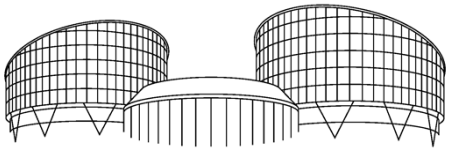

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RIMŠĒVIČS v. LATVIA

(Application no. 56425/18)

JUDGMENT

Art 5 § 1 • Lawful arrest and forty-six-hour detention of the then Governor of Latvia's Central Bank in connection with criminal proceeding against him • Existence of reasonable suspicion of having committed an offence • No arbitrariness

STRASBOURG

10 November 2022

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 Rimšēvičs v. Latvia,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 56425/18) 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 Ilmārs Rimšēvičs ("the applicant"), on 28 November 2018;

the decision to give notice to the Latvian Government ("the Government") of the complaints under Article 5 §§ 1, 3 and 4 and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 6 and 27 September 2022,

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

INTRODUCTION

1. The case mainly concerns the applicant's complaint under Article 5 § 1 of the Convention about the lawfulness of his arrest (*aizturēšana*) from 17 to 19 February 2018 in connection with criminal proceedings against him. The case also concerns complaints under Article 5 §§ 3 and 4 of the Convention about not being promptly brought before a judge and not being able to obtain a judicial review of his arrest.

THE FACTS

2. The applicant was born in 1965 and lives in Ropaži Municipality. He was represented by Mr S. Vārpiņš, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

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

I. BACKGROUND TO THE CASE

5. The applicant held the post of Governor of the Central Bank of Latvia (*Latvijas Banka*) at the material time. He became a member of the General Council of the European Central Bank (ECB) following the accession of the

Republic of Latvia to the European Union (EU) on 1 May 2004, then a member of the Governing Council of the ECB following the accession of the Republic of Latvia to the euro area on 1 January 2014. His term of office as Governor of the Central Bank of Latvia expired on 20 December 2019.

6. Trust Commercial Bank (*Trasta komercbanka* – "the Bank") was a private credit institution providing financial services. On 3 March 2016, upon a proposal from the financial market supervising authority in Latvia, the Financial and Capital Market Commission (*Finanšu un kapitāla tirgus komisija* – "the FKTK"), the ECB withdrew its banking licence over concerns regarding capital adequacy and shortcomings in the Bank's operations regarding the prevention of money laundering and terrorism financing. The Bank and its shareholders, including I.B. (see paragraph 9 below), brought an action for annulment of that decision. On 5 November 2019 the Court of Justice of the European Union (CJEU) (joined cases C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923) dismissed the action brought by the shareholders, but at the same time referred the case back to the General Court of the European Union for a ruling on the action brought by the Bank. On 17 November 2021 the General Court (case T-247/16 RENV) held that the Bank had lost its interest in seeking annulment as the impugned decision had been set aside and revoked by a subsequent decision in July 2016. The Bank is currently subject to liquidation proceedings in Latvia.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

7. On 15 February 2018 the Bureau for the Prevention and Combating of Corruption (*Korupcijas novēršanas un apkarošanas birojs* – "the KNAB") instituted proceedings against the applicant on suspicion of bribery in relation to events that had taken place in 2013-14. He was suspected of having taken a bribe of around 100,000 euros (EUR) from V.Z., a member of the Bank's management board, in exchange for "not creating obstacles to the Bank's activities". The decision to institute proceedings referred to two written statements received by the KNAB on the same date. The Government provided copies of those two written statements to the Court.

8. In his written statement, V.Z. submitted that the applicant had solicited a bribe in exchange for "helping to resolve the Bank's problems with the FKTK". He stated that the FKTK had requested that the Bank's capital be increased but the shareholders had been unable to do so. They had had no other option than to give bribes. On two occasions between 2013 and 2014, he claimed to have paid approximately EUR 50,000 in cash to the applicant.

9. In his written statement, I.B., one of the Bank's main shareholders and the president of its supervisory board, submitted that sometime between 2009 and 2010 he had gone on a fishing trip with the applicant to the Kamchatka Peninsula in Russia. I.B. had paid for tickets, accommodation and other expenses in the amount of 10,000-15,000 US dollars using personal funds.

He had done so in exchange for "services, support in working with the FKTK". In 2010 he had introduced V.Z. to the applicant at the former's request.

10. On the evening of 16 February 2018, the applicant's office and home were searched while he was abroad. KNAB officials called to inform him that his house was being searched and requested access codes to two personal safety deposit boxes found in his home, which he provided. The investigator, A.R., informed him that he had to appear before the KNAB, and he made the necessary arrangements to travel back to Latvia.

11. On 17 February 2018 the applicant arrived in Latvia and voluntarily presented himself at the KNAB's offices with a lawyer. According to the applicant, he immediately stated that he was ready to cooperate with the investigation, provide all necessary information and participate in all investigative activities. Nonetheless, at 6.14 p.m. he was arrested. He was suspected of having taken a bribe with the help of businessman M.M. (who had been arrested the previous day) sometime between 2013 and 2014 from the Bank's board member V.Z., in exchange for "not creating obstacles to the Bank's activities". Between 6.16 and 6.59 p.m. the investigator drew up an arrest record (*aizturēšanas protokols*) specifying that a witness had identified him as the perpetrator. She relied on section 264(1)(2) of the Criminal Procedure Law as the legal basis for the applicant's arrest (see paragraph 29 below). The applicant signed the record, but stated that his arrest was unjustified. He relied on Article 5 of the Convention and requested to be immediately brought before an investigating judge to examine the justification for his arrest (*aizturēšanas pamatotība*).

12. The applicant was questioned and involved in other investigative activities from 6.16 p.m. until 10 a.m. the following day. He denied the allegations against him. The Government provided the relevant procedural records to the Court.

13. At 10 a.m. on 18 February 2018 the applicant was placed in a short-term detention facility. He remained there for a further thirty hours. According to the applicant, during those thirty hours no further investigative activities were carried out in his presence. According to the Government, during this period the KNAB questioned three more witnesses, authorised the police to involve the applicant in investigative activities in other proceedings and prepared decisions to impose attachments on assets owned by him. They informed an investigating judge of further searches to be conducted under the urgent procedure, including a search of the applicant's car. They also examined further evidence and questioned V.Z. about certain audio recordings made in April and May 2013. The content of those recordings was not disclosed to the Court.

14. At 12 noon on 19 February 2018 the applicant's lawyer requested that the applicant be released on bail in the amount of EUR 100,000. According to the Government, the investigator granted that request. At 1 p.m. the

applicant's lawyer submitted proof of payment by a third party. According to the Government, from about 2.30 to 4.30 p.m. two further witnesses were questioned and evidence was examined.

15. At 4.50 p.m. on 19 February 2018 the applicant was released from the short-term detention facility and escorted to the KNAB's offices.

16. At 5.51 p.m. the same day the KNAB issued a decision officially declaring the applicant a suspect in the criminal proceedings. On the same date, the KNAB 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, including M.M., V.Z. and I.B. The ban on holding office was subsequently overturned by the CJEU (see paragraph 26 below).

III. REVIEW OF THE APPLICANT'S COMPLAINTS

17. In reply to the applicant's complaint (see paragraph 11 *in fine* above), on 21 February 2018 the investigator issued a decision. She considered that the applicant's request to be brought before an investigating judge was not justified. The Criminal Procedure Law did not provide for such a possibility (see, by contrast, paragraph 21 below). At the same time, she explained that the applicant could lodge a complaint with a supervising prosecutor against her decision (and about any action taken by the investigator) within ten days of its receipt. He received the decision on 26 February 2018 (see paragraph 20 below) but did not lodge a complaint.

18. On 22 February 2018 the applicant lodged another complaint with the supervising prosecutor challenging the lawfulness of his arrest.

19. On 13 March 2018 the supervising prosecutor examined and dismissed the applicant's complaint. Having reviewed the evidence which had served as the grounds for his arrest, she concluded that the conditions for his arrest under section 264(1)(2) of the Criminal Procedure Law had been fulfilled. Thus, the restrictive measure imposed on him had been proportionate, and sections 241 and 244 of the Criminal Procedure Law had not been breached. In reaching this conclusion, she took into account the statements made by the applicant upon his arrival at the KNAB's offices (see paragraph 11 above). The domestic forty-eight-hour time-limit for arrest had not been breached either. Article 5 § 1 (c) of the Convention had been complied with as he had been released. Article 5 § 4 was only applicable in domestic review proceedings before a court. Moreover, she noted that the applicant had not lodged a complaint against the 21 February 2018 decision (see paragraph 17 above).

20. On 23 March 2018 the applicant lodged a further complaint with a superior prosecutor about the 13 March 2018 reply, explaining that he had only received the 21 February 2018 decision on 26 February 2018, that is,

after lodging the complaint challenging the lawfulness of his arrest. He emphasised that his rights had been breached on account of the fact that he had not been brought before an investigating judge to examine the lawfulness of his arrest.

21. On 23 April 2018 the superior prosecutor examined and dismissed the applicant's complaint. Deprivation of liberty on the grounds of section 264(1)(2) of the Criminal Procedure Law was not limited to investigations in connection with "recent" offences (unlike section 264(1)(1) of the same Law). He dismissed as unsubstantiated the applicant's allegation that his arrest had been orchestrated in order to publicly demand his resignation, stating that the investigator was not bound and could not be influenced by any statements made by public officials. He explained that a suspect only had to be brought before an investigating judge within forty-eight hours of his arrest if further deprivation of liberty was to be applied. In compliance with section 268(2) of the Criminal Procedure Law, the applicant had been declared a suspect and released. There had been no breach of Article 5 of the Convention since he had been released. Without indicating any legal grounds, he asserted that since the applicant had been released, he had the possibility of lodging a complaint himself with the investigating judge (see, by contrast, paragraph 17 above). Lastly, he dismissed the applicant's arguments pertaining to the immunity of a member of the Governing Council of the ECB, stating that he was not suspected of having carried out the alleged offence in the performance of his duties.

22. By a final decision of 28 May 2018, another superior prosecutor upheld the prosecution's previous replies and dismissed a further complaint by the applicant of 7 May 2018, where he repeatedly relied on the fact that he had not been brought before a judge. In addition, the prosecutor emphasised that section 241(2) of the Criminal Procedure Law required grounds to believe that the person would continue criminal activities, or hinder or avoid investigation and trial. It was not necessary for the applicant to have had already hindered or avoided such proceedings and trial. At the time the applicant was arrested, such a possibility existed; it continued to exist, as evidenced by the fact that on 19 February 2018 several restrictive measures had been imposed on him.

IV. SUBSEQUENT EVENTS

A. Domestic proceedings

23. On 18 June 2018 the KNAB referred the criminal case for prosecution. On 28 June 2018 the prosecution brought charges against the applicant and M.M. On 9 July 2019 the criminal case was sent to a first-instance court for trial.

24. Following a request by the first-instance 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 paragraph 27 below), the applicant's trial was suspended in December 2019. The applicant's trial resumed on receipt of the CJEU's preliminary ruling. A copy of any court decision in that regard has not been submitted to the Court.

25. The case is currently pending before the first-instance court.

B. Proceedings before the CJEU

26. On 26 February 2019 the CJEU, ruling on direct actions brought by the applicant and the ECB (joined cases C-202/18 and C-238/18, EU:C:2019:139), annulled the 19 February 2018 decision (see paragraph 16 above) in so far as it had banned the applicant from performing his duties as Governor of the Central Bank of Latvia (paragraph 97 of the CJEU's judgment). The State argued that the evidence in the applicant's criminal case file was covered by the confidentiality of the investigation pursuant to the relevant provisions of the Criminal Procedure Law (paragraph 87). The CJEU held as follows:

> "90. In the present case, the prohibition on Mr Rimšēvičs performing his duties as Governor of the Central Bank of Latvia is for the purposes of a criminal investigation relating to that person's alleged conduct, which is considered criminal and which, were it to be established, would constitute 'serious misconduct' for the purposes of Article 14.2 of the Statute of the ESCB and of the ECB.
>
> 91. It should be specified at the outset that it is not for the Court, when an action is brought before it on the basis of Article 14.2 of that statute, to take the place of the national courts having jurisdiction to give a ruling on the criminal liability of the governor involved, nor even to interfere with the preliminary criminal investigation being conducted in respect of that person by the competent administrative or judicial authorities under the law of the Member State concerned. For the purposes of such an investigation, and in particular in order to prevent the governor concerned from obstructing that investigation, it may be necessary to decide to suspend that person temporarily from office.
>
> 92. By contrast, it is for the Court, in the context of the powers conferred on it by the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB, to verify that a temporary prohibition on the governor concerned performing his duties is taken only if there are sufficient indications that he has engaged in serious misconduct capable of justifying such a measure.
>
> 93. In the present case, the person concerned maintains before the Court that he has not committed any of the offences of which he is accused. Like the ECB, he considers that the Republic of Latvia has not adduced the slightest evidence of those offences. In fact, in the written procedure before the Court, the Republic of Latvia did not provide any prima facie evidence of the accusations of bribery which were the basis for the opening of the investigation and the adoption of the decision at issue.
>
> 94. At the hearing, the President of the Court requested the representatives of the Republic of Latvia, who undertook to do so, to communicate to the Court, within a short period, the documents supporting the decision at issue. However, as the Advocate

General noted in points 125 to 130 of her Opinion, none of the documents produced by the Republic of Latvia following the hearing contain any evidence capable of establishing the existence of sufficient indications as regards whether the accusations made against the person concerned are well founded.

95. By letter received at the Court Registry on 8 January 2019, the Republic of Latvia offered to communicate other documents 'within a reasonable time', without requesting that the oral part of the procedure, which had been declared closed following the delivery of the Advocate General's Opinion pursuant to Article 82(2) of the Rules of Procedure, be reopened. By a second letter of 30 January 2019 the Republic of Latvia renewed its offer of evidence and requested that the oral part of the procedure be reopened. However, that offer of evidence, received at the Court at the stage when the case was under deliberation, is not accompanied by any statement of reasons explaining the delay in submitting those documents as is required by Article 128(2) of the Rules of Procedure. The developments in the criminal investigation as described by the Latvian Government are not relevant in that regard. In addition, that offer of evidence does not contain any concrete and specific indication regarding the content of the documents whose disclosure is offered. In those circumstances and having regard to the expedited nature of the proceedings, the offer of evidence and the request that the oral part of the procedure be reopened must be rejected.

96. Consequently, the Court must hold that the Republic of Latvia has not established that the relieving of Mr Rimšēvičs from office is based on the existence of sufficient indications that he has engaged in serious misconduct for the purposes of the second subparagraph of Article 14.2 of the Statute of the ESCB and of the ECB and, accordingly, upholds the plea alleging that that decision is unjustified. It is therefore unnecessary to examine the other pleas in the application.

97. It follows from the foregoing that the decision at issue must be annulled in so far as it prohibits Mr Rimšēvičs from performing his duties as Governor of the Central Bank of Latvia."

27. On 30 November 2021 the CJEU, in a preliminary ruling following a request from the first-instance court (case C-3/20, EU:C:2021:969) (see paragraph 24 above), held as follows (references omitted):

"***The fourth question***

...

56. It should be noted at the outset that Article 11(a) of the Protocol on privileges and immunities provides that officials and other servants of the European Union enjoy immunity from legal proceedings only in respect of acts performed 'in an official capacity', that is to say, within the framework of the task entrusted to the European Union ...

57. In addition, the privileges and immunities which the Protocol grants to the European Union have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the European Union, which entails, in particular, that the privileges, immunities and facilities accorded to officials and other servants of the European Union are done so solely in the interests of the latter ...

...

68. Secondly, it is apparent from the first paragraph of Article 17 of the Protocol on privileges and immunities that the sole purpose of immunity from legal proceedings is,

by avoiding any interference with the functioning and independence of the European Union ..., to ensure the protection of the interests of the European Union and it cannot therefore impede the exercise by the Member States of their competence to punish criminal offences where those interests are not at stake.

69. The exercise of that competence would be hindered, or at least systematically delayed, if the national authority responsible for the criminal proceedings were, in all cases, required to request the EU institution concerned to waive immunity as soon as a criminal prosecution is initiated against one of the officials or other servants of that institution.

70. Consequently, that national authority must be able to find that the offence committed by an official or other servant of the European Union was manifestly not committed by him or her in the performance of his or her duties.

...

77. In the light of the foregoing considerations, the answer to the fourth question is that Article 11(a) of the Protocol on privileges and immunities, read in conjunction with Articles 17 and 22 of that protocol, must be interpreted as meaning that the national authority responsible for the criminal proceedings, that is to say, depending on the stage of the proceedings, the authority responsible for criminal prosecutions or the competent criminal court, has the competence to assess, in the first place, whether the offence potentially committed by the governor of a national central bank, in his or her capacity as a member of an organ of the ECB, is an act of that governor carried out in the performance of his or her duties within that organ, but in the event of doubt it is required, in accordance with the principle of sincere cooperation, to request the ECB's opinion and to comply with the latter. Conversely, it is for the ECB alone to assess, when it receives an application for waiver of that governor's immunity, whether such a waiver of immunity is contrary to the interests of the European Union, subject to the potential review of that assessment by the Court of Justice.

The third question

...

85. Furthermore, too broad an interpretation of immunity from legal proceedings, including the police and judicial investigation and preliminary criminal proceedings, would be liable to render EU officials and other servants virtually exempt from criminal liability and to excessively hinder the exercise of criminal justice in the Member State concerned where one of them is implicated, which would be contrary to the values, set out in Article 2 TEU, to which the authors of the Treaties subscribed, in particular the rule of law. In that regard, there is, in particular, no justification for the authority responsible for the criminal proceedings not to be able to serve on him or her an indictment.

86. It follows from the foregoing that the immunity from legal proceedings provided for in Article 11(a) of the Protocol on privileges and immunities does not preclude the criminal prosecution in its entirety, in particular investigative measures, the gathering of evidence and service of the indictment.

87. Nevertheless, if, at the stage of the investigations conducted by the national authorities and before the matter is brought before a court, it is established that the official or servant of the European Union may enjoy immunity from legal proceedings in respect of the acts which are the subject of the criminal prosecution, it is for those authorities, in accordance with Article 4(3) TEU and Article 18 of the Protocol on privileges and immunities, to request a waiver of immunity from the EU institution

concerned, which is then required to act, in particular, in accordance with the approach set out ... above.

88. As regards the question whether immunity from legal proceedings precludes the subsequent use of evidence gathered during the investigation, it follows from the foregoing that that immunity does not have such a scope. It merely precludes any use of evidence obtained for the purposes of trying and convicting the official or servant of the European Union in question for the act covered by that immunity. On the other hand, since that immunity is enjoyed by the official or servant of the European Union concerned only in respect of a particular act, it does not preclude that evidence from being used in other proceedings concerning other acts not covered by immunity or directed against third parties.

89. For the same reasons as those referred to ... above, the interpretation set out ... above is also relevant to the assessment of the immunity from legal proceedings of a governor of a central bank of a Member State, in his or her capacity as a member of an organ of the ECB.

90. In the light of the foregoing, the answer to the third question is that Article 11(a) of the Protocol on privileges and immunities must be interpreted as meaning that the immunity from legal proceedings for which it provides does not preclude the criminal prosecution in its entirety, including investigative measures, the gathering of evidence and service of the indictment. Nevertheless, if, at the stage of the investigations conducted by the national authorities and before the court is seised, it is established that the person under investigation may enjoy immunity from legal proceedings in respect of the acts which are the subject of the criminal prosecution, it is for those authorities to request a waiver of immunity from the EU institution concerned. That immunity does not preclude evidence gathered during the investigation from being used in other judicial proceedings.

The fifth question

...

97. In the light of the foregoing, the answer to the fifth question is that Article 11(a) and Article 17 of the Protocol on privileges and immunities must be interpreted as meaning that immunity from legal proceedings does not apply where the beneficiary of that immunity is implicated in criminal proceedings in respect of acts which were not performed in the context of the duties which he or she carries out on behalf of an EU institution."

C. Proceedings before the Court

28. In addition to the present application, the applicant also lodged an application about statements made after his arrest by public officials (no. 31634/18), which is currently pending.

RELEVANT LEGAL FRAMEWORK

29. The relevant sections of the Criminal Procedure Law (*Kriminālprocesa likums*) provide as follows:

CHAPTER 13
GENERAL PROVISIONS FOR THE APPLICATION OF RESTRICTIVE MEASURES

Section 241 – Grounds for the application of a procedural restrictive measure

"(1) Grounds for the application of a procedural restrictive measure shall be the resistance of a person to achieving the objective of criminal proceedings in the specific proceedings or to carrying out a separate procedural action, or failure to fulfil or improper fulfilment of his or her procedural duties.

(2) A security measure shall be applied as a procedural restrictive measure to a suspect or an accused if there are grounds to believe that the relevant person will continue criminal activities, or hinder pre-trial criminal proceedings and trial or avoid such proceedings and trial.

..."

Section 244 – Selection of procedural restrictive measures

"(1) The person conducting the proceedings shall choose a procedural restrictive measure that infringes upon the basic rights of a person as little as possible and is proportionate.

(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.

..."

CHAPTER 15
RESTRICTIVE MEASURES RELATED TO THE DEPRIVATION OF LIBERTY

Section 263 – Arrest

"Arrest (*aizturēšana*) is the deprivation of the liberty of a person for a period of up to 48 hours without a decision by an investigating judge, if grounds for arrest exist."

Section 264 – Grounds for arrest

"(1) A person may only be arrested if there are reasons to believe that a criminal offence has been committed for which a punishment of deprivation of liberty may be imposed, and if any of the following grounds exist:

1) the person has been caught either at the moment of committing of a criminal offence, immediately thereafter, or while escaping from the location where the criminal offence was committed;

2) the person has been indicated as the perpetrator of a criminal offence by a victim or another person who saw the event or directly acquired such information in another manner;

..."

Section 268 – Time-limit for arrest

"(1) The person conducting the proceedings shall without delay, but no later than within 48 hours, decide [whether or not] to declare the arrested person a suspect or an accused and to impose a restrictive measure.

(2) After the arrested person has been declared a suspect or an accused and his or her questioning, if necessary, the person conducting the proceedings shall without delay decide to release the person from a short-term detention facility if a restrictive measure has been applied which is not related to the deprivation of liberty.

(3) If the arrested person has been declared a suspect or an accused and, if necessary, questioned, but the restrictive measure selected by the person conducting the proceedings is related to the deprivation of liberty, the person may be placed in a short-term detention facility until he or she is brought before an investigating judge, taking into account that the 48-hour time-limit runs from the time of actual arrest."

CHAPTER 24
COMPLAINTS

Section 337 – Lodging of a complaint [as in force at the material time]

"(1) A complaint shall be addressed to and lodged with an official or institution that is entitled to decide on it. A complaint may also be submitted to an official whose action or decision is being contested.

(2) A complaint shall be forwarded for examination [to]:

1) the person conducting the criminal proceedings in respect of a complaint about an action by a member of an investigation team, [a person who has performed] a procedural task, an expert or an auditor;

2) the supervising prosecutor in respect of a complaint about an action or decision by an investigator or his or her immediate superior;

3) a higher-ranking prosecutor in respect of a complaint about an action or decision by a prosecutor;

4) a higher-level court in respect of a complaint about a decision by an investigating judge;

5) the president of the court in respect of a complaint about an action by a judge;

6) a higher-level court in respect of a complaint about a ruling by a court or judge.

(3) If a person who has lodged a complaint in respect of a complaint about an action or decision referred to in [section 337(2)(1) to (3)] disagrees with a decision taken by a higher-ranking prosecutor in that regard, he or she may lodge a further complaint with the next higher-ranking prosecutor, whose decision shall be final in the pre-trial criminal proceedings.

...

(5) A person who has received a complaint in respect of his or her action or decision shall immediately forward that complaint to the official referred to in [section 337(2)]. If [that official] considers the complaint justified, [he or she] shall discontinue the contested action or revoke the contested decision and [at the same time] shall declare the results thereof invalid.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

30. The applicant complained that his arrest on 17 February 2018 had not been in accordance with the law. He also alleged that his detention from 10 a.m. on 18 February 2018 onwards had been arbitrary and unnecessary. He relied on Article 5 § 1 (c) of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

31. The Government contested that argument.

A. Admissibility

32. The Court notes that the Government have not raised any objections as to the exhaustion of domestic remedies. Furthermore, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. This complaint is not inadmissible on any other grounds either. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicant contended that his arrest on 17 February 2018 had been unlawful, arbitrary and unnecessary. He argued that section 264(1)(2) of the Criminal Procedure Law should not have been applied in respect of him. Since he had cooperated with the investigation (see paragraphs 11-12 above), there had been no grounds to impose any restrictive measures on him. Section 241(1) of the Criminal Procedure Law only authorised restrictive measures on the grounds of resistance, obstruction or failure to cooperate. However, the domestic authorities did not apply this legal provision in practice when imposing restrictive measures related to the deprivation of liberty. Instead, they exclusively relied on the grounds laid down in section 264 of the Criminal Procedure Law. Moreover, he disagreed that section 264(1)(2) of the Criminal Procedure Law could be used to authorise an arrest on the basis of witness statements about events in the past. Relying on the

historical method of interpretation and the former Code of Criminal Procedure, he argued that this provision was only applicable when the alleged criminal offence was "recent" and when it was necessary to act "without delay".

34. The applicant submitted that the reasons given by the KNAB for his arrest had been extremely brief. He also contended that his arrest had been based merely on an "assumption" rather than a "reasonable suspicion".

35. According to the applicant, his arguments pertaining to potential immunity of a member of the Governing Council of the ECB had not been assessed by the KNAB upon his arrest (see the CJEU's preliminary ruling on this issue, paragraph 27 above).

36. The applicant emphasised that his arrest had not been made on the basis of a judicial warrant. If a person was arrested for up to forty-eight hours, the decision was made by an investigator and not subject to judicial review. He contended that that interpretation of the domestic law had been confirmed by the prosecution (see paragraphs 17-22 above). The lack of judicial review and shortcomings in legal regulation contributed to arbitrariness and elements of bad faith on the part of the law-enforcement authorities since they used criminal-law mechanisms to settle political issues. This was particularly so in high-profile cases where a person was arrested for forty-eight hours without a judicial warrant and subsequently released. Extensive media coverage would follow during the investigation and potentially lengthy trial, with the person concerned being depicted as a "person accused of a serious criminal offence", thereby tarnishing his or her reputation and removing him or her from the public arena. The applicant pointed to certain elements which, in his view, suggested that his arrest could have been orchestrated in the interests of "other persons": his position that the Latvian banking system needed changes; the particular situation with respect to another bank; the upcoming parliamentary elections; and the redistribution of political influence, including posts held by high-ranking officials.

37. His detention after 10 a.m. on 18 February 2018 had been arbitrary and unnecessary since he had no longer been involved in any investigative activities. Moreover, the KNAB had had sufficient information to declare him a suspect and release him earlier as the procedural records had already contained "suspicions" against him (see paragraphs 10, 11 and 13 above). If the KNAB had considered that his liberty had to be restricted during the investigation, they could have already released him on 18 February 2018 and imposed less severe restrictive measures (for example, house arrest, ban on approaching certain people and so forth). The applicant emphasised that the KNAB had not considered any alternative measures for his detention or identified any public interest that would be upset by his release. Given that the KNAB had informed the media and general public of the searches of his home and office, they could not cite the need to restrict information about an ongoing investigation.

38. The applicant disagreed with the Government's contention that his case had been significant (see paragraph 44 *in fine* below). He contended that it had been ordinary compared to other cases investigated by the KNAB. If the work had been properly organised, the number of officials assigned to the case in the early days of the investigation (six investigators from the KNAB, three economic crime officers and various experts) would have been sufficient to carry out the necessary activities and process the information obtained in a timely manner.

(b) The Government

39. As to lawfulness, the Government submitted that the applicant's deprivation of liberty had been in conformity with the substantive and procedural rules of domestic law. The domestic authorities had been able to furnish sufficient facts and information to satisfy "the objective observer" test (they relied on *O'Hara v. the United Kingdom*, no. 37555/97, §§ 34-35, ECHR 2001-X).

40. As to the procedure laid down by law, the prosecution had explained the relevant provisions of domestic law in its replies. While section 241 of the Criminal Procedure Law contained grounds for the application of all restrictive measures, section 264 was *lex specialis* as regards the application of restrictive measures related to the deprivation of liberty. The latter provision contained an exhaustive list of the grounds for arrest, including the existence of a suspicion against a particular person on the basis of a statement by a victim or witness. Since the case file contained the statements of two witnesses, the Government, like the prosecutors, were of the view that the conditions provided for in section 264(1)(2) of the Criminal Procedure Law had been fulfilled.

41. The Government disagreed that section 264(1)(2) of the Criminal Procedure Law could only be applied in respect of "recent" offences (see paragraph 34 above). The applicant's interpretation was erroneous and ill-founded. As explained by the various prosecutors, the applicant's detention on the grounds of section 264(1)(2) had been justified; there was no reason to consider that it could only be applied in respect of "recent" cases. The "objective observer" test had been satisfied – there had been objective information about a specific criminal offence pointing to a particular individual. The Government referred to the testimony of I.B. and V.Z. against the applicant in that regard. Thus, his detention had not been based merely on an "assumption" but on a "reasonable suspicion".

42. The Government emphasised that the applicant's detention after 10 a.m. on 18 February 2018 had not been arbitrary. There had been no signs or elements of bad faith or deception on the part of the KNAB. Unlike in the case of *Kasparov v. Russia* (no. 53659/07, § 56, 11 October 2016), the Government in the present case provided evidence to the Court proving a "reasonable suspicion" against the applicant. All the legal requirements under

the Criminal Procedure Law had been met – his detention had been properly documented, he had been questioned in the presence of a lawyer and he had subsequently taken part in searches and seizures, activities which had also been properly documented. His release from the short-term detention facility had been documented, and he had been officially declared a suspect shortly thereafter.

43. Moreover, the applicant's detention had not been "prolonged" as he had been released before the expiry of the forty-eight-hour time-limit laid down in domestic law. The Government reiterated that reasons for the applicant's detention had been given (see paragraphs 11 and 40 above); the prosecution had reviewed the relevant procedural record at three levels and found that the reasons provided for the applicant's detention complied with domestic law (see paragraphs 17 to 21 above).

44. As to the necessity of the applicant's detention after 10 a.m. on 18 February 2018, the Government noted that the case had been at the early stages of investigation. It had been necessary to protect the effectiveness of that investigation from any attempts to hinder it. The Government disagreed with the applicant's contention that he should only have been detained for as long as he had been directly involved in the investigative activities. They emphasised that the subsequent investigative activities – while not involving the applicant – had been directly related to information obtained during the recent searches, questionings and interviews. From 16 to 18 February 2018 sixteen searches had been carried out and a large body of evidence had been obtained, including information stored on various electronic devices, which had had to be processed. On the basis of that information, the KNAB investigators had questioned more witnesses. During the initial days and hours of the investigation, short-term detention had been necessary in respect of all key suspects. The Government concluded by emphasising that the criminal proceedings against the applicant remained one of the largest corruption scandals in Latvia in the last decade.

45. In response to the applicant's contention that no alternative measures for detention had been considered (see paragraph 37 above), the Government emphasised that as soon as he had requested to be released on bail, that request had been granted. For the same reason, they emphasised that the applicant's detention had not pursued a "punitive function".

2. The Court's assessment

(a) General principles

46. The Court will examine the applicant's complaints in the light of the relevant general principles set out, in particular, in the case of *Merabishvili v. Georgia* ([GC] no. 72508/13, §§ 181-86, 28 November 2017, with further references). In particular, to be compatible with Article 5 § 1 (c), an arrest or detention must meet three conditions. First, it must be based on a "reasonable

suspicion" that the person concerned has committed an offence, which presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence. Secondly, the purpose of the arrest or detention must be to bring the person concerned before a "competent legal authority" – a point to be considered independently of whether that purpose has been achieved. Thirdly, an arrest or detention under sub-paragraph (c) must, like any deprivation of liberty under Article 5 § 1 of the Convention, be "lawful" and "in accordance with a procedure prescribed by law" (ibid.).

47. Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among other authorities, *Mooren v. Germany* [GC], no. 11364/03, § 72, 9 July 2009, and *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is, moreover, clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 75, 22 October 2018). One general principle established in the Court's case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Mooren*, cited above, § 78). In the context of the first limb of Article 5 § 1 (c), the Court has held that in order for deprivation of liberty to be considered free from arbitrariness, it does not suffice that this measure be executed in conformity with national law; it must also be necessary in the circumstances (see *S., V. and A. v. Denmark*, cited above, § 77).

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

48. The Court observes that the applicant in the present case, the Governor of the Central Bank of Latvia and, consequently, a member of the Governing Council of the ECB at the relevant time, was suspected of bribery. The Court is also mindful of the fact that the criminal proceedings against him are still pending before the domestic courts. It is called upon to determine whether his arrest complied with the requirements of Article 5 § 1 of the Convention on the basis of the information and facts available to the national authorities at the time of his arrest. Questions relating to the fairness of the criminal proceedings against the applicant do not form part of the present case.

49. The Court notes that the applicant was arrested at 6.14 p.m. on 17 February 2018, when he arrived at the KNAB's offices. The procedural record of his arrest was drawn up immediately, and his lawyer was present.

The arrest record indicated that the applicant was suspected of having taken a bribe from V.Z. in exchange for "not creating obstacles to the Bank's activities" (see paragraph 11 above). He was subsequently questioned and participated in further investigative activities. It was clear that his arrest was carried out in connection with the criminal proceedings against him, which had been instituted two days prior to his arrest. Thus, his arrest fell within the ambit of the first limb of Article 5 § 1 (c) of the Convention.

50. As to the existence of a reasonable suspicion, the Court notes that there was a concrete suspicion against the applicant of having taken a large amount of money from V.Z. in exchange for not creating obstacles to the Bank's activities. The main evidence in that regard was the testimony of two people – high-level officials of the Bank – who had claimed to be directly involved in the events in question (see paragraphs 8-9 above). Although there is no further information why those people did not report the events at issue to the investigating authorities earlier, the Court finds it sufficient to note that criminal proceedings were instituted as soon as that information was received (see paragraph 7 above). It contained serious allegations of corruption and, as such, demanded speedy and thorough consideration by the domestic authorities to determine their credibility and truthfulness. The fact that the alleged offence dated back to 2013-14 did not remove the existence of a reasonable suspicion (compare *Talat Tepe v. Turkey*, no. 31247/96, § 61, 21 December 2004).

51. Furthermore, the arrest record contained sufficiently specific references to individuals who had allegedly been involved in the events in question and the time period of those events (see paragraphs 11 and 49 above). While the reasons provided for the applicant's arrest were rather succinct, in view of the early stages of the investigation and the evidence at the authorities' disposal, they were sufficiently specific and concrete. Thus, the Court considers that the evidence gathered by the national authorities at the time of his arrest could satisfy an "objective observer" that he might have committed the offence. However, it should be emphasised that the standard imposed by Article 5 § 1 (c) does not presuppose that the domestic authorities have sufficient evidence to bring charges at the time of arrest, and that the facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see, among other authorities, *O'Hara*, cited above, § 36).

52. The Court notes that unlike in the direct action brought by the applicant and the ECB before the CJEU – as regards the decision of 19 February 2018 banning the applicant from performing his duties as Governor of the Central Bank of Latvia (see paragraph 26 above) – the Government in the present case submitted to the Court the relevant material on the basis of which the domestic authorities had established a reasonable suspicion against the applicant in connection with the criminal proceedings

against him (see paragraphs 8-9 above, contrast *Kasparov*, cited above, §§ 53-54). The Court notes that one of the two individuals claiming to be directly involved in the events in question, V.Z., was also expressly mentioned in the arrest record drawn up by the investigator and served on the applicant (see paragraph 11 above).

53. Accordingly, in the present case, even if the applicant had expressed willingness to cooperate with the investigation, there was a reasonable suspicion against him and this is sufficient for the purposes of Article 5.

54. As to the question of whether the purpose of the applicant's arrest was to bring him before a "competent legal authority", the Court notes as follows. This is a point to be considered independently of whether that purpose has been achieved (see paragraph 46 above and the authorities cited therein). Although the applicant was not brought before a judge, he was released before the expiry of the domestic time-limit of forty-eight hours as the investigating authorities considered that his detention was no longer necessary at that point in the investigation (see paragraphs 14-16 above). The Court finds that the applicant was arrested with a view to furthering the criminal investigation – commenced two days prior to his arrest and specifically in relation to him – by way of confirming or dispelling the concrete and specific suspicion against him (see paragraph 50 above) and, thus, with the purpose of bringing him before a "competent legal authority".

55. With regard to lawfulness, the Court notes that the applicant was arrested under section 264(1)(2) of the Criminal Procedure Law (see paragraph 11 above). Under that provision, a person may be arrested if: first, there are "reasons to believe" that a criminal offence has been committed, secondly, that the offence is punishable by imprisonment, and, thirdly, the alleged perpetrator has been identified by a victim or another person directly related to the events in question (see paragraph 29 above). The first of those conditions refers essentially to the existence of a "reasonable suspicion", which the Court has analysed above (see paragraph 50). It is undisputed that the second of those conditions has been met – bribery is a criminal offence punishable by imprisonment under Latvian law. Regardless of the applicant's submissions to the contrary, the Court considers that the third condition laid down in domestic law was also complied with. As the Government explained, section 264 was *lex specialis* in relation to deprivation of liberty, while section 241 was a general provision applicable to all restrictive measures (see paragraph 40 above). Thus, notwithstanding the applicant having expressed willingness to cooperate with the domestic authorities (see paragraph 11 above), his arrest under section 264(1)(2) was considered to have been in accordance with domestic law since he was identified as the alleged perpetrator by two people claiming to be directly involved in the events in question (see paragraphs 8-9 above).

56. The Court finds nothing in the material before it to suggest that an arrest under section 264(1)(2) of the Criminal Procedure Law could only be

carried out in relation to "recent" offences, as claimed by the applicant (compare and contrast *Korban v. Ukraine*, no. 26744/16, §§ 96 and 146, 4 July 2019). It appears that unlike section 264(1)(1) – such a requirement was not laid down in section 264(1)(2) of the Criminal Procedure Law (see paragraphs 21 and 41 above). The Court would add here that it follows directly from the text of section 264(1) that subsections (1) and (2) contain alternative and not cumulative criteria. It is in the first place for the national authorities, notably the courts, to interpret national law. However, the Court is called upon to examine whether the effects of such an interpretation are compatible with the Convention. Consequently, the Court considers that the applicant's arrest in relation to an offence allegedly carried out in the past complied with the substantive and procedural rules of domestic law (compare and contrast *Leva v. Moldova*, no. 12444/05, §§ 52-54, 15 December 2009, where eyewitness testimony relied on by the prosecution to detain the applicant on the basis of a similar domestic-law provision was not found to be present in the criminal case file by a judge).

57. Furthermore, the parties agreed that domestic law did not require the applicant's arrest – which lasted no more than forty-eight hours – to have been authorised by a judge. Consequently, no issues of lawfulness arise in that regard.

58. In relation to the applicant's argument about potential immunity from legal proceedings on account of him being a member of the Governing Council of the ECB, the Court notes that the relevant national investigating authority appears to have had no doubt that the applicant was accused of acts which were not performed in the context of the duties which he carried out on behalf of an EU institution and, accordingly, that immunity from legal proceedings did not apply (see paragraphs 21 and 22 above). The Court, in the circumstances of the present case and, in particular, in view of the CJEU's preliminary ruling on this issue (see paragraphs 77 and 97 of that ruling, quoted in paragraph 27 above), does not see any reason to question the application of legal provisions by the national investigating authority in so far as the applicant's complaint under Article 5 § 1 is concerned.

59. The applicant also raised two arguments as to whether his arrest was free from arbitrariness and whether it was necessary (see paragraphs 36 and 37 above).

60. With respect to the applicant's contention that criminal-law mechanisms were used to settle political issues (see paragraph 36 above), the Court, whose assessment at this stage relates solely to the lawfulness of his arrest and short-term detention under Article 5 of the Convention, finds no evidence in the case material before it to substantiate this.

61. The Court notes that the applicant was released before the expiry of the forty-eight-hour time-limit laid down in domestic law and that his bail application was granted immediately. It cannot be said, on the basis of the information available, that he was kept in detention for a prolonged period to

exert any pressure on him (compare and contrast *Merabishvili*, cited above, §§ 352-53).

62. The Court is not in the position to examine the applicant's allegations of damage to his reputation as he did not bring a complaint under Article 8 of the Convention. It notes that the applicant lodged another application about statements made after his arrest by public officials (see paragraph 28 above).

63. As to the alleged arbitrariness of the applicant's detention after 10 a.m. on 18 February 2018 (see paragraph 37 above), the Court agrees with the Government that the case material reveals no indication of bad faith or deception on the part of the domestic authorities. The applicant was arrested in connection with the criminal proceedings against him, and he participated in several investigative activities in relation to them (contrast *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, §§ 55-56, 13 January 2009). All those activities were duly documented and the relevant records were drawn up. As the Court has already established above, there was a reasonable suspicion against him at the time of his arrest, but this does not mean that the elements on the basis of which it was established needed to be of the same level as those necessary for bringing charges or to justify a conviction (see paragraph 50 *in fine* above).

64. The fact that the applicant was not directly involved in any investigative activities for the last thirty hours in detention does not automatically render his arrest arbitrary. The Court notes that the domestic authorities did not remain passive during this time. On the contrary, they actively pursued the investigation, carrying out a large number of investigative activities, and collecting and processing evidence, all of which is crucial during the early hours and days of an investigation. It is also significant that one of the two prosecution witnesses, V.Z., was questioned for a second time during this period (see paragraphs 13-14 and 44 above). The fact that following those investigative measures it was not considered necessary to proceed with further questioning or other measures involving the applicant cannot retrospectively render his arrest arbitrary. The Court thus dismisses the applicant's contention that the investigation had been badly organised and unduly delayed in its early days (paragraph 38 *in fine* above).

65. The Court is thus satisfied that the applicant's arrest was lawful and that he was detained on reasonable suspicion of having committed an offence, within the meaning of Article 5 § 1 (c) of the Convention.

66. It follows that there has been no violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

67. The applicant in essence complained under Article 5 § 4 of the Convention that he had been unable to obtain a judicial review of his arrest.

68. The Government raised three main objections. Firstly, they argued that domestic remedies had not been exhausted. The applicant had had the right to submit a constitutional complaint if he had considered that his right to liberty and security under Article 94 of the Constitution and Article 5 § 4 to the Convention had been breached on account of the fact that no judicial review was available in relation to his arrest under domestic law. That complaint should have been directed against section 337 of the Criminal Procedure Law, which laid down the general review mechanism for complaints and provided for a prosecutorial review of actions and decisions taken by the investigating authorities. Secondly, the Government submitted that in the absence of any effective remedy, the applicant's complaint before the Court had been lodged out of time as he had been released on 19 February 2018. Thirdly, they argued that his complaint was manifestly ill-founded.

69. The applicant agreed, firstly, that the Criminal Procedure Law did not provide for the right to be brought before a judge before the expiry of the forty-eight-hour time-limit. However, while in detention, he had expected the investigator to ensure compliance with international standards, in particular the Convention, and that in response to his request he would be brought before a judge, since it was the role of an investigating judge to ensure respect for human rights in criminal proceedings. After his release, he could only lodge a complaint about the investigator's actions with the supervising prosecutor. By using this general review mechanism for complaints, he considered that he had exhausted domestic remedies. It was only after he had received replies from the prosecutors that it had become clear to him that the prosecutorial review was not an effective remedy. Secondly, he implied that the final decision in respect of this complaint had been taken by the superior prosecutor on 28 May 2018. Thirdly, he considered that his complaint before the Court was well-founded.

70. The Court reiterates that the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely interrelated. As a rule, the six-month period, as applicable at the material time, runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to him or her. The Court has further stated that, in general, in continuing situations the six-month period runs from the cessation of the situation complained of (see, among many other authorities, *Popovych v. Ukraine*, no. 44704/11, § 26, 22 April 2021).

71. Accordingly, the Court has to examine, first, whether the applicant did exhaust domestic remedies and, notably, whether the remedy suggested by the Government but not used by him – a constitutional complaint – was effective and should have been used in the circumstances of the present case.

72. In doing so, the Court must take into consideration the requirements of Article 5 § 4 of the Convention in relation to the applicant's complaint under this provision. As its wording indicates, it becomes operative immediately after arrest or detention and is applicable to "[e]veryone who is deprived of his liberty". The right to "take proceedings" thus arises at that stage, with the consequence that the denial of the right to institute such proceedings – subject to reasonable practical considerations – will raise an issue under Article 5 § 4 (see *Döner and Others v. Turkey*, no. 29994/02, § 68, 7 March 2017). That provision requires judicial review by a "court" that has the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 186-87, 1 June 2021; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 128, 15 December 2016; and *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III (extracts)).

73. With the above in mind, the Court observes that the Constitutional Court's jurisdiction is limited to reviewing the constitutionality of legal provisions and their compatibility with provisions of superior legal force (see *Elberte v. Latvia*, no. 61243/08, §§ 79-80, 13 January 2015, with further references). The Constitutional Court is empowered to repeal legal provisions which it finds unconstitutional, but not to adopt new legal procedures or to close an alleged legislative gap (see *Liepājnieks v. Latvia* (dec.), no. 37586/06, §§ 73 and 75, 2 November 2010; *Mihailovs v. Latvia*, no. 35939/10, § 157, 22 January 2013; and *Raudevs v. Latvia*, no. 24086/03, § 84, 17 December 2013).

74. The Court has already held that the Constitutional Court could not be considered an effective remedy in respect of complaints under Article 5 § 4 in various contexts as the Government had not demonstrated that the Constitutional Court could decide on the lawfulness of detention and to order release if the detention is unlawful (see, for example, *Mihailovs*, cited above, § 157, and *Čalovskis v. Latvia*, no. 22205/13, § 224, 24 July 2014). The Government have not provided any information which would allow the Court to reach a different conclusion in the present case. Moreover, the Court notes that the absence of a judicial review of the lawfulness of the applicant's detention - which did not exceed forty-eight hours - derived precisely from the fact that no such review was required by law. The Government have not submitted any examples from the case-law of the Constitutional Court that would allow the Court to find that the Constitutional Court might have been able through its case-law to be instrumental towards filling a legislative gap (see, for a similar conclusion, *Taraneks v. Latvia*, no. 3082/06, § 107, 2 December 2014, as regards the effectiveness of the Constitutional Court in respect of a complaint under Article 8 of the Convention). It follows that a constitutional complaint cannot be considered an effective remedy in respect of the applicant's complaint under Article 5 § 4 of the Convention that he was not afforded a judicial review of the lawfulness of his detention and, if

appropriate, obtain release. The Government did not suggest that there were any other avenues available to him but not used by him in that respect. The Court accordingly dismisses the Government's non-exhaustion objection.

75. Turning to the six-month time-limit under Article 35 § 1 of the Convention, the Court must examine whether the remedy used by the applicant – the general review mechanism for complaints – was an effective remedy with the effect that the last decision taken in its context should be considered as the starting point of that time-limit. The Court notes in this regard that the applicant complained about the investigator's actions to the supervising prosecutor in accordance with section 337 of the Criminal Procedure Law. His complaints were examined by that prosecutor and other higher-ranking prosecutors (see paragraphs 17-22 above). Whilst the prosecutors had the authority to examine such complaints under domestic law and did so, their review cannot be considered to constitute a review by a "court" of the "lawfulness" of detention under Article 5 § 4 of the Convention. It is the Court's established case-law that a prosecutorial review of the lawfulness of detention does not qualify as a judicial review by a "court" offering institutional and procedural guarantees, as required under Article 5 § 4 of the Convention (see, for a summary of the general principles, *Svipsta*, cited above, § 129, in particular sub-paragraphs (f), (g) and (h); and, for their application in relation to the prosecutorial review in Latvia, *Čalovskis*, cited above, § 222, and *Sharma v. Latvia*, no. 28026/05, § 101, 24 March 2016).

76. The Court therefore concludes that the prosecutorial review cannot be considered an effective remedy in respect of the applicant's complaint about the absence of a judicial review of the lawfulness of his detention. Accordingly, the final decision taken by the superior prosecutor on 28 May 2018 cannot be taken into consideration when calculating compliance with the six-month time-limit in the present case.

77. The Court therefore concludes that the applicant did not have any effective domestic remedies to complain about the judicial review of the "lawfulness" of his detention. The six-month time-limit should be calculated from the day of his release from the short-term detention facility on 19 February 2018. However, he did not lodge his application with the Court until 28 November 2018.

78. Accordingly, the Court upholds the Government's objection in relation to six-month time-limit and concludes that this complaint was lodged out of time. It must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention. This conclusion obviates the need to address the Government's third objection.

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

79. The applicant complained that he had not been brought promptly before a judge or other officer to decide on the lawfulness of his detention, as required by Article 5 § 3 of the Convention.

80. The Government raised several objections in that regard. They argued that this complaint had been submitted out of time. Alternatively, they submitted that domestic remedies had not been exhausted. The Court does not deem it necessary to address these objections as the complaint is in any event inadmissible.

81. The Court has previously held that if the arrested person is no longer "arrested or detained" but has been released, there is no obligation to bring him or her promptly before a judge (see *S., V. and A. v. Denmark*, cited above, § 129). The fact that a detained person is not charged or brought before a court does not in itself amount to a violation of the first part of Article 5 § 3. No violation of Article 5 § 3 can arise if the arrested person is released "promptly" before any judicial review of his detention would have been feasible (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 58, Series A no. 145-B). While any period in excess of four days is prima facie too long, in certain circumstances shorter periods can also be in breach of the promptness requirement (see *Magee and Others v. the United Kingdom*, nos. 26289/12 and 2 others, § 78, ECHR 2015, and the references therein). Thus, for example, in *İpek and Others v. Turkey* (nos. 17019/02 and 30070/02, §§ 36-37, 3 February 2009) and *Kandzhov v. Bulgaria* (no. 68294/01, §§ 66-67, 6 November 2008) the Court found that periods of three days and nine hours and three days and twenty-three hours respectively could not be considered "prompt".

82. As the Court has already established above, the applicant was arrested at 6.14 p.m. on 17 February 2018 and released at 4.50 p.m. on 19 February 2018. It follows that he was held in custody for approximately forty-six hours. That period of time does not exceed the forty-eight-hour time-limit for an arrest without a judicial warrant laid down in domestic law (see paragraph 29 above). The Court considers that the applicant's detention during this period was compatible with the requirement to be "brought promptly" as enshrined in Article 5 § 3 of the Convention and in the Court's case-law (see, *mutatis mutandis*, *Aquilina v. Malta* [GC], no. 25642/94, §§ 51-54, ECHR 1999-III, where the applicant's appearance before a magistrate two days following his arrest satisfied the requirement of promptness, but was in breach of Article 5 § 3 because the magistrate had had no power to order his release, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 48-51, ECHR 2006-X, where the applicant was brought before the judicial officer within forty-eight hours of his arrest).

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

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaint under Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been no violation of Article 5 § 1 of the Convention;

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Síofra O'Leary President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges O'Leary, Jelić and Guyomar is annexed to this judgment.

S.O.L.
V.S.

PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGES O'LEARY, JELIĆ AND GUYOMAR

I. INTRODUCTION

1. The applicant in the present case complained of a violation of Articles 5 §§ 1, 3 and 4 of the Convention in relation to his arrest in February 2018 on suspicion of bribery.

The Chamber has found, unanimously, that there has been no violation of Article 5 § 1, rejecting the applicant's arguments to the effects that the impugned arrest was unlawful, arbitrary and unnecessary.

As regards the alleged lack of promptness in bringing the applicant before a judge (Article 5 § 3) and the alleged absence of the required possibility of judicial review of his arrest (Article 5 § 4), the Chamber, by a majority in the latter regard, has rejected the complaints as inadmissible due to them being manifestly ill-founded in the first case and out of time in the second.

2. For the reasons explained below, we are unable, regretfully, to join our colleagues in rejecting the complaint in relation to Article 5 § 4 of the Convention due to a failure to respect what was, at the relevant time, the six-month rule.

Given the highly unusual nature of the applicant's case – involving as it has done domestic courts, the Court of Justice of the European Union (CJEU) and now this Court, with the criminal trial of the applicant still ongoing – we also consider it necessary to make some additional comments in relation to the complaint under Article 5 § 1 of the Convention.

3. The facts of the case are outlined in the Chamber judgment. When arrested on 17 February 2018 the applicant was serving as the Governor of the Central Bank of Latvia. He had been a member of the General Council of the European Central Bank (ECB) since Latvia's accession to the European Union in 2004 and a member of its Governing Council since Latvia joined the euro area in 2014. His arrest followed an investigation by the Latvian Anti-Corruption Office (KNAB). The applicant was released on 19 February 2018, forty-six hours after his arrest but the charges were maintained and his criminal trial commenced on 9 July 2019. The KNAB ordered a number of measures in his regard, including a prohibition of his performing his duties as Governor of the Central Bank of Latvia.

II. THE COMPLAINT UNDER ARTICLE 5 § 1 OF THE CONVENTION

4. The general principles relating to Article 5 § 1 of the Convention and the requirements relating to the reasonable suspicion, purpose and lawfulness required under sub-paragraph (c) of that provision are set out clearly in paragraphs 46 and 47 of the Chamber judgment. There is little to add thereto. The standard imposed by Article 5 § 1 (c) does not presuppose that the police

have sufficient evidence to bring charges at the time of arrest or while the applicant is in custody (see, for example, *Petkov and Profirov v. Bulgaria*, nos. 50027/08 and 50781/09, § 52, 24 June 2014). It is well-established that the facts which raise a suspicion need not be of the same level as those necessary to justify a conviction, or even the bringing of a charge (*Merabishvili v. Georgia* [GC], no. 72508/13, § 184, 28 November 2017). National authorities are under an obligation, however, to provide a sufficient factual basis justifying a person's initial detention (*Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, § 321, 22 December 2020).

5. As is clear from the Chamber judgment and the relevant judgments of the CJEU, the Court has handed down a decision in relation to Article 5 of the Convention against the background of:

(a) the applicant being charged in June 2018 on charges of bribery and money-laundering by the prosecutor, an indictment further supplemented in May 2019;

(b) a judgment by the CJEU in February 2019 in a direct action brought by the applicant and the ECB annulling the decision of the KNAB to the extent that it temporarily prohibited the applicant from performing his duties as Governor of the Central Bank of Latvia (Case C-202/18 and C-238/18 *Rimšēvičs and the ECB v. Republic of Latvia*, EU:C:2019:139);

(c) the applicant's criminal trial which is still pending before the District Court, Riga;

(d) the decision of the latter court in December 2019 to suspend that trial before the oral stage in order to ascertain, via a preliminary reference, the existence and scope of any immunity, pursuant to EU law, held by the applicant;

(e) the preliminary ruling of the CJEU in November 2021 in relation to the extent of and limits to the immunity enjoyed by a governor of a central bank of a (Euro) Member State (Case C-3/20 *Criminal Proceedings against AB and Others*, EU:C:2021:969); and

(f) the fact that from the moment he was charged with a criminal offence the applicant was entitled to the protection of Article 6 of the Convention and the rights of defence and right to a fair trial guaranteed thereunder.

As emphasised in paragraph 48 of the Chamber judgment questions relating to the fairness of the criminal proceedings still pending do not form part of the present case.

6. Two Grand Chamber judgments have been handed down by the CJEU in relation to the applicant's case. Never before has this Court had to determine an Article 5 § 1 (c) complaint in such circumstances.

In the 2019 annulment decision, the CJEU held that the Republic of Latvia had not established that relieving the applicant from his office as Governor of the Central Bank of Latvia "was based on sufficient evidence establishing that he had been guilty of serious misconduct, within the meaning of the second subparagraph of Article 14.2 of the Protocol on the Statute of the

European System of Central Banks (ESCB) and the ECB". At first sight the finding by the CJEU and the finding of no violation of Article 5 § 1 of the Convention might appear to conflict. However, as is clear from the annulment decision, the CJEU is not competent to rule on the criminal liability of an ECB governor and its role is not to interfere with preliminary criminal investigations conducted by competent prosecution and judicial authorities. Its role is limited to determining if a temporary prohibition on performance of ECB duties is justified by serious misconduct. As is clear from paragraphs 91 to 96 of the CJEU annulment ruling and from paragraph 52 of the Chamber judgment, the Latvian government appears to have failed to provide to the CJEU in the expedited direct action on immunity pending before the latter (see paragraphs 93 – 95 of the judgment in Case C-202/18 and C-238/18), material which it did provide to the Court when the latter was called to apply its established case-law on the existence of reasonable suspicion.

Furthermore, and more importantly, when the District Court of Riga suspended the criminal trial with a view to clarifying the nature, extent and effects of any immunity which might benefit the applicant, the CJEU provided a much more comprehensive answer in response to the questions posed by the trial court (see paragraphs 77 and 85 to 90 of the preliminary ruling in Case C-3/20).

7. This leads us to the fundamental basis on which we felt able to join the majority and find that there had been no violation of Article 5 § 1 of the Convention in the applicant's case, notwithstanding his continued reliance before this Court on the immunity which had been the subject of the two important CJEU rulings outlined above.

Having suspended the trial in December 2019 to await the preliminary ruling of the latter court, the applicant's trial was resumed in December 2021. The Court was not provided with the decision of the District Court of Riga in response to that preliminary ruling. We regret that the respondent State, already criticised by one European court for a lack of timely provision of evidence, may equally have deprived this Court of this important decision. We note, however, the terms of the CJEU's preliminary ruling, namely that it falls in the first place to the authority responsible for prosecution or to the competent criminal court to determine whether (EU) immunity from legal proceedings applied or not in a given case. Only in case of doubt were the national authorities ordered to request the opinion of the ECB.

Since the referring District Court resumed the criminal trial on receipt of the aforementioned preliminary ruling and did not seise the ECB, the Chamber has proceeded on the basis that the applicant did not benefit from the immunity sought as the acts the subject of the pending criminal proceedings did not relate to the performance of his functions as a member of the Governing Council of the ECB. Should this basis turn out to be incorrect, all interested parties, whether the applicant or the ECB, presumably have at their disposal other remedies.

III. THE COMPLAINT UNDER ARTICLE 5 § 4 OF THE CONVENTION

8. We consider it important to emphasise at the outset that the Chamber judgment reveals the existence of a systemic deficiency in Latvia, namely the absence of the judicial review required by Article 5 § 4 of the Convention. That provision requires judicial review by a "court" that has the competence to "decide" the "lawfulness" of the detention and to order release if the detention is unlawful.

9. The majority reject the Government's objection based on non-exhaustion – a constitutional complaint being considered an ineffective remedy - only to accept their objection relating to the failure to comply with what was then the six-month rule. For the reasons explained below, we consider the logic of the majority position somewhat problematic.

10. We do not contest that prosecutorial review could not be considered an effective remedy in respect of the applicant's complaint about the absence of a judicial review of the lawfulness of his detention. However, in our view, it is only in this case that the Court clearly establishes that there was no remedy open to the applicant to challenge the absence of the required Article 5 § 4 judicial review.

11. It appears to us that the majority conflate two different things – a remedy pursuant to Article 5 § 4 to decide the lawfulness of detention and order release if unlawful (which is implicitly found in this judgment to be lacking in Latvia) and a remedy to raise before the domestic courts this lacuna in Latvian law when it comes to Article 5 § 4 requirements. The majority judgment seems to proceed on the basis that since reliance on the constitutional remedy would not have led to the applicant's release it was not an effective remedy to be exhausted before complaining to this Court about the systemic deficiency which the judgment implicitly recognises.

12. Given the uncertainty as to the availability of remedies in Latvian constitutional law, we do not consider that the applicant knew or ought to have known in 2018 that he did not have any domestic remedies available to him to complain about the systemic absence in Latvia of judicial review of the lawfulness of his detention as required by Article 5 § 4 of the Convention. The close interrelationship between the requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period implies a consistent and comprehensive approach of the legal situation in which the applicant found himself. In the present case, we fear that the appreciations made successively by the majority concerning these two elements amount to an excessively formalistic and, accordingly, unfair outcome.