminal procedural remedy is also necessary, taking into account the impact on the interests of the 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 the possibility of bringing a civil action for a breach of the presumption of innocence before a national court does not constitute an effective remedy [*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 awarded cannot in itself remedy the harm caused to the interests of the 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 within the meaning of Article 6 § 1 of [the Convention]. 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 [*Shagin v. Ukraine*, no. 20437/05, § 71, 10 December 2009, and *Dovzhenko v. Ukraine*, no. 36650/03, § 42, 12 January 2012].

At present, no remedy is provided under the Criminal Procedure Law in cases where a public official violates an individual's right to be presumed innocent by a public statement, thereby affecting the criminal proceedings. According to section 46(2)(5) of the Criminal Procedure Law, a superior prosecutor has the right to order another investigating authority to conduct an investigation in criminal proceedings; however, if the person who made the public statement about a person's guilt is the head of the investigating authority, the influence on the criminal proceedings cannot be ruled out.

Consequently, the remedy available under the Criminal Procedure Law for a public statement by a third party (public authority) must be provided to suspects or accused persons whose right to be presumed innocent has been violated by a public statement about the person's guilt, so that they are placed in the same position they would have been had the violation not occurred, namely by a public (counter) statement by the person conducting the proceedings 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 unacceptable. This solution, rather than, for example, a solution similar to that provided for in section 49.[1] of the Criminal Law ... with regard to the imposition of a penalty in the event of failure to respect the right to the completion of criminal proceedings within a reasonable time, 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, with an immediate public (counter) statement by the person conducting the proceedings, the prejudice caused by the criminal proceedings is remedied and 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 paragraph to section 19 of the Criminal Procedure

> Law providing that if a public official who is not involved in the criminal proceedings has, by a public statement, expressed his or her opinion on 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, publicly announce that the violation referred to in this section is unacceptable.
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> This means that the person conducting the proceedings is required to make a public statement only after receiving a reasoned application from the person. The public statement may be made by the person conducting the proceedings, either through the institution's communication service or through the available media (e.g. a statement on the institution's website or a communication to the National Information Agency).

COMPLAINT

34. The applicant complained under Article 6 § 2 of the Convention that his right to be presumed innocent had been violated by public statements made by various high-ranking Latvian officials.

THE LAW

A. The parties' submissions

1. The Government

35. The Government submitted that the applicant's complaint was incompatible *ratione materiae* with the provisions of the Convention. They argued that for Article 6 to be applicable, there had to exist an issue regarding the determination of criminal charges against an individual. As in the present case the proceedings against the applicant had been at the pre-trial stage when he had lodged his application with the Court, there had not been any determination of criminal charges and his complaint was therefore incompatible *ratione materiae* with the provisions of the Convention.

36. The Government further submitted that the applicant had failed to exhaust domestic remedies as he had not raised his complaint within the criminal proceedings against him in a sufficiently explicit and clear manner. They referred, in particular, to section 19(4) of the Criminal Procedure Law, which entered into force on 25 October 2018. They argued that even though that provision had been introduced after the applicant had lodged his application and there was no developed practice with regard to its application, he should have availed himself of the remedy in question as, judging by the wording of the provision, the reasons for its introduction and the aim of the remedy, it could have provided redress in respect of his complaints. In particular, it had been introduced in order to implement the specific requirements of EU Directive 2016/343, had provided an additional procedural safeguard and had become *lex specialis* with regard to public statements made by officials not involved in criminal proceedings. The response of the competent authorities should be "immediate", but only after

an application was lodged by the individual concerned. The relevant Annotation provided for a wide range of available communication channels to ensure the necessary publicity (see paragraph 33 above). Furthermore, the first-instance court had received the criminal case file in July 2019, when section 19(4) had already been in force. As there was no time-limit for lodging a complaint under that provision, the applicant could still make use of it as long as the final decision or judgment had not been adopted. The Government further maintained that the trial judge had not been precluded from examining the applicant's request in that regard even when the domestic proceedings had been suspended awaiting the adjudication of the CJEU, since it could be done without the proceedings being reopened. As regards public statements made by those involved in criminal proceedings, the applicant could have lodged a request or a complaint with the trial court even before section 19(4) of Criminal Procedure Law had entered into force.

37. The applicant could have also brought a defamation claim, but such a claim was only of a complementary nature, as it only provided for compensation.

2. The applicant

38. The applicant submitted that there had been no effective remedy available to him when he had lodged his application with the Court. In addition to pointing out that section 19(4) of the Criminal Procedure Law had not been introduced until later, the applicant also objected to its practical application. In particular, a public statement about a breach of the presumption of innocence made several months after the disputed statements could in no way be considered immediate nor could it achieve the same level of publicity. It was also unclear what institution would actually be able to find the Prime Minister and other Ministers liable. The investigator of the KNAB, which had been the authority conducting the proceedings, could not assess and present any information as the proceedings had been suspended and it had been unknown when they would resume. In addition, there had been some doubt as to the possible objectivity of their assessment in that regard. The civil remedies, as acknowledged by the Government, had not been sufficient and compensation would not have had any impact on the criminal proceedings.

B. The Court's assessment

1. Compatibility ratione materiae

39. The Court notes at the outset that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

40. In this connection, the Court reiterates that, as expressly stated in the terms of that provision, Article 6 § 2 applies where a person is "charged with a criminal offence" within the autonomous Convention meaning (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 95, ECHR 2013, and *Agapov v. Russia*, no. 52464/15, § 31, 6 October 2020), that is, as of the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence (see *Bikas v. Germany*, no. 76607/13, § 30, 25 January 2018, and the authorities cited therein), or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *McFarlane v. Ireland* [GC], no. 31333/06, § 143, 10 September 2010; *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-11, 12 May 2017; and *Larrañaga Arando and Others v. Spain* (dec.), no. 73911/16 and 3 others, § 40, 25 June 2019, and the authorities cited therein). In the absence of a "criminal charge", where no such criminal proceedings are, or have been in existence, Article 6 § 2 has been found not to be applicable (see *Larrañaga Arando and Others*, cited above, § 40; *Zollman v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII; and *Blake v. the United Kingdom* (dec.), no. 68890/01, §§ 123-24, 25 October 2005).

41. The first question for the Court is therefore whether the applicant was a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2 of the Convention. The Court answers this question in the affirmative. It accepts that his situation was "substantially affected" by the criminal proceedings initiated by the KNAB against him on suspicion of bribery, his subsequent detention, his becoming a suspect and the several restrictive measures imposed on him (see paragraphs 6, 7, and 15 above). The Court therefore considers that he can be regarded as having been "charged with a criminal offence", within the autonomous Convention meaning, and can claim the protection of Article 6 of the Convention (see *Agapov*, cited above, § 32, and *Fatullayev v. Azerbaijan*, no. 40984/07, § 155, 22 April 2010; compare *Kalēja v. Latvia*, no. 22059/08, §§ 36-40, 5 October 2017).

42. Regard being had to the above, the Court considers that the complaint cannot be rejected under Article 35 § 3 (a) of the Convention as incompatible *ratione materiae* with the provisions of the Convention.

2. Exhaustion of domestic remedies

43. The general principles as regards the exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). The Court reiterates that 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. 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, 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 *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 221, ECHR 2014 (extracts); *Vučković and Others*, cited above, § 70; and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 84, 9 July 2015).

44. 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*).

45. 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. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts), and *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 87, ECHR 2010). In particular, the Court has departed from this rule following the creation of new remedies in cases concerning the length of proceedings (see, for example, *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX, and *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII); in cases concerning a new compensatory remedy in respect of interferences with property rights (see *Beshiri and Others v. Albania* (dec.), nos. 29026/06 and 11 others, § 177 and §§ 216-18, 17 March 2020, and *Olkhovik and Others v. Russia* (dec.), no. 11279/17 and 2 others, §§ 34-41 and § 43, 22 February 2022); in respect of failure to execute domestic judgments (see *Nagovitsyn and Nalgiyev v. Russia* (dec.), no. 27451/09 and 60650/09, §§ 36-40, 23 September 2010, and *Balan v. Moldova* (dec.), no. 44746/08, §§ 22-30, 24 January 2012); in respect of prison overcrowding (see *Łatak v. Poland* (dec.), no. 52070/08, §§ 79-82, 12 October 2010, and *Stella and Others v. Italy* (dec.), nos. 49169/09 and 10 others, §§ 42-45, 16 September 2014); or in respect of improper conditions of detention (see *Shmelev and Others v. Russia* (dec.), no. 41743/17 and 16 others, §§ 123-31, 17 March 2020).

46. Where the respondent State has introduced a new remedy, the Court has ascertained whether that remedy is effective (see, for example, *Robert*

Lesjak v. Slovenia, no. 33946/03, §§ 34-55, 21 July 2009; *Demopoulos and Others*, cited above, § 87; *Preda and Others v. Romania*, nos. 9584/02 and 7 others, §§ 118-33, 29 April 2014; and *Xynos v. Greece*, no. 30226/09, §§ 37 and 40-51, 9 October 2014). Neither the fact that no judicial or administrative practice has yet emerged as regards the application of the framework nor the risk that the proceedings might take considerable time can in themselves render the new remedy ineffective (see *Nagovitsyn and Nalgiyev*, cited above, § 30, albeit in the context of the enforcement of domestic judgments). The assessment of whether there were exceptional circumstances compelling applicants to avail themselves of such a remedy will take into account, in particular, the nature of the new domestic regulations and the context in which they were introduced (see *Fakhretdinov and Others v. Russia* (dec.), nos. 26716/09 and 2 others, § 30, 23 September 2010).

47. The Court reiterates that the principle of the presumption of innocence is above all a procedural safeguard, and one of the elements of a fair criminal trial required by Article 6 of the Convention (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005).

48. The Court previously held that allegations of a breach of the presumption of innocence were normally raised in the course of criminal proceedings against the applicant (see *Shagin v. Ukraine*, no. 20437/05, §§ 71-73, 10 December 2009; *Panasyuk v. Ukraine* (dec.), no. 19906/04, 23 August 2011; and *Dovzhenko v. Ukraine*, no. 36650/03, § 42, 12 January 2012) in order to give the criminal courts an opportunity to place the applicant, as far as possible, in the position he or she would have been in had the requirements of Article 6 not been disregarded (see *Igars v. Latvia* (dec.), no. 11682/03, § 91, 5 February 2013, and *Šantare and Labazņikovs v. Latvia*, no. 34148/07, § 71, 31 March 2016). The Court has also held in several cases that a civil claim for damages could only be related to the alleged violation and sufficient in part; it could not fully remedy the alleged infringement of the presumption of innocence (see, for example, *Konstas*, cited above, § 29) and thus could not constitute an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Paulikas v. Lithuania*, no. 57435/09, § 41, 24 January 2017, and the authorities cited therein).

49. In a number of other cases the Court has found that a civil-law remedy may, in principle, be an effective way of addressing a complaint relating to allegedly prejudicial statements made in respect of ongoing criminal proceedings, either alone or in combination with a criminal-law remedy (see *Mamaladze v. Georgia*, no. 9487/19, § 63, 3 November 2022, and *Okropiridze v. Georgia*, nos. 43627/16 and 71667/16, § 113, 7 September 2023). For example, the criminal law remedy as a complaint raised in the relevant criminal proceedings, may be effective where the applicant's complaint concerning the right to be presumed innocent is closely linked to the alleged breach of the procedural guarantees in the context of a criminal

trial itself (see *Mamaladze*, cited above, § 67; see also *Matijašević v. Serbia*, no. 23037/04, §§ 32 and 33, ECHR 2006-X, and *Hajnal v. Serbia*, no. 36937/06, § 121, 19 June 2012). In the absence of a particular criminal law remedy, notably in cases involving public statements, the civil remedy may be preferred (see *Mamaladze*, cited above, § 65).

50. The Court considers that the question 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. The Court notes that in the present case 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 presumption of innocence (compare *Hajnal*, cited above, § 121). The issues at the heart of the applicant's complaint were solely the various statements that public officials had made outside of the trial.

51. 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 31 above). The Court notes that under this provision a complaint alleging a violation of the presumption of innocence by statements of 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 v. Serbia*, no. 3363/08, § 113 *in fine*, 7 January 2014, and *Orkopiridze*, cited above, § 114). 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 complaint by the individual concerned, acknowledge a violation of the presumption of innocence and ensure that that acknowledgement is publicised (see paragraph 31 above; contrast *Neagoe v. Romania*, no. 23319/08, § 27, 21 July 2015). A copy of the request shall also be submitted for evaluation to the authority which can decide on the liability of the official in question. The remedy, therefore, depending on the circumstances, can also lead to the punishment of the official who made the impugned statement. It is further observed 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 of those not involved in criminal proceedings, in accordance with the relevant EU Directive requirements and having regard to the Court's case-law (see paragraphs 32 and 33 above).

52. The Court further observes that, if there were acknowledgement by the authority in charge of the criminal proceedings under Article 19(4) of the Criminal Procedure Law, a civil claim on the basis of the Civil Law would serve as a supplementary element through which a person could obtain compensation (see paragraphs 30 and 33 above).

53. The Court has already noted above that various procedures for acknowledging or putting an end to the infringement of the presumption of innocence in the context of criminal proceedings together with civil-law remedies have been considered to be effective within the meaning of the Convention (see paragraph 49 above). In the present case, such acknowledgement could be obtained through the use of section 19(4) of the Criminal Procedure Law. The Court therefore considers that a complaint under that provision 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 in the circumstances of the present case (see paragraphs 44 *in fine* and 49 above).

54. As noted above, while 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, the Court accepts that there may be exceptions justified by the particular circumstances of a case (see paragraph 45 above). The Court notes that section 19(4) entered into force on 25 October 2018. Even though this took place four months after the applicant had lodged his application with the Court, it is observed that this newly introduced remedy had already been in force for more than eight months when his case arrived at Riga District Court for adjudication in July 2019 (see paragraphs 26 and 27 above). Even though the judge in charge of the case was released from her position in October 2019 and the proceedings were suspended between 20 December 2019 and December 2021 (see paragraphs 27 and 28 above), there were clearly periods in which the applicant could have raised his complaint before that court pursuant to section 19(4) and thus could have afforded the national authorities the opportunity to acknowledge the alleged violation (see paragraph 43 above). Given that there are no time-limits for making use of that remedy, the applicant can still make use of it, including in an appeal against a first-instance judgment of the trial court (see *Czajkowski v. Poland* (dec.), no. 6809/03, 16 October 2007). Depending on the findings of the court, the applicant can in addition seek compensatory redress before the civil courts in accordance with the relevant provision of the Civil Law (see paragraph 30 above).

55. The Court sees no exceptional circumstances which could have absolved the applicant from the obligation to avail himself of those remedies. It is reiterated, in this regard, 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 Other*, cited above, §§ 74 and 84).

56. As the applicant did not raise his complaint before the domestic authorities – in the course of the criminal proceedings, as discussed above, and in civil proceedings – the Court, reiterating the subsidiary character of the Convention machinery, finds that the applicant has failed to exhaust

domestic remedies in respect of his complaint under Article 6 § 2 of the Convention. It follows that his 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 9 November 2023.

Victor Soloveytchik Registrar	Georges Ravarani President