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La Corte EDU sui presupposti per la continuazione della custodia cautelare
(CEDU sez. V, sent. 13 giugno 2024, ric. n. 44570/19)

La Corte EDU si è pronunciata sulla presunta violazione dell'articolo 5 § 3 della Convenzione, lamentata dal ricorrente per aver disposto, l'autorità giudiziaria lettone, la continuazione della sua custodia cautelare in mancanza di ragioni pertinenti e sufficienti. Molto brevemente il ricorrente era stato condannato, nel 2013, a sette anni di reclusione per spaccio di grandi quantità di sostanze stupefacenti, ed aveva continuato tale attività anche durante la carcerazione.

Ai fini della risoluzione del caso, la Corte di Strasburgo ha primariamente attinto alla sua consolidata giurisprudenza, riaffermando che la persistenza di un ragionevole sospetto è una condizione *sine qua non* per la validità della detenzione continuata, ma dalla prima decisione giudiziaria che ordina la detenzione non è più è sufficiente. La giustificazione, infatti, per qualsiasi periodo di detenzione, non importa quanto breve, deve essere dimostrata in modo convincente dalle autorità e deve includere alcuni specifici motivi tra cui il pericolo di fuga, il rischio di pressioni sui testimoni o di alterazione delle prove, il rischio di collusione, il rischio di recidiva, il rischio di provocare disordini pubblici e la necessità di proteggere il detenuto.

Tutto quanto premesso, la Corte EDU ha osservato poi: *i*) che l'esistenza di un ragionevole sospetto non può di per sé giustificare la custodia cautelare ma è necessario che i tribunali nazionali forniscano motivi "pertinenti" e "sufficienti" per decidere la continuazione della detenzione del ricorrente; *ii*) che le richieste del ricorrente di sostituire la misura di sicurezza impostagli con una misura di sicurezza non detentiva sono state esaminate dai giudici nazionali in modo sommario, senza una reale valutazione di fatti specifici e rilevanti; *iii*) che nella sua decisione, il giudice nazionale si è limitato ad affermare che i motivi della detenzione non sussistevano più, senza però dare conto del motivo per il quale la liberazione condizionale del ricorrente fosse possibile in quel momento e non in una fase precedente del procedimento. È sulla base di simili motivazioni che la Corte ha ritenuto che i tribunali nazionali non hanno fornito – oltre all'esistenza di un ragionevole sospetto – ragioni pertinenti e sufficienti per giustificare la continuazione della detenzione del ricorrente, con conseguente violazione dell'articolo 5 § 3 della Convenzione.

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

FIFTH SECTION

JUDGMENT
STRASBOURG
13 June 2024

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

In the case of *omissis* v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Mattias Guyomar, *President*,
Lado Chanturia,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
María Elósegui,
Mykola Gnatovskyy,
Stephane Pisani, *judges*,
Martina Keller, *Deputy Section Registrar*,

Having regard to:
the application (no. 44570/19) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr *omissis* ("the applicant"), on 17 August 2019;
the decision to give notice to the Latvian Government ("the Government") of the application;
the parties' observations;
Having deliberated in private on 21 May 2024,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged lack of relevant and sufficient reasons justifying the applicant's continued pre-trial detention under Article 5 § 3 of the Convention.

THE FACTS

2. The applicant was born in 1962 and is currently imprisoned in Riga. The applicant was represented by Ms R. Matjušina, a lawyer practising in Riga.
3. The Government were represented by their Agent, Ms Kristīne Līce.
4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE APPLICANT'S PRE-TRIAL DETENTION

5. In January 2013 the applicant was convicted for the unauthorised procurement and storage of large quantities of narcotic substances for distribution and sentenced to seven years' imprisonment. While in prison, he continued to organise the procurement and storage of narcotics for distribution. In particular, under a previously agreed scheme, the applicant arranged to have V.R. supply M.L. with narcotics, which the latter would then distribute, transferring the proceeds to the applicant's account.
6. On 16 October 2017 the State Police conducted an undercover investigation (*operatīvā detektīvdarbība*) to verify the information they had received and witnessed an illegal narcotics transaction between V.R. and M.L. The police subsequently stopped M.L.'s car, discovering narcotics on his person during a search. The same day, M.L. was arrested and criminal proceedings

were initiated against him. On 17 October 2017 his detention was ordered but was converted to police supervision on 23 October 2017.
7. On 14 November 2017 the State Police arrested V.R. and, during a search, discovered narcotics on his person. He was released two days later and placed under police supervision.
8. In the course of several interviews that took place between November 2017 and March 2018, both M.L. and V.R. testified that they had been working on behalf of the applicant.

II. THE APPLICANT'S ARREST AND PRE-TRIAL DETENTION

9. On 15 November 2017, having been released on 10 November 2017 after serving his previous prison sentence, the applicant was arrested on suspicion of unauthorised procurement and storage of large quantities of narcotic substances with the intent to distribute them. At the time of his arrest, he was under the influence of drugs, a fact which subsequently formed the basis for administrative offence proceedings.
10. On 17 November 2017 the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*) ordered the applicant's pre-trial detention. The court found that there was a reasonable suspicion that the applicant had committed a particularly serious offence which was punishable by a prison sentence. Moreover, in view of his character, there was a justifiable risk that he would persist in his alleged criminal activities. The court concluded that the applicant's detention was both proportionate and in the public interest.
11. On 24 November 2017 the applicant appealed against the decision to place him in detention, arguing that the measure was not justified and should therefore be lifted.
12. On 4 December 2017 the Riga Regional Court (*Rīgas apgabaltiesa*) upheld the decision ordering the applicant's detention. Noting that the investigating judge (*izmeklēšanas tiesnesis*) had duly assessed the nature of the alleged criminal offence and the possibility of applying a non-custodial security measure, the Regional Court took the view that the judge had made an individualised assessment in ordering the applicant's detention. The court further emphasised that detention was justified because it was in the public interest, which, taking into account the gravity of the offence allegedly committed, took precedence over the applicant's individual liberty. The court also noted that, as the applicant's previous conviction still appeared on his criminal record (*sodāmība nav dzēsta*) and he was suspected once more of having committed a particularly serious offence, there was a risk that he would continue to re-offend if released.
13. On 10 January 2018 the Riga City Ziemeļu District Court ordered that the applicant's detention be extended. The court, having assessed the nature and gravity of the offence in question, the fact that the applicant was being prosecuted as part of an organised group, his character, criminal history and other relevant circumstances, concluded that there was a risk that he might re-offend and that his detention, while not to exceed a reasonable duration, was still necessary in the public interest.
14. On 6 March 2018 the Riga City Vidzeme District Court (*Rīgas pilsētas Vidzemes rajona tiesa*) ordered that the applicant's detention be extended on the grounds that there was a risk that he would re-offend if released. The court took into account the nature and seriousness of the alleged offence – which was punishable by a prison sentence –, his character, criminal history and the fact that he was alleged to have committed the offence as part of an organised criminal group at a time when his previous conviction still appeared on his criminal record. The court also considered the possibility of applying a non-custodial security measure but concluded that such a measure would not ensure fair and speedy criminal proceedings and that the applicant's detention was in the public interest.

15. On 20 April 2018 the applicant was indicted for the unauthorised procurement and storage of large quantities of narcotic substances as part of an organised criminal group, with the intent to distribute them.
16. On 2 May and 27 June 2018 respectively, the Riga City Vidzeme District Court reviewed the necessity of keeping the applicant in pre-trial detention and decided that his continued detention was in the public interest because there was still a risk that he would re-offend if released. The court relied on the facts and arguments mentioned in the previous decisions and further noted that, on the day of his arrest, the applicant had been under the influence of narcotics, which demonstrated that he had not drawn any conclusions regarding his lifestyle.
In its decision of 27 June 2018, the court further found that the criminal proceedings had thus far been conducted without undue delay and that the grounds for the applicant's detention had not disappeared. At the same time, the court determined that the applicant could be released on bail, provided he paid a security deposit of 25,000 euros (EUR) within a month of its decision. As to the amount of bail, the applicant himself considered that it could be fixed at EUR 12,000; it could be paid by his family. The prosecution considered that EUR 12,000 was disproportionately low and that it should at least be doubled. Referring to sections 275(1) and 257(2) of the Criminal Procedure Law, the court held as follows:

> "[D]espite a high risk of re-offending [that risk] could be prevented by fixing bail [in accordance with section 257 of the Criminal Procedure Law].

However, the court – taking into account the nature of the criminal offence, the harm caused by it, the severity of the punishment envisaged for the criminal offence ..., as well as a very high risk of re-offending – considers that fixing bail at EUR 12,000 will not ensure the fair resolution of [the criminal proceedings] and [will not prevent] the risk of re-offending, consequently [it will not] be capable of protecting society from the detrimental effects of narcotic substances. Therefore, the court considers that the bail must be fixed at EUR 25,000 and that [such amount] will ensure fair resolution of [the criminal proceedings], including ensuring that [the applicant] will not commit a new criminal offence while at liberty.

> When setting the bail in the present case, the court considered [the applicant's] submissions during the hearing that he had no income and that no vehicles or immovable property had been registered in his name. However, the court considers that fixing the bail [at EUR 25,000] is appropriate and proportionate since the main criterion when setting bail is not only [the applicant's] financial status but also the nature of the criminal offence, the harm caused by such an offence, as well as the need to fix an amount which will ensure the public interest and the fair resolution of the [criminal proceedings]. Moreover, the applicant himself indicated that the bail will be paid by his relatives.

The court considers that such an amount of the bail will protect the interests of society, prevent the risk of new criminal offences being committed, and will ensure fair resolution of [criminal proceedings].

> ...

The court holds that [the applicant] ... must remain in detention.

> ...
>
> [The court] holds that [the applicant] may be released from detention if a security deposit of EUR 25,000 is paid within one month."

The applicant having failed to pay the deposit within the allotted time, he remained in detention.

17. The trial against the applicant, along with two other co-accused, was opened by the Riga District Court (*Rīgas rajona tiesa*) on 15 August 2018.
18. At both the 15 August and 8 October 2018 hearings the applicant's defence counsel requested that his detention be replaced with a non-custodial security measure. The court rejected those requests. It can be seen from the court's decision of 15 August 2018 that, relying on sections 272(1) and 249(1) of the Criminal Procedure Law (*Kriminālprocesa likums*), it found that the grounds for the applicant's detention had not disappeared or changed. The court dismissed the defence's arguments that the applicant's continued detention could not be justified solely on the basis of his criminal history and the supposition that he might commit another criminal offence, and that different or additional grounds were necessary to maintain the custodial measure. According to the court, these arguments did not provide sufficient grounds to alter the custodial security measure applied in the applicant's case. It further noted that the custodial measure was necessary to ensure that the applicant would not abscond or otherwise evade trial or the execution of a sentence, and that a less restrictive security measure would fail to ensure fair and speedy criminal proceedings.
Relying on sections 249(1), 272(1), 277(2) and 281(6) of the Criminal Procedure Law, the court held in its decision of 8 October 2018 that the grounds for detention had not disappeared or changed and that the applicant was to remain in custody since he was accused of having committed a particularly serious crime.
19. On 19 December 2018 the Riga District Court ordered that the applicant's detention be extended. Relying on sections 249(1), 272(1), 277(2) and 281(6) of the Criminal Procedure Law, it considered that the grounds for detention had not changed and that the applicant's detention was necessary to ensure the proper conduct of the criminal proceedings, whereas a less restrictive security measure would not ensure their fair and speedy completion. The court further noted that the applicant's residence, employment and family status did not constitute a basis for altering the custodial measure applied in his case or for substituting bail for detention.
20. At the hearings held on 25 April and 28 June 2019 in the Riga District Court, the applicant's defence counsel again requested that the custodial measure imposed be replaced with a non-custodial security measure. The court rejected those requests and decided that the applicant should remain in custody. The relevant part of the court's decision of 25 April 2019 reads as follows:

> "8. The fact that the accused wishes to live with his family and intends to take up employment does not constitute a basis for changing the security measure imposed.
>
> ...
>
> 15. The court considers that the [applicant's] detention is justified in the present criminal proceedings because it is in the public interest. It is in the public interest to prevent the distribution of illegal drugs and to protect the public from the threat that illegal drugs may pose to society as a whole. It is therefore in public interest to prevent the risk of new offences being committed in connection with drug trafficking.
>
> ...
>
> 17. There is no reason to alter the decision to detain [the applicant], as it is in accordance with the aims of the Criminal Procedure Law and with Article 116 of the Constitution of Latvia, which provides that individual rights may be restricted in the cases provided for by law in order to protect the rights of others, the democratic order of the State and public safety, welfare and morals.
>
> 18. In these circumstances, the court finds that the security measure imposed on [the applicant] is proportionate with regard to [his] fundamental rights ... and that the imposition of another security measure which did not involve the deprivation of liberty would not be such as to ensure that [the applicant] will duly fulfil his procedural obligations.

... the court has no reason to believe that ... another security measure such as bail would be likely to achieve a fair and speedy outcome of the criminal proceedings in this case in a manner proportionate to the public interest.

19. The court therefore considers that the security measure imposed in the form of detention is proportionate to the seriousness of the offence and respects both the [applicant's] fundamental rights and the interests of public safety. There are no objective circumstances which, having regard to the circumstances of the case as a whole, would justify the imposition of a different coercive measure in the present case."

21. In its decision of 28 June 2019 the court held, *inter alia*, as follows:

"11. ... The court considers that detention is justified in the present criminal proceedings because it is in the public interest. It is in the public interest to prevent the distribution of illegal drugs and to protect the public from the threat that illegal drugs may pose to society in general and to young people in particular. It is therefore in the public interest to prevent the risk of new criminal offences in connection with drug trafficking.

12. Under section 249(1) of the Criminal Procedure Law, the investigator may lift or change the restrictive procedural measure if the grounds for its application have disappeared or changed, or if the conditions for its application, the person's conduct or other circumstances having determined the choice of the restrictive procedural measure have changed.

13. When assessing the necessity of continued detention, there was no indication evident that the grounds on which that security measure had been ordered had disappeared or changed. The court finds that there are no grounds for substituting the security measure of bail for that of detention.

It had previously been offered to substitute bail for detention and it had been declined.

Under section 257(2) of the Criminal Procedure Law, the amount of bail is set considering the nature of the criminal offence and the harm caused by such an offence, the financial status of the person, as well as the type and measure of the punishment laid down in law.

The court notes that there is no indication in the case that [the applicant] could pay bail set in such an amount to ensure that [he] will duly fulfil his procedural obligations. Moreover, at the hearing [the applicant] indicated that he and his family had limited resources to pay bail, he could pay bail in the amount from EUR 5,000 to EUR 6,000.

14. As can be seen, the security measure has been regularly reviewed and an analysis of all the available information has been provided in the corresponding decisions. The court shall therefore refrain from reiterating the text [of those decisions].

15. In sum, there has been no change in the previous justification for detention, no circumstances have been identified that would entirely preclude further detention, and no breach of procedural rules has been found.

The detention is proportionate to the nature of the offence and the conduct of the proceedings."

22. On 12 September 2019, noting, *inter alia*, that the maximum term for the applicant's detention was about to expire, the Riga District Court considered that the grounds for his detention no longer obtained and decided to alter the security measure imposed on him, releasing him on condition that he notify the relevant authorities of any change of residence and prohibiting him from leaving the country.

23. On 15 January 2020 the prosecution and the applicant came to an agreement under which the applicant pleaded guilty to the criminal charges brought against him. The same day, the Riga District Court delivered a judgment approving the terms of the plea bargain. The applicant pleaded guilty to the charge of unauthorised procurement and storage of large quantities of narcotic substances as part of an organised criminal group, with the intent to distribute them. He was sentenced to six years' imprisonment. The judgment took effect on 11 February 2020.

RELEVANT LEGAL FRAMEWORK

24. The relevant sections of the Criminal Procedure Law, as in force at the relevant time, provide as follows:

Section 244 – Selection of Restrictive Procedural Measures

"...

(2) In selecting a security measure, the person conducting the proceedings shall take into account the nature and harmfulness of the criminal offence, the character of the suspect or accused, his or her family situation, health and other circumstances."

Section 249 - Modification or Lifting of a Restrictive Procedural Measure

"(1) If, during the application of a restrictive procedural measure, the grounds of application of that measure disappear or change, or the provisions for its application or the conduct of the person concerned change, or other circumstances having determined the choice of the restrictive procedural measure are brought to light, the person conducting the proceedings shall take a decision to change or lift the measure.

..."

Section 272 – Grounds for Detention

"(1) Detention may be applied only where specific factual information obtained in the course of criminal proceedings creates a reasonable suspicion that the person in question has committed a criminal offence for which the law provides a custodial sentence, and where no other security measure can ensure that he or she will not commit another criminal offence, or obstruct or evade the pre-trial proceedings, trial or execution of the sentence.

(2) A person suspected or accused of committing a particularly serious crime may be detained where:

...

2. that person is a member of an organised criminal group;

..."

Section 274 – Procedures for the Application of Detention

"(1) The decision as to detention pending trial before a court of first instance shall be taken by the investigating judge upon a proposal to that effect from the person conducting the proceedings or, following committal for trial, from the prosecutor, after hearing the views of the defendant, examining the case file and assessing the reasons and grounds for detention.

...

(4) The investigating judge shall take one of the following decisions in a closed hearing, of which a record shall be taken:

1. refuse to order detention;
2. refuse to order detention, but order a residence restriction;

...

4. order detention;

...

(5) In his or her decision, the investigating judge shall justify detention or the application of another security measure on specific grounds based on the material in the case file.

...

(7) After announcing the decision of the investigating judge, the court shall promptly provide the persons present with a copy of the full decision, or a copy of the introductory and operative parts of the decision and, within twenty-four hours, a copy of the full decision. Where the suspect or accused does not understand the language in which the decision is written, the court shall, without delay, provide a written translation of the full decision in a language he or she understands. When ordering a security measure involving deprivation of liberty, the court shall immediately inform the person concerned of the maximum number of months for which he or she may be deprived of his or her liberty during the pre-trial proceedings."

Section 275 – Substitution of Bail for Detention

"(1) If the investigating judge or a higher-level court determines that there are grounds for detention under section 272 herein but that the circumstances also allow for release on bail, and if requested by the defence, a term of one month's detention may be set, during which time the measure may be lifted upon payment of the bail set by the judge. A higher-level court may replace detention with bail only when the defence has made a request to that effect to the investigating judge.

(2) If the bail is paid within one month, and if a document certifying payment, as well as a written notice regarding the origin of the funds used to pay the bail paid containing information regarding the persons who have granted resources for payment of the bail, and the amount of the money granted is submitted to an investigating judge, the judge shall take a decision to change the security measure. On the basis of such a decision, the person shall be immediately released.

(3) If the bail is not paid, the question whether to extend the term of detention shall be decided in accordance with the procedures set forth in section 274 herein."

Section 277 – Terms of Detention

"(1) A person may be detained only for as long as is necessary to ensure the normal conduct of the proceedings, but no longer than is permitted under this Law for the criminal offence specified in the decision recognising that person as a suspect or as liable to criminal prosecution.

...

(7) The term of detention of a person suspected or accused of having committed a particularly serious crime shall not exceed twenty-four months, of which no more than fifteen months shall be spent in pre-trial detention. The investigating judge in pre-trial proceedings, and a higher-

level court during a trial, may extend the term by an additional three months if the person conducting the proceedings has not caused any unjustified delay, or if the defence has wilfully delayed the proceedings, or if their complexity has rendered their faster completion impossible. A higher-level court may extend this term by a further three months, provided the person conducting the proceedings has not caused an unjustified delay and public safety cannot be ensured by the application of any other security measure."

Section 281 – Oversight of the Application of Detention

"...

(4) In the event that, within two months, the detainee or his or her representative or defence counsel has not applied for review of the necessity of continued detention, such a review shall be carried out by the investigating judge. After the opening of the trial, the court of first instance shall carry out the review if the trial has been adjourned or postponed for a period exceeding two months."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

25. Relying on Article 5 §§ 3 and 4 of the Convention, the applicant complained that his continued pre-trial detention had been unlawful and that the judicial decisions had lacked sufficient reasoning to justify its continuation.

26. The Court takes the view that the complaint should be examined under Article 5 § 3 alone (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 61, 5 July 2016), which reads as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

28. The applicant submitted that there had been no valid grounds for his pre-trial detention as of 25 April 2019, which had therefore been unlawful. While the initial period of detention might have been justified by the risk of re-offending, his continued detention could not be justified on the same grounds as those adduced when his detention had first been ordered.

29. In the applicant's view, the Riga District Court's decision of 28 June 2019 extending his pre-trial detention had been formulated in very abstract and general terms, without any specific consideration of his personal situation. In assessing the risk of re-offending, the domestic courts had taken into account the fact that, on the day of his arrest, he had been under the influence of narcotic substances – a fact for which his administrative liability had admittedly been incurred, but which did not form the basis for a criminal offence.

30. Relying on the Criminal Procedure Law, the applicant emphasised that detention, as the strictest security measure, could be ordered only in cases where the aims of the criminal proceedings could not be achieved by other security measures or where their achievement might be jeopardised if the suspect's liberty were not restricted. The domestic courts had continued to order the applicant's detention as a purely precautionary measure, without assessing whether the deprivation of his liberty was necessary to prevent the risk of his interfering with or absconding from the criminal proceedings, or the risk of his reoffending, or whether those risks could not have been prevented by a non-custodial measure. Indeed, the domestic courts had never considered imposing a less restrictive measure on him.

(b) The Government

31. The Government submitted that the applicant's pre-trial detention had been ordered on the reasonable suspicion that he had committed the offence in question. This reasonable suspicion, based on solid evidence incriminating the applicant, had not dissipated with the passage of time and had been duly addressed in the national courts' decisions ordering his continued detention.
32. In the course of the criminal proceedings, the national courts, having taken into consideration the nature, character and harmfulness of the criminal offence that the applicant had allegedly committed, his character, marital status, state of health and other criteria, had found that the applicant's continued detention was justified by the risk that he might commit another criminal offence if released. In so finding, they had taken into account the applicant's criminal history and the fact that he had been under the influence of narcotics at the time of his arrest, thereby incurring his administrative liability. Moreover, the national courts had regarded as important factors in their assessments the fact that the applicant had been prosecuted for having orchestrated the distribution of illegal drugs as part of an organised criminal group, and that the alleged offence had been of a particularly serious nature. In this context, the national courts, having regularly reviewed the applicant's continued detention, had considered the possibility of applying other, less restrictive measures, but had found them to be insufficient having regard to the public interest.
33. More specifically, regarding the Riga District Court's decisions of 25 April and 28 June 2019, the Government submitted that the court had reviewed the material in the case file and had heard the explanations given by the applicant and his defence counsel before deciding on the applicant's continued detention. The court had analysed the general interests of public safety and had held that it was in the interest of society to stop drug trafficking and to protect society, especially the younger generation, from the threat that drug trafficking might pose. In assessing the risk that the applicant might re-offend and thus constitute a risk to public safety, the court had taken into account, *inter alia*, the applicant's previous convictions and the fact that he had allegedly committed the offence in question while in prison, serving a sentence for a similar criminal offence.

2. The Court's assessment

(a) General principles

34. The applicable general principles concerning the length of and justification for pre-trial detention are set out in *Buzadji* (cited above, §§ 84-91).
35. The Court reiterates in particular that, according to its established case-law under Article 5 § 3, the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of continued detention, but from the first judicial decision ordering detention it no longer suffices (ibid. § 102). The Court must establish (1) whether other grounds given by the judicial authorities continued to justify the deprivation of liberty, and (2) where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings.

Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see, among many other authorities, *Idalov v. Russia* [GC], no. 5826/03, § 140, 22 May 2012, and *Buzadji*, cited above, § 87). Justifications which have been deemed "relevant" and "sufficient" reasons (in addition to the existence of reasonable suspicion) in the Court's case-law, have included such grounds as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (see *Buzadji*, cited above, § 88, with further references). Until conviction, an accused must be presumed innocent and the purpose of Article 5 § 3 is essentially to require his or her provisional release once his or her detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X, and *Buzadji*, cited above, § 89). Moreover, continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see *Buzadji*, cited above, § 90).

36. Furthermore, the presumption is always in favour of release. The national judicial authorities must, while having regard for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his or her appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, among other authorities, *Buzadji*, cited above, §§ 89 and 91). Arguments for and against release must not be "general and abstract" (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)). Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the specific facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

37. The Court finally recalls that the guarantee provided for by Article 5 § 3 of the Convention is designed to ensure the presence of the accused at the hearing (see *Mangouras v. Spain* [GC], no. 12050/04, § 78, ECHR 2010). The amount of bail must therefore be set by reference to the detainees' assets, and with due regard to the extent to which the prospect of its loss will be a sufficient deterrent to dispel any wish on their part to abscond (see *Neumeister v. Austria*, 27 June 1968, § 14, Series A no. 8). Since the issue at stake is the fundamental right to liberty guaranteed by Article 5, the authorities must take as much care in fixing appropriate bail as in deciding whether or not continued detention is indispensable. Furthermore, the amount set for bail must be duly justified in the decision fixing bail and must take into account the accused's means (see *Mangouras v. Spain*, cited above, § 79).

(b) Application of those principles in the present case

38. The applicant was arrested on 17 November 2017 and held pending investigation and trial until his release on 12 September 2019 (see paragraphs 10 and 22 above). Thus, he remained in custody for close to one year and ten months.

39. The Court notes that the applicant did not dispute that there was a reasonable suspicion that he had committed an offence and it has no reason to find otherwise. However, the existence of a reasonable suspicion cannot on its own justify pre-trial detention and must be supported by additional grounds (see *Buzadji*, cited above, § 95). The Court will therefore examine whether the national courts gave "relevant" and "sufficient" grounds to justify the applicant's continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

40. The Court observes that the applicant's pre-trial detention was initially based on the serious nature of the offence for which he was being prosecuted, his criminal history and the risk that he would persist in his criminal activities (see paragraph 10 above). In its decision of 4 December 2017 the Riga Regional Court, in upholding the custodial measure, merely reiterated the grounds on which the Riga City Ziemeļu District Court had based its decision to remand the applicant in custody, merely adding that the applicant's previous conviction still appeared on his criminal record (see paragraph 12 above).
41. The courts subsequently reviewed the grounds for the applicant's detention on a number of occasions, either when required to decide on its extension or in response to the applicant's requests to replace the custodial measure with a non-custodial measure. The Court observes that, in considering that the applicant's detention was in the public interest, the national courts consistently relied – in addition to the existence of a reasonable suspicion – on the nature and seriousness of the charges brought against him and which were punishable by a prison sentence, on the risk of reoffending and on the need to ensure fair and speedy criminal proceedings.
42. The Court observes that in June 2018, some seven months after the applicant had been taken into custody, the Riga City Vidzeme District Court expressed its readiness to release the applicant on bail if he paid a deposit of EUR 25,000. In setting the amount, the court relied on several relevant factors and explained why the lower amounts proposed by the applicant would not fulfil the purpose of bail. In the light of the Court's case-law concerning the amount of the bail (see paragraph 37 above), the Riga City Vidzeme District Court's reasoning on this issue does not appear to be deficient. As the applicant did not pay the deposit within the one-month statutory time-limit, he remained in detention (see paragraph 16 above).
43. The Court further observes, however, that the applicant's subsequent requests to have the security measure imposed on him replaced with a non-custodial security measure were examined by the national courts in a summary manner without a genuine assessment of specific, relevant facts warranting the applicant's deprivation of liberty. The Riga District Court merely held that the applicant's detention was necessary and rejected the arguments he put forward in support of his requests, merely noting that those arguments did not constitute a basis for altering the custodial measure applied in his case.
44. Furthermore, the Court observes that, at a certain stage of the proceedings, the domestic courts began to justify the applicant's continued detention by finding that "the grounds for detention [had] not disappeared or changed", without providing any relevant reasons in this regard apart from those relating to the seriousness of the criminal offence for which the applicant was being prosecuted (see paragraphs 18, 19 and 21 above). They relied on section 249(1) of the Criminal Procedure Law, under which a detention order could be lifted or altered where the relevant circumstances had changed. In this connection, the Court has already pointed out that, while the persistence of a reasonable suspicion is a condition *sine qua non* for the validity of pre-trial detention, it is also necessary for other relevant and sufficient grounds justifying continued detention to be put forward by the national authorities (see paragraph 35 above).
45. In its decision of 28 June 2019, the domestic court stated, referring to its previous decision, that there was no indication that the applicant would be able to provide a security of an amount that would guarantee that he would comply with his procedural obligations, given that, according to his own statement, his family's means to pay for the deposit were limited to between EUR 5,000 and EUR 6,000 (see paragraphs 18 and 20-21 above). However, the court did not make any effort to determine what would be an appropriate level of security in the circumstances, even though one year had passed since the previous decision on the possibility of releasing the applicant on bail.
46. Admittedly, it is in the first place for the national authorities to interpret and apply domestic law (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 191, 28 November 2017 – in respect of Article 5

§ 1 (c) of the Convention). It also primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, as the Court has already noted (see paragraph 36 above) they must, with due regard for the principle of the presumption of innocence, examine all the facts militating for or against the existence of a requirement of public interest or justifying a departure from the rule in Article 5, and must set them out in their decisions on applications for release (see *Buzadji*, cited above, § 91), since it is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his or her appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Merabishvili*, cited above, § 225, with further references).

47. The Court considers that a reasoned decision is essential if the applicant is to be able to protect his or her liberty and if the prosecuting authorities are to be able to request that he or she be remanded in custody. It is also essential for the public to be able to monitor the way in which justice is administered by the courts. This is crucial, moreover, in order to enable the Court to properly exercise its supervisory function, since it is called upon to rule on the basis of the decisions of the domestic courts and does not itself establish the possible grounds for continued detention.

48. The Court further notes that, after nearly a year and ten months in detention, the applicant was eventually released, subject to the requirement that he notify the authorities of any change of residence and that he not leave the country. In its decision, the domestic court merely stated that the grounds for his detention no longer obtained, but it did not transpire from this decision why his conditional release was possible at that moment in time and not at any earlier stage of the proceedings (see paragraph 22 above).

49. The Court would point out that in a number of cases against Latvia, it has found a violation of Article 5 § 3 of the Convention where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using summary reasoning, without addressing specific facts or considering alternative preventive measures (see, for example, *Bannikov v. Latvia*, no. 19279/03, §§ 65-66, 11 June 2013, with further references; *Davidovs v. Latvia* [Committee], no. 45559/06, §§ 54-55, 7 July 2015; or *Vaščenkovs v. Latvia*, no. 30795/12, §§ 51-52, 15 December 2016). Moreover, in *Urtāns v. Latvia* (no. 16858/11, §§ 34-39, 28 October 2014), the Court found a violation of Article 5 § 1 of the Convention on account of the absence of relevant and sufficient reasons for the applicant's continued detention, pointing out that the domestic courts had failed to provide sufficient reasons as to their conclusion that the grounds for detention had not disappeared or changed, with reference to section 249(1) of the Criminal Procedure Law.

50. In the light of the above, the Court considers that the domestic courts failed to provide – in addition to the existence of a reasonable suspicion – relevant and sufficient reasons for their decisions to extend the applicant's detention. Referring in particular to the decisions of 25 April and 28 June 2019, the Court notes that while the courts referred to the relevant domestic statutes, no further reasons were provided with the passage of time. Moreover, although the initial decision to release the applicant on bail and setting its amount was based on relevant reasons, in their later decisions the courts did not give sufficient consideration to the possibility of ensuring the applicant's compliance with his procedural obligations through the use of a different, non custodial measure, as requested by him.

51. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Damage

53. The applicant claimed 42,300 euros (EUR) in respect of non-pecuniary damage.
54. The Government considered that amount excessive. They further considered, should the Court decide that the applicant was entitled to compensation, that the finding of a violation should constitute sufficient just satisfaction or, alternatively, that any financial compensation awarded should be calculated on an equitable basis, taking into account the socio-economic circumstances of the respondent State and not exceeding the amounts awarded by the Court in the comparable cases.
55. The Court considers that the facts underlying the finding of a violation of Article 5 § 3 must have caused the applicant a certain degree of distress, which cannot be sufficiently compensated for by the finding of a violation of the Convention. In accordance with its own case-law and ruling on an equitable basis, the Court thus awards the applicant EUR 2,600 in respect of non-pecuniary damage.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the failure to provide relevant and sufficient reasons for the applicant's continued detention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts: EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 June 2024 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Mattias Guyomar
President