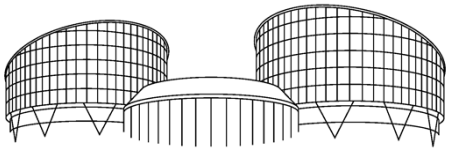

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF STRAUME v. LATVIA

(Application no. 59402/14)

JUDGMENT

Art 11 (+ Art 10) • Freedom of association • Domestic court failure to apply convention standards and acceptably assess employee sanctions, in response to a complaint by a trade union, imposed on its representative • Failure of domestic courts to take account of trade union element of complaint, whereby the very essence of its right to defend members' interests was being exercised • Exceptionally harsh repercussions on applicant and further actions directed at trade union members pressuring them to distance themselves from the Trade Union complaint
Art 6 § 1 (civil) • Failure to ensure rights to a public hearing and the public delivery of judgments in respect of civil proceedings brought by applicant

STRASBOURG

2 June 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 Straume v. Latvia,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Ivana Jelić,
Arnfinn Bårdsen,
Kateřina Šimáčková, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 59402/14) 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 Lithuanian national, Ms Aušra Straume ("the applicant"), on 25 August 2014;

the decision to give notice to the Latvian Government ("the Government") of the complaints concerning the freedom of expression, freedom of association and the right to a public hearing and pronouncement;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Transport Workers' Federation, the European Trade Union Confederation, the International Federation of Air Traffic Controllers' Associations, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 3 May 2022,

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

INTRODUCTION

1. The case concerns detriments imposed on the applicant, a chairperson of a trade union board, for having addressed to the State officials overseeing a State-owned company a letter about trade union grievances and concerns, and the domestic courts' decision to exclude the public from court hearings relating thereto. The main complaints are under Articles 6, 10 and 11 of the Convention.

THE FACTS

2. The applicant was born in 1978 and lives in Riga. The applicant was represented by Mr R. Arthur, a lawyer practising in Bristol, UK.

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

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

THE CIRCUMSTANCES OF THE CASE

A. The applicant's employment and employment record

5. In 2005 the applicant started working as an air traffic control officer (hereinafter "ATCO") for a State-owned joint stock company, *Latvijas Gaisa Satiksme* (hereinafter "LGS"), which is overseen by the Ministry of Transport. In 2010 she also undertook ATCO instructor duties.

6. On 3 May 2011 the applicant was presented with a revised job description, which she signed, adding a note that read: "I have acquainted myself [with the job description] but do not agree" (*Iepazinos, bet nepiekrītu*). The subject of the disagreement concerned the regulation of the allocation of seniority grades following longer periods of absence, such as maternity leave. The matter was discussed with the applicant's manager. The applicant signed the revised job description on 29 June 2012, after the matter had resurfaced during the internal investigation (see paragraph 21 below).

B. Trade Union activities and the letter of 2 March 2012

7. On 27 October 2011 the Latvian Air Traffic Controllers' Trade Union (hereinafter "the Trade Union"), was established and the applicant became the chairperson of its board. According to the Trade Union's Statute and the information entered in the Enterprise Register, the chairperson of the Trade Union board had the right to represent the Trade Union individually.

8. On 7 November 2011 the Trade Union sought clarification from the LGS board about a recent order concerning the ATCO instructors' work schedules with respect to their training duties. LGS responded that ATCO training was supposed to be carried out outside normal work shifts – it would be regarded as additional work and would be paid separately. In subsequent correspondence the Trade Union insisted that ATCO instructors' training work was not being recorded and that those ATCO instructors were hence not being paid for such work. It emphasised the negative impact of such a situation, including potentially negative effects on flight safety. This correspondence was signed by the applicant in her capacity as the chairperson of the Trade Union board.

9. On 14 February 2012 the Trade Union held a board meeting. The minutes of the meeting, which were signed by all three Trade Union board members, stated:

> "It has been decided to write a complaint in the name of the Trade Union to LGS's [sole] shareholder and to the Minister of Transport, as the board sees no other way of rectifying the working procedures of the instructors. In the view of the Trade Union board, the LGS board does not have the necessary knowledge and expertise to comprehend the problem of the poor organisation of the ATCO instructors' work and to take the appropriate decision to resolve the problem. The complaint should also address other relevant problematic issues."

10. The above-mentioned complaint, formulated in a letter dated 2 March 2012, was addressed to the Minister of Transport and the person representing the State as the sole shareholder of LGS. It was drawn up on the letterhead of the Trade Union; its text used formulations like "the Trade Union announces", "we, the air traffic control officers"; and it was signed by the applicant next to the words: "In the name of the Latvian Air Traffic Controllers' Trade Union, chairperson of the board".

11. The letter asserted that the LGS board did not comply with the requirements set out by the relevant laws, was infringing the legal rights of the LGS employees, and was mismanaging the company's funds. The letter then stated:

> "Even though the Trade Union has repeatedly attempted to find a constructive solution through negotiations, the situation has become unmanageable [*kļuvusi nevaldāma*] and seriously endangers both the quality of the provision of aeronavigation services [*aeronavigācijas pakalpojumu nodrošināšanas kvalitāti*] and LGS's ability to grow and compete in the international market."

The letter then recounted the history of unsuccessful negotiations and collective bargaining attempts, emphasising an alleged lack of cooperation and withholding of information on the part of the LGS board.

12. The letter continued by describing the problems regarding the ATCO training. The introductory part of this section read:

> "We also wish to draw your attention to other problematic issues that have not been resolved for a long time and could in the near future affect not only the sustainability of the enterprise, but also, unfortunately, flight safety in Latvian airspace. [ATCOs], and hence also the Trade Union, are very concerned in this regard and consider it to be their duty to inform higher State officials and authorities [of their concerns], so that the above-mentioned issue regarding a deterioration in flight safety and a lowering of the sustainability of the enterprise might be prevented."

13. The letter then relayed the information that LGS had ordered ATCO instructors to train ATCO trainees outside their scheduled working hours. This training time was not recorded and the ATCO instructors were not paid for such work. Aside from being contrary to the labour laws, this practice harmed morale, hampered possibilities to upgrade qualifications, negatively impacted the training process, and caused disappointment among ATCO trainees who had been forced (without any proper explanation) to take unpaid leave. That increased the risk that LGS would lose those employees. According to the letter, all the above-noted factors would affect flight safety in future.

14. The letter then addressed numerous other problems concerning the organisation of ATCOs' work, such as: discrimination with respect to the payment of bonuses (that is to say of all LGS's employees the ATCOs received the lowest bonuses); failure to pay monthly allowances that had been agreed upon; failure to include ATCOs in the "high-risk" employee category in the light of the continuous stress that they faced; failure to categorise

ATCOs working during the night time as night workers; a violation of the collective agreement by failing to insure ATCOs against the loss of their licences; failure to pay extra for carrying out the work of an absent colleague; and paying ATCOs only 75% of their agreed salary for two years following their acquisition of their permanent ATCO licences.

15. The letter next identified specific payments that were regarded as constituting the mismanagement of funds. It also stressed the fact that the ATCOs working for LGS were among the lowest paid in Europe and that owing to problems within LGS four very experienced ATCOs had resigned. This part of the letter included the following passages:

> "Everything we have mentioned in this letter points to a serious risk to the enterprise and to the aeronavigation sector in Latvia."

> "If the situation within the enterprise does not change, this trend [of resignations] will not only continue but will get worse. However, if the goal of the [LGS] board is to lead the enterprise to a state in which it is unable to ensure safe air traffic navigation services, thereby endangering the existence of the enterprise, this could be attained in the not so distant future."

16. In conclusion, the Trade Union noted that these issues were of societal importance and that the LGS employees were prepared to discuss them publicly and, if need be, to organise strike action and to appeal to international organisations. The Trade Union then called for the LGS board to be removed.

C. The reaction to the letter of 2 March 2012

17. On 9 March 2012 nineteen ATCOs, some of whom were not members of the Trade Union, wrote a letter to LGS distancing themselves from the Trade Union's letter of 2 March 2012. In the subsequent civil proceedings one of the signatories testified that they had been ordered to sign the letter of 9 March 2012 under the threat of suspension (see paragraph 31 below).

18. On 15 March 2012, in response to an enquiry made by LGS, the Civil Aviation Agency expressed concerns about the Trade Union's "extreme pronouncements" regarding flight security. It advised LGS to assess whether the ATCOs whose statements had "contained threats about lowering the level of flight security" had complied with their terms of employment. As to LGS's refusal to conclude agreements with ATCO instructors regarding their training duties, it noted that LGS was acting correctly, as it was "ensuring the allowed amount of monthly hours". The Trade Union had not raised the issues that were of concern to them through the proper channels, as the Civil Aviation Agency had received no reports of "breaches in ATCOs' employment".

19. The Trade Union members in written statements addressed to the Trade Union reported that on the following day the LGS board summoned all the ATCOs who were at work that day to attend a meeting concerning the letter of 2 March 2012. The chairperson of the LGS board, D.T., emphasised

that he had strong political support and asked everyone to sign a letter, addressed to him, certifying that ATCOs worked in compliance with the domestic and international legal instruments.

20. The Trade Union members also wrote statements of further meetings between the LGS board and the members of the Trade Union that were organised on 19, 20 and 22 March 2012. They submitted that D.T. had repeatedly emphasised that he had strong political support and asked the Trade Union members to sign statements attesting that they were ensuring that flight safety was maintained. It was indicated that signing them would be interpreted as compliance with the requirements of the post, whereas a refusal to sign would trigger an investigation and possibly suspension from duties. In addition, D.T. repeatedly asserted that the applicant was "inadequate", that it was not possible to communicate with her, and that she was not capable of leading the Trade Union. He suggested that the applicant be removed as the Trade Union representative and be replaced with a more "adequate" person.

21. On 23 March 2012 LGS commenced an internal investigation with the stated purpose of establishing whether the dissemination of the statements about the potential threats to flight safety had been lawful. During the investigation, the applicant's failure to sign the job description (see paragraph 6 above) was also reviewed. The applicant was suspended from her post for the period of the investigation. Her average salary was maintained, but she was prohibited from entering the premises of LGS.

22. On the same day, the Trade Union members gathered for a spontaneous meeting with the LGS board, requesting an explanation for the applicant's suspension and the fact that only one person was being held responsible for a letter that had been sent in the name of the Trade Union. According to written statements by the Trade Union members, D.T. responded that the applicant would merely need to provide some explanations, as she had been the one who had signed the letter. Additionally, her representing the Trade Union was senseless, and her goals did not correspond with those of the Trade Union's members. D.T. also warned against trying to obtain any help from "outside". All issues had to be resolved within LGS, and letters such as this only harmed the Trade Union's members.

23. On 27 March 2012 fifty-one ATCOs wrote a letter to D.T. expressing their support for the applicant. They requested that the applicant be reinstated in her post and called it unacceptable to confuse the applicant's Trade Union activities with her direct duties at work. On 15 June 2012 forty-seven ATCOs wrote a letter to the Prime Minister in which they affirmed the continuance of the problems highlighted in the Trade Union's letter of 2 March 2012. They also expressed their indignation about the retaliatory measures directed against the applicant.

24. On 30 March 2012 the Civil Aviation Agency ordered the applicant to undergo an evaluation of her neuropsychological state and on 14 April 2012 ordered an evaluation of her mental health. Both examinations

confirmed that the applicant was healthy. On 28 April 2012 LGS lodged a complaint with the Security Police – the State's counterintelligence and internal security service – concerning "the potential threat to flight safety in view of the Trade Union's complaint". On 18 June 2012, the Security Police responded that the conflict in question constituted a labour dispute and that there were therefore no grounds to examine it under the Criminal Procedure Law.

25. On 11 May 2012 the internal investigation was completed, with the investigation commission suggesting that the applicant be dismissed. The LGS board revoked the applicant's salary and asked the Trade Union to agree to the applicant's dismissal; the Trade Union refused.

26. In June 2012 the Latvian Federation of Aviation Trade Unions organised talks aimed at achieving a friendly settlement. LGS insisted that the applicant or the Trade Union write a letter to the Ministry of Transport stating that the threats outlined in the letter of 2 March 2012 no longer existed. The applicant and the Latvian Federation of Aviation Trade Unions considered this condition unacceptable.

27. On 26 June 2012, following the expiry of the maximum period for which she could be suspended, LGS reinstated the applicant in her position while simultaneously ordering her to "stand idle" – that is to say to be present at the workplace every day without carrying out her direct employment duties. During that period the applicant was to receive her average wage. However, from 14 December 2012 the applicant was again refused entry to the premises of LGS and from 11 March 2013 the payment of her salary was terminated.

28. Over this time period LGS management demanded explanations from colleagues of the applicant who had congratulated her on her birthday or had otherwise manifested a favourable attitude towards her (for example, by giving her a lift or taking a photograph of themselves together), as confirmed by witness statements during the civil proceedings.

D. Civil proceedings

1. First-instance proceedings

29. On 23 April 2012 the applicant brought civil proceedings against LGS, challenging her suspension and seeking reinstatement. In a subsequent addendum she lodged additional claims regarding, *inter alia*, the order for her to stand idle, the discrimination against her on the basis of her trade union activities, and the interference in the work of the Trade Union.

30. At the first hearing LGS lodged a counterclaim seeking the termination of the applicant's employment. That hearing was adjourned. At the next hearing LGS requested that the case be examined in closed proceedings, as the case called for an assessment of information about the security of Latvian airspace, and misinterpreted facts had already reached the

public, fuelling undesirable speculation about threats to flight safety. The applicant's representative objected, as the case did not concern any classified information. The court granted LGS's request on the grounds that this would allow for a "more efficient and successful administration of justice".

31. During the proceedings several ATCO instructors testified that they had to carry out their training duties in their free time (that is to say outside their work shifts). They spoke of the fatigue that this arrangement caused to them and to the ATCO trainees. They also testified about the pressure placed on them by the LGS management to sign statements attesting that there existed no threat to flight safety, and to distance themselves from the Trade Union's letter of 2 March 2012. One of the signatories of the letter of 9 March 2012 testified that they had been told to sign that letter under the threat of suspension. She agreed with the text of that letter in so far as it stated that ATCOs were not endangering flight safety. The applicant's superiors at LGS and a witness from the Civil Aviation Agency testified that the applicant was a highly qualified employee and that they had no information about her committing any infringements at work.

32. On 11 March 2013 the Riga City Kurzeme District Court dismissed all the applicant's claims and upheld LGS's counterclaim seeking the termination of her employment. The summary judgment was pronounced in a closed hearing; the full text was made available to the parties on 21 March 2013.

33. The court found that the applicant's suspension and the requirement that she stand idle had been justified under section 34 of the Law on Aviation (see paragraph 51 below). With her statements about the risks to flight safety – which had been inextricably linked with her performance of her ATCO duties – the applicant had created an emergency requiring extraordinary measures. The applicant had not reported threats to flight security to the relevant institutions and had not used the opportunity, offered during the friendly-settlement negotiations, to "retract her conviction" about a threat to flight safety. A professionally substantiated opinion had to be distinguished from an "ideological conviction", which the applicant had expressed merely for the sake of it (*pārliecības paušana pārliecības dēļ*), and it was inappropriate to invoke human rights in this instance. The applicant's conduct could have caused the employer to be concerned that she might be unpredictable in the performance of her professional duties.

34. As regards the applicant's discrimination claim, the court found that a suspension based on the performance of employment duties could not be perceived as constituting a difference in treatment. The circumstances meriting the applicant's suspension pertained only to her. The applicant had submitted no evidence that LGS had interfered with the exercise of her trade union rights. The applicant's suspension had had no impact on her ability to represent employees. The allegation that LGS had interfered with the work

of the Trade Union could not be assessed, as the applicant's claim had been lodged only in the name of the applicant.

35. LGS's counterclaim seeking the termination of the applicant's employment was based on the assertion that she, when performing her work, had acted unlawfully and had thereby lost the employer's trust (section 101(1)(2) of the Labour Law – see paragraph 48 below). The court considered that the applicant had indeed acted unlawfully in two respects. Firstly, she had performed her employment duties without having accepted the revised job description. By adding a note expressing her disagreement with the revised job description (see paragraph 6 above) the applicant had indicated her intention not to comply with the normative acts regulating air traffic. Accordingly, the applicant had been unpredictable in her function as an ATCO, and it had been impossible to foresee whether she might significantly endanger flight safety. For that reason, the applicant had been prohibited, under section 34(1)(2) of the Law on Aviation, from carrying out her functions (see paragraph 51 below).

36. Secondly, the applicant had acted unlawfully by knowingly disseminating untruthful information about her employer. It could not be established that the letter of 2 March 2012 had been based on a decision by the Trade Union's General Assembly or that it reflected the majority opinion of its members. Some ATCOs had distanced themselves from the letter (see paragraph 17 above), and the other board members had not authorised the applicant to sign Trade Union letters individually. Referring to three subsequent Trade Union letters (including the letter to the Prime Minister expressing support for the applicant (see paragraph 23 above) and the letter refusing consent to the applicant's dismissal (see paragraph 21 above)), the court concluded that Trade Union's letters were usually signed by at least two board members or by a large number of its members. It followed that in the letter of 2 March 2012 the applicant had expressed her personal opinions and had been acting in her capacity as an ATCO, instead of in her capacity as the Trade Union representative.

37. As to the truthfulness of the disseminated information, the court considered that the applicant had made allegations about threats to flight safety. Referring to testimony given by LGS employees asserting that there no danger was posed to flight safety, written statements from ATCOs that they were ensuring flight safety, and documents from the Civil Aviation Agency and other evidence attesting, in general terms, that aeronavigation was safe, the court concluded that the applicant's allegations had not been confirmed. The witness testimony concerning the organisation of working time (see paragraph 31 above) was not mentioned in the judgment.

38. The court furthermore noted that the applicant had "made serious threats with respect to the quality of the performance of her direct employment duties". Moreover, contrary to the procedure prescribed by law, the applicant had not reported the existence of any risks. According to the

assertion that the applicant had made in her letter, ATCOs had acted in breach of section 34(2) of the Law on Aviation by performing their duties while tired and without reporting their tired state to their management. If the applicant considered that there had been threats to flight safety, she had been duty bound to stop performing her employment duties. Instead, for the purpose of creating a scandal, the applicant had disseminated an "untruthful opinion", thereby harming her employer's interests and damaging its reputation. The applicant had been loyal to her profession but not to the enterprise that she had worked for. The fact that the applicant had written the complaint to the Ministry of Transport, without first discussing the issues in question with her employer, indicated that the applicant had been merely interested in discrediting LGS. The applicant had knowingly disseminated to third parties untruthful information about threats to flight safety with the goal of securing socio-economic benefits for herself. Given those circumstances, the employer could justifiably have lost its trust in the applicant.

2. Appeal proceedings

39. On 8 April 2013 the applicant lodged an appeal with the Riga Regional Court. The Free Trade Union Confederation of Latvia requested that the case be examined in a public hearing. LGS requested a closed hearing on the grounds that the case concerned rules governing the security of airspace and the possible violations of those rules. The appellate court granted LGS's request, referring to section 11(3)(1) of the Civil Procedure Law, which allows the exclusion of the public from a courtroom for the protection of State or commercial secrets. During the appeal hearing a picket organised by the Latvian Federation of Aviation Trade Unions was held outside the courthouse with the participation of members of the Free Trade Union Confederation of Latvia and the Lithuanian trade union *Solidarumas*.

40. In its judgment of 20 June 2013, the operative part of which was pronounced publicly, the Riga Regional Court endorsed the findings and the reasoning of the first-instance court. It added that there was no doubt that the applicant had signed the letter of 2 March 2012 herself; hence, her objection to the fact that engaging in a trade union activity had been deemed to constitute a personal action on her part was unfounded. It would have been unacceptable to prevent the employer from taking measures against the applicant merely on the grounds that the letter stated that it had been written in the name of the Trade Union. Employees' material or social guarantees could not be invoked as grounds for not complying with direct employment duties.

41. The appeal court considered it immaterial that the ATCOs who had distanced themselves from the letter of 2 March 2012 had not been members of the Trade Union (see paragraph 17 above). Their letter of 9 March 2012 had confirmed that ATCOs' professional training and experience ensured the necessary level of flight safety. The applicant's argument that ATCOs had

been intimidated into signing that letter under the threat of suspension was unfounded, as the witness had testified that she had never endangered air traffic (see paragraph 31 above). No evidence had been adduced confirming that flight security was endangered or that the situation in LGS was out of control. The appeal court upheld the first-instance court's finding that the applicant had "made serious threats with respect to the quality of the performance of her direct employment duties" and had disseminated an "untruthful opinion" with the goal of destabilising LGS and securing socio-economic benefits for herself.

3. Appeal on points of law proceedings

42. On 5 August 2013 the applicant lodged an appeal on points of law. On 28 February 2014, after examining the case in written proceedings, the Supreme Court upheld the judgment of the Riga Regional Court. With respect to the applicant's argument that her statements had not contained any threats, the Supreme Court responded that the question of whether or not the applicant had made a threat could not be understood merely as her having threatened not to fulfil duties with regard to flight safety but also as her having made statements that the institution carrying out such tasks was not capable of functioning and, hence, that Latvian airspace was not safe.

E. Other aspects relevant to the dispute

43. On 10 January 2012 an internal audit of LGS identified nine areas of non-compliance with regulations in the field of air traffic control, including the training of ATCOs. It also concluded that the internal bodies of LGS had disagreements regarding their respective areas of responsibility, and that the applicable legal instruments and the internal mechanism for resolving such differences were not functioning.

44. On 24 May 2012 the European Transport Workers' Federation wrote to the Prime Minister that the actions of LGS had contravened EU Directive 2003/42/EC on occurrence reporting in civil aviation, as well as the Law on Trade Unions and the Labour Law. It requested the Prime Minister to halt the disciplinary investigation against the applicant and to revoke her suspension. On 11 April 2013 it wrote to the LGS board that the treatment of the applicant, as well as that of the other employees who had been intimidated into signing various statements, had been incompatible with trade union freedoms and autonomy and had contravened International Labour Organisation (ILO) Convention No. 135. On 22 April 2013 the Latvian Federation of Aviation Trade Unions expressed similar concerns to the LGS board.

45. On 17 January 2013 the International Federation of Air Traffic Controllers' Associations wrote a letter to the Prime Minister, the Minister of Transport, the Civil Aviation Agency, and the LGS board expressing serious

concerns about compliance with the principles of a "just culture" in the light of the treatment of individual ATCOs who had raised safety concerns. On 14 March 2014 the International Transport Workers' Federation and the European Transport Workers' Federation wrote a joint letter to the President of Latvia expressing grave concerns about the ruling of the first-instance court and, notably, its anti-union bias. They emphasised the fact that the complaint of 2 March 2012 had been sent by the applicant as the chairperson of the board of, and on behalf of, the Trade Union. It had raised problematic issues within LGS relating to social dialogue and the main issues highlighted had concerned training, rest times and fatigue. The ruling contradicted the principles of freedom of association and the legal protection of trade union representatives, as well as ILO Conventions No. 87, 98, and 135 and EU Directive 2003/42/EC.

46. On 1 February 2013 the applicant was re-elected as the chairperson of the Trade Union board.

47. On 27 June 2014 the State Labour Inspectorate concluded that LGS had committed an administrative offence by not complying with the Labour Law in respect of overtime work – *inter alia*, by exceeding the lawful limits for ATCO overtime work and by failing to properly record employees' working hours.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

48. Section 101(1)(2) of the Labour Law authorises an employer to dismiss an employee if he or she, when carrying out his or her work, has acted unlawfully and has thereby lost the employer's trust.

49. Section 110(1) of the Labour Law provides that an employer cannot dismiss an employee who is a member of a trade union without the trade union's prior agreement. Section 110(4) further specifies that if the trade union does not agree with the dismissal, the employer may, within one month of receiving the trade union's response, bring proceedings in a court seeking termination.

50. Section 31(1) of the Labour Law provides for a prescription period of two years for all claims emanating from labour relationships, unless otherwise provided for by law. Sections 34, 60 and 95(2) specify a three-month prescription period with respect to various discrimination claims.

51. Section 34(1)(2) of the Law on Aviation, as worded at the relevant time, provided that a civil aviation specialist was prohibited from performing his or her functions if he or she was sick, tired or could not perform his or her functions because of other circumstances, in order to guarantee flight safety or civil aviation security.

52. Section 44 of the Law on Associations and Foundations, which at the relevant time also regulated the representation of the trade unions, provides that members of the board represent the association jointly, unless otherwise provided in the Statute.

53. Section 11(3)(1) of the Civil Procedure Law provides that on the basis of a reasoned request by a party to a case or at the discretion of the court, a hearing (or a part thereof) may be closed to the public if this is necessary to protect a State secret or a commercial secret. Section 11(3)(5) provides that a closed hearing may also be held in the interests of the administration of justice. Section 11(8) provides that in cases that have been examined in closed hearings the operative part of the judgment must be pronounced publicly.

54. With respect to cases that have been examined in closed hearings, section 28^2(2) of the Law on the Judiciary provides that the introductory and the operative parts of the judgment that have been pronounced publicly must be available to the public. Under sections 28^4(1) and 28^4(2), the case file in such cases shall be available only to the parties to the case and other specifically listed persons for twenty years; after this period has elapsed the case file will become available as "restricted information".

II. INTERNATIONAL LAW AND MATERIALS

55. Article 1 of ILO Convention No. 98 on the Application of the Principles of the Right to Organise and to Bargain Collectively (adopted in 1949 and ratified by Latvia on 27 January 1992), in its relevant part, reads:

> "1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> 2. Such protection shall apply more particularly in respect of acts calculated to...
>
> (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."

56. Article 1 of ILO Convention No. 135 on Worker's Representatives (adopted in 1971 and ratified by Latvia on 27 January 1992) reads:

> "Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements."

57. A report by the ILO Committee of Experts on the Application of Conventions and Recommendations entitled "Giving globalisation a human face" (issued during the 101st session of the International Labour Conference, 2012) reads:

> "59. ... The ILO supervisory bodies have since unceasingly stressed the interdependence between civil liberties and trade union rights, emphasizing that a truly free and independent trade union movement can only develop in a climate free from

violence, pressure and threats of any kind against the leaders and members of such organizations. ...

173. Under the terms of the first two Articles of Convention No. 98, States are under the obligation to take specific measures to ensure both: (i) the adequate protection of workers against any acts of anti-union discrimination both at the time of taking up employment and in the course of employment, including at the time of the termination of the employment relationship, and covering 'acts of anti-union discrimination in respect of their employment' (dismissal, transfer, demotion and other prejudicial acts); and (ii) adequate protection for workers' and employers' organizations against 'any acts of interference by each other' in their establishment, functioning or administration."

58. An ILO document entitled "Freedom of Association: compilation of decisions of the Committee on Freedom of Association, International Labour Office" (Geneva, 6th edition, 2018), reads:

"586. Workers and their organizations should have the right to elect their representatives in full freedom and the latter should have the right to put forward claims on their behalf. ...

719. Employers' and workers' organizations must be allowed to conduct their activities in a climate that is free from pressure, intimidation, harassment, threats or efforts to discredit them or their leaders...

720. Professional organizations of workers and employers should under no circumstances be subjected to retaliatory measures for having exercised their rights arising from ILO instruments on freedom of association...

731. The exercise of trade union rights might at times entail criticisms of the authorities of public employer institutions and/or of socio-economic conditions of concern to trade unions and their members. ...

737. Denouncing to the competent authorities insufficient occupational safety and health measures is in fact a legitimate trade union activity and a workers' right which should be guaranteed by law. ...

1075. No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment. ...

1078. Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts. ...

1131. Especially at the initial stages of unionization in a workplace, dismissal of trade union representatives might fatally compromise incipient attempts at exercising the right to organize, as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply join the union. ...

1138. The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned. ...

1175. If the judicial authority – or an independent competent body – determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION READ IN THE LIGHT OF ARTICLE 10

59. Invoking Articles 6, 8, 10, 11 and 14 of the Convention, the applicant complained of the negative consequences that she had suffered owing to the letter she had addressed to the State officials overseeing a State-owned company in her capacity as the chairperson of the Trade Union board. In her subsequent observations she argued that this complaint should be examined under Article 11, read in the light of Article 10. Those provisions read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. Admissibility

60. The Government submitted that when signing the letter, the applicant had acted in a personal capacity and that Article 11 was therefore not

applicable. The applicant had also not clarified how her status as a trade union member and leader had been affected – she had continued to be the chairperson of the Trade Union and had been allowed to participate in its meetings. Therefore, she could not claim to be the victim of a violation of Article 11. In the alternative, the Government argued that the applicant had not exhausted the domestic remedies, as she had not raised her claim (at least in substance) before the domestic courts, the civil proceedings having concerned her dismissal. She had argued that her suspension had affected the work of the Trade Union; however, she had failed to substantiate that claim. She had also failed to involve the Trade Union in the proceedings in a third-party capacity or to bring a claim against LGS on behalf of the Trade Union itself. Accordingly, the complaint before the Court could only be examined under Article 10.

61. The applicant disputed the Government's position. Her argument, domestically and before the Court, had been that she had been subjected to detriments by reason of her legitimate trade union activity in signing the letter. That had been an official Trade Union letter and it had concerned the terms and conditions of employment of the Trade Union's members. It had been written as part of the process of collective bargaining. Article 11 guarded not only against interference with the right to participate in trade union activities but also against being penalised for participating in such activities.

62. The Court notes that the domestic proceedings, to which the applicant was a party, concerned her suspension, dismissal and other detriments imposed on her for having written a letter in her capacity – as argued by the applicant – as a representative of the Trade Union. While the Government considered that she had written the letter in her private capacity, they did not dispute the fact that the applicant's suspension and dismissal had been in reaction to the letter she had signed. Thus, the domestic proceedings raised in substance the same question, which is the complaint that the applicant has now brought before this Court relying on Articles 10 and 11 of the Convention. It follows that the applicant can claim to be the victim of the alleged violations of the Convention. Accordingly, the Court dismisses the Government's objections concerning victim status and non-exhaustion. The remainder of the Government's arguments, which pertain to the question whether indeed the applicant acted in her capacity of a Trade Union representative and, therefore, the existence of an interference with Article 11 rights rather than with Article 10 rights, are closely related to the merits of the case and must therefore be joined to the merits.

63. The Court also notes that the above complaint 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 applicant

64. The applicant argued that after sending the Trade Union letter she had been subjected to a wave of detriments that had included: a disciplinary investigation; suspension from work; being banned from the workplace; unnecessary medical checks and neuropsychological assessments; the revocation of her pay (during her suspension period); being obliged to perform tasks unrelated to her employment duties; being obliged to stand idle; the compromising of her status as chairperson of the Trade Union board; the intimidation of those of her colleagues who had not distanced themselves from her; and – lastly – her dismissal. While those detriments had also interfered with her freedom of expression (as guaranteed under Article 10), she was entitled to even greater protection under Article 11, given that she had been acting as the Trade Union's representative. Unlike in the case of *Palomo Sánchez and Others v. Spain* ([GC], nos. 28955/06 and 3 others, ECHR 2011) – where, owing to the nature of the content of the published material, the Court had examined the case under Article 10, read in the light of Article 11 – in the instant case the letter addressed socio-economic demands made by the Trade Union in the interests of its members. Therefore, the present case had to be regarded as primarily falling within the scope of Article 11, read in the light of Article 10.

65. The applicant emphasised that she had signed the letter in her capacity as the chairperson of the Trade Union board, in pursuit of the protection of the interests of the Trade Union's members. The domestic courts had had no jurisdiction to question her authority to sign the letter in the absence of a challenge to it by the Trade Union. Her authority had emanated from the Trade Union's rules, had been confirmed by the subsequent acquiescence and support from the Trade Union's members, and had been strengthened even further by the prior authorisation by the Trade Union board (see paragraph 9 above). Additionally, the contents of the letter had been typical of trade union correspondence raising grievances and concerns with an employer and pointing to perceived risks and the potential adverse consequences thereof. The domestic courts' findings that the applicant had acted in a personal capacity were incompatible with the freedom of trade unions to draw up their own rules and administer their own affairs.

66. The interference had not been prescribed by law. A reasonable interpretation of section 34(1)(2) of the Law on Aviation would not have rendered it applicable to the note that the applicant had appended to her revised job description, as that provision had only concerned a lack of physical capability to perform work (see paragraph 51 above). In any case, the applicant's manager had given her a clear permission to express her disagreement, and the employer had permitted her to continue performing her ATCO functions. The courts' finding that the applicant had thereby expressed

her intention not to comply with the normative acts regulating air traffic had been absurd and unsupported by evidence. Such grounds for the applicant's dismissal constituted a false construct, which had been created to conceal the real reason for the reprisals – her trade union activity.

67. With respect to the purportedly legitimate aim of the interference, no independent and impartial tribunal could have concluded that an ATCO appending such a note to his or her job description could have conceivably given rise to a threat to public safety; nor had any party argued that the applicant signing the letter had posed a risk to flight safety. Indeed, since overtime work had persisted after the applicant's dismissal, public safety had remained unprotected in that regard.

68. In the Trade Union letter the applicant had noted that ATCOs were working long hours of unrecorded overtime, which was likely to make them fatigued. The applicant had expressed the view that flight safety was thereby threatened. This allegation had then been unjustifiably magnified by the Supreme Court into the extraordinary allegation that LGS was not capable of functioning and hence that Latvian airspace was not safe. However, it was a *fact* that the ATCOs undertaking the instruction of ATCO trainees had done so outside their normal working shifts and that this overtime work had not been recorded or paid for (as, *inter alia*, found by the State Labour Inspectorate – see paragraph 47 above). It had, however, been a *value judgment* as to whether that fact, if not resolved, would threaten flight safety. The applicant had clearly been an expert qualified to make such an assessment, as she had undertaken ATCO training and had worked with and represented other instructors who had delivered such training. Hence, this value judgment had clearly had a sufficient factual basis.

69. While the tone and language of the letter had been forceful, the statements had not been immoderate, inflammatory, grossly insulting or offensive. Such forceful expressions were not unusual within the context of industrial relations between employers and trade unions. Insults could justify sanctions; however, criticism – even if it included strong and intemperate remarks – was protected. Where criticism emanated from a trade union representative advancing a claim for better terms and conditions, the categories of persons with respect to whom the acceptable level of criticism was wider had to be extended to the employing entity and its senior management.

70. The Government's argument about the damage that might be suffered as a result of the disclosure of the contents of the letter had concerned the potential consequences of disrupted air traffic. Neither the note to the revised job description, nor the letter had been capable of producing such effects. The Government's case also rested on the dissemination of the letter "outside the premises of the company", yet the letter had only been sent to the Minister of Transport (as the Ministry had owned 100% of the shares in LGS) and to its representative (who had held those shares on the Ministry's behalf). In fact,

this had been an internal letter addressed by the Trade Union to the management of the employer.

71. Lastly, the detriments imposed on the applicant – particularly her suspension, "idle standing" and dismissal – had constituted very heavy sanctions. Even the mere threat of dismissal constituted a serious prejudice in employment that struck at the very core of the freedom of association. Such sanctions could have a chilling effect on legitimate trade union activity. Furthermore, as LGS was the sole employer of civilian ATCOs in Latvia, for the applicant the dismissal had resulted in the loss of her career, in Latvia, with material consequences for her entire family.

2. The Government

72. The question of whether the letter had reflected the position of the Trade Union had been examined before the domestic courts, which had concluded that the letter had expressed the applicant's personal opinion. While the questions raised in the letter had been touched upon in discussions between the Trade Union's members, they had not been informed of the exact content and expressions used in the letter, and had not supported the statements about the threats to the flight security. Similarly, as in *Palomo Sanchez and Others* (cited above), the restrictions imposed on the applicant had not been directed against her as a trade union representative but as an ATCO instructor.

73. The applicant's suspension had been based on section 34(1)(2) of the Law on Aviation and her dismissal had been based on section 101(1)(2) of the Labour Law (see paragraphs 51 and 48 above). The applicant had acted unlawfully as she had: 1) appended a dissenting note to her revised job description and 2) included in the letter of 2 March 2012 untrue statements regarding the flight safety. Accordingly, the restrictions had been based on law.

74. The legitimate aim of the restrictions had been the protection of public safety and the rights of others. Given the nature and tone and the unambiguous statements about allegedly imminent dangers to flight safety, LGS had had a duty to react and initiate the required follow-up measures to verify the alleged dangers and to prevent them.

75. The case raised the complex issue of the freedom of expression of employees regarding conditions of work in a State-owned company that fulfilled an important State function and was critical to its infrastructure. The specific nature of those services required that the most careful attention be paid to the kind of information and allegations that were disseminated to third persons, as unverified or unsubstantiated allegations could give rise to extensive harm. Among professionals, the limits of permissible expressions could be broader; however, with respect to third persons who did not deal with flight safety on a daily basis, the use of "forceful" expressions could give rise to unintended and potentially harmful reactions.

76. The letter had in very strong terms referred to allegedly imminent threats to the safety of air traffic without there being sufficient factual basis. Institutions had carried out inspections and had not found that any threats to flight safety existed. There was also a difference between a value judgment made by one person and a commonly held opinion, or at least a majority opinion. The applicant had been at liberty to assert that she was suffering from fatigue owing to her long working hours, and this was presumably the reason why she had refused to take on additional working hours as an instructor. However, it was doubtful that when writing the letter the applicant had expressed an opinion agreed between all ATCO instructors.

77. Due to their specific working environment, ATCOs were bound by the duty of loyalty that is applicable in the public sector. They were required to evaluate their own psycho-emotional state and ability to perform their respective tasks and were obliged to withdraw from their duties in the event of any doubt. LGS's reaction constituted standard procedure whenever doubts about an ATCO's ability to perform his or her duty arose. The fact that the applicant was a trade union leader could not exempt her from the necessary assessments that an employee would ordinarily face after making an allegation that the company's ability to provide the services was threatened owing to overwork and fatigue.

78. While the letter had contained some elements that could be characterised as legitimate socio-economic demands on the part of the Trade Union, the present case revolved around specific and forceful statements made by the applicant concerning the flight safety (a strictly regulated area). As in the case of *Szima v. Hungary* (no. 29723/11, 9 October 2012), a distinction had to be drawn between statements made with regard to legitimate trade union interests and those not related to trade union interests. The case had to be analysed in the light of the principles developed in *Guja v. Moldova* ([GC], no. 14277/04, ECHR 2008). Balancing the authenticity of the disseminated information against any damage it's dissemination might have caused had been at the core of the dispute. The applicant had written the letter with the goal of obtaining socio-economic benefits and destabilising the LGS board.

3. The third-party interveners

(a) The European Transport Workers' Federation

79. The European Transport Workers' Federation emphasised that employers frequently sought to penalise workers by claiming that activities carried out in the name of a trade union were in fact carried out in a personal capacity. That approach had a chilling effect on the willingness of workers to articulate the interests of their colleagues through their union. It was the trade union in question that had to be the arbiter of whether what was done by a worker was done on the authority of that union. Freedom of association

encompassed the right of trade unions to organise their administration and activities without any interference by public authorities.

80. Nothing could have a more chilling effect on trade union organisation at a workplace than the threat of the dismissal of that union's elected representatives. One of the fundamental principles of freedom of association was that union representatives should enjoy adequate protection against all acts of anti-union discrimination in order to be able to perform their union duties completely independently, in accordance with the mandate given to them by their members.

(b) The European Trade Union Confederation

81. The European Trade Union Confederation stressed that the instant case was of fundamental importance for the protection of trade union rights, and in particular for the activities of trade union officials. The latter had to be effectively protected against harassment, dismissal and other forms of discrimination, as otherwise trade unions would be deprived of a substantial means of defending, protecting and furthering workers' rights and interests. That would be even more the case in respect of trade union officials who were furthering the public interest by trying to secure the implementation of standards aimed at providing safe air traffic control services. Failure to observe safety and health regulations and limitations on the number of working hours could have a negative impact not only on workers' health but also a potentially dangerous impact on the quality of work to be performed. In relation to work, such as air traffic control, that had a direct impact on the life and health of third persons, any activity on the part of the Trade Union was also aimed at contributing to public safety.

82. A distinction had to be drawn between an "employee expression" and a "trade union expression" in respect of professional and employment-related matters. A trade union expression warranted a higher degree of protection, and the Court's jurisprudence in respect of media freedom had to be applied also to trade unions, given their role as "watchdogs" for workers' interests. In the instant case, priority had to be given to the examination of the case in the light of the trade union rights guaranteed by Article 11, their level of protection being strengthened by the right to freedom of expression enshrined in Article 10.

83. By no means could an activity undertaken by a trade union official (or even more so, a chairperson) on behalf of his or her union be attributed to that single person if he or she at the same time happened to be a worker at the enterprise concerned. If such an activity was followed by reprisals, those measures were discriminatory and directly interfered with the rights guaranteed under Article 11. Anti-union discrimination, which included the dismissal of workers on the grounds of their trade union activities, constituted one of the most serious violations of freedom of association, as it could jeopardise the very existence of trade unions. The violation became even

more serious, if such a dismissal had been preceded by a long series of other prejudicial acts (such as an internal investigation, a complaint with the Security Police, a suspension), and deprived the person in question of any possibility of enjoying a professional occupation (for example, due to being the only workplace in the country for the specific occupation).

84. Employers often tried to influence trade union activities not only by discriminating against individual trade union members or officials but also in relation to the organisation of trade unions' internal affairs. It was not up to the employer to decide who should act on behalf of the trade union; that was unquestionably the prerogative of the union and its internal administration. The right to freedom of association would also be violated if the employer organised meetings aimed at discrediting trade union activities, compelled workers to sign letters against a trade union, particularly under the threat of suspension, or demanded that certain trade union officials be replaced.

(c) The International Federation of Air Traffic Controllers' Associations

85. The International Federation of Air Traffic Controllers' Associations expressed concerns about attempts to penalise office holders in professional associations and trade unions for fulfilling the functions of their respective offices. Acts of anti-union discrimination were often disguised as criticism of a worker for carrying out his or her employment duties.

86. Air traffic management was a specific working environment where the interests of safety were paramount. Any conflicts between management and staff contained elements that related to "safety critical" aspects. In a "safety critical" environment, it was of absolute importance that any shortcomings, irregularities, flaws, and potential safety risks could be reported at any time, both by individuals and by their representative organisations. Therefore, it was of great importance that air traffic management, civil aviation authorities, and staff promoted and created a working atmosphere that fostered the above-noted conditions. The reporting of safety issues had to be handled within a "just culture" atmosphere before any labour laws were applied. The right to report should not be denied without any proper motivation.

87. The structural reporting of overtime was a safety issue. Management and civil aviation agencies had to be open to receiving critical information from staff. It went without saying that government, judicial authorities, and aeronavigation service providers should not hinder the possibility for individuals, staff associations and unions to report safety issues. Speaking up out of loyalty to the profession and a concern for safety was never a sign of lack of loyalty to an aeronavigation service provider.

88. Air traffic management authorities had an above-average interest in respecting human rights in labour relations. Labour relations should not be used in a way that could diminish the reporting culture at a professional level.

4. The Court

(a) The applicable provision

89. In the present case, the question of freedom of expression is closely related to that of freedom of association within a trade union context. The protection of personal opinions, as secured by Article 10, is one of the objectives of freedom of assembly and association, as enshrined in Article 11 (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202; *Palomo Sánchez and Others*, § 52, cited above; *Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, no. 11828/08, § 51, 25 September 2012; and *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, §§ 99-101, ECHR 2011 (extracts)).

90. The Court observes that the main focus of the applicant's complaint is that she was penalised for carrying out a trade union activity and that the domestic courts arbitrarily denied the trade union element of the dispute. While the Court will deal with the question of whether the negative consequences suffered by the applicant were indeed the result of her acting as a Trade Union representative later (see paragraph 95 below), the Court considers that in view of the circumstances of the case and the nature of the applicant's complaint, it should be examined under Article 11, interpreted in the light of Article 10 (compare also *Schwabe and M.G.*, cited above, §§ 98-101, and the references cited therein).

(b) The relevant principles

91. The Court reiterates that Article 11 § 1 presents trade union freedom as a special aspect of freedom of association. The Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible. A trade union must thus be free to strive for the protection of its members' interests, and its individual members have a right, in order to protect their interests, that that trade union should be heard (see *Ognevenko v. Russia*, no. 44873/09, §§ 54-55, 20 November 2018; *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96 and 2 others, § 42, ECHR 2002-V; and *National Union of Belgian Police v. Belgium*, 27 October 1975, § 39, Series A no. 19). One of the essential elements of the right of association is the right for a trade union to seek to persuade an employer to listen what it has to say of behalf of its members (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 143 and 145, ECHR 2008; *Wilson, National Union of Journalists and Others*, cited above, § 44; *Trade Union of the Police in the Slovak Republic and Others*, cited above, § 54; and *Tek Gıda İş Sendikası v. Turkey*, no. 35009/05, § 33, 4 April 2017).

92. Accordingly, the members of a trade union must be able to express to their employer the demands by which they seek to improve the situation of

workers in their company. A trade union that does not have the possibility of expressing its ideas freely in this regard is deprived of an essential means of action. Consequently, for the purpose of guaranteeing the meaningful and effective nature of trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members' interests (see the above-cited cases of *Palomo Sánchez and Others*, § 56, and *Szima*, § 28; see also the above-cited cases of *Wilson, National Union of Journalists and Others*, § 46, and *Trade Union of the Police in the Slovak Republic and Others*, § 55). Where statements clearly relate to trade union activities, their sanctioning is difficult to reconcile with the prerogatives of a trade union leader (see *Szima*, cited above, § 32). Even minimal sanctions dissuade trade union members from freely engaging in their activities (see *Doğan Altun v. Turkey*, no. 7152/08, § 50, 26 May 2015).

93. The protection against arbitrary, unlawful and unjustified restrictions guaranteed by Article 11 is not limited to bans and refusals to authorise the exercise of Convention rights, but also includes punitive measures taken after such rights have been exercised, including various disciplinary measures (see the above-cited cases of *Ezelin*, § 39; *Ognevenko*, § 61; and *Trofimchuk v. Ukraine*, no. 4241/03, § 35, 28 October 2010). In determining the conduct that has triggered the punishment the Court has been mindful not to take an overly formalistic approach and has been guided by the principle of practical and effective application of the Convention (see the above-cited cases of *Trofimchuk*, §§ 36-39, and *Doğan Altun*, § 32).

(c) Application of the relevant principles

(i) Whether there was an interference

94. The applicant submitted that the series of detriments imposed on her (listed in paragraph 64 above) were a direct reaction to her having sent, on behalf of the Trade Union, the letter of 2 March 2012. The Government countered that the applicant's freedom of association had not been interfered with, as she had acted in her private capacity in sending the letter and her involvement in the Trade Union had not been affected.

95. Having examined the material before it and the parties' submissions, the Court considers it beyond any doubt that when signing the letter of 2 March 2012 the applicant represented the Trade Union. The applicant had general authority to act on behalf of the Trade Union as its chairperson (see paragraph 7 above) and the text of the letter made it plain that it was written and signed on behalf of the Trade Union (see paragraph 10 above). In addition, the Trade Union board had made a collective decision to address the institution overseeing the employer (see paragraph 9 above), and the letter dealt with socio-economic matters concerning the Trade Union's members and their ability to correctly perform their function as ATCOs given their

working conditions that had been raised in previous negotiations with the employer (see paragraph 8 above). Furthermore, the Trade Union members supported the applicant in her actions as their representative (see paragraph 23 above), and even though some individual members distanced themselves from the contents of the letter, possibly under the threat of suspension (see paragraphs 17 and 31 above), the Trade Union itself never retracted the letter or the contents thereof. The fact that other letters sent by the Trade Union – particularly those intended to express support for the applicant – were signed by more than one person can in no way be taken to infer that the applicant acted in her private capacity. Neither could a finding that not all members of the Trade Union shared all of the views expressed in the letter. Accordingly, the domestic courts' finding that the applicant had acted in her private capacity has no legal or factual basis and is therefore manifestly arbitrary. It follows that by sending the Trade Union letter the applicant acted as its representative and thereby exercised her right to freedom of association.

96. The Court further observes that the majority of the detriments that were imposed on the applicant were put in place expressly as a sanction for her having sent this letter (in particular, the disciplinary investigation, the suspension from work, the prohibition to attend the workplace, the revocation of pay, the obligation to stand idle, the dismissal – see paragraphs 21, 25, 27, 32, 40 above). The other detriments complained of were either closely connected to the aforementioned measures (such as the medical checks and the obligation to perform tasks unrelated to the employment duties – see paragraphs 24, 27 above), or, in view of the context, could only be understood as a reaction to the applicant's trade union activities (such as the steps taken to compromise her status as the chairperson of the Trade Union board or to pressure the colleagues who had not distanced themselves from her – see paragraphs 20, 22, 28 above). There was therefore an interference with the applicant's freedom of association.

97. In the light of the above, the Court dismisses the Government's remaining preliminary objections, joined to the merits, regarding the applicability of Article 11 of the Convention to the particular facts of the case (see paragraph 62 above).

98. It remains to be determined whether that interference was prescribed by law, pursued one or more of the legitimate aims set out in paragraph 2 of Article 11, and was necessary in a democratic society for achieving those aims.

(ii) Whether the interference was justified

(α) Lawfulness

99. The Court has certain misgivings as to whether the domestic law could have reasonably been interpreted as providing for the detriments imposed on

the applicant. This relates, in particular, to the legal provisions invoked to justify the applicant's suspension and dismissal as applied in the circumstances of the present case (see paragraphs 73, 51 and 48 above, see also paragraph 95 above). The Court will, however, proceed on the assumption that the interference had a legal basis. The justification for those measures is to be examined below.

(β) Legitimate aim

100. The Court accepts that the impugned measures were aimed at protecting the rights and freedoms of the employer, and therefore served the legitimate aim of protecting the rights and freedoms of others. The Government's argument that they were also aimed at protecting the rights and freedoms of the wider public and the public safety was disputed by the applicant and will be analysed below.

(γ) Necessity

101. An interference with trade union freedom can be regarded as necessary in a democratic society if it answers a pressing social need and is proportionate to the legitimate aim pursued. Accordingly, in the present case the Court must determine, in particular, whether the domestic courts struck a fair balance between the applicant's right to freedom of association on the one hand and protection of the employer's interests on the other hand. In doing so the Court has to satisfy itself that the reasons adduced by the national authorities were relevant and sufficient and, in particular, that the standards applied were in conformity with the principles embodied in Articles 10 and 11 of the Convention and that the national authorities based themselves on an acceptable assessment of the relevant facts (see *Tek Gıda İş Sendikası*, cited above, § 34; *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, § 86, ECHR 2014; *Sindicatul "Păstorul cel Bun" v. Romania* [GC], no. 2330/09, § 133, ECHR 2013 (extracts); and *Ognevenko*, cited above, §§ 67-68).

102. The Court does not find it necessary to inquire into the kind of issues that have been central to its case-law on whistle-blowing (see *Guja*, cited above; *Bucur and Toma v. Romania*, no. 40238/02, 8 January 2013; *Heinisch v. Germany*, no. 28274/08, ECHR 2011 (extracts); and *Gawlik v. Liechtenstein*, no. 23922/19, 16 February 2021), as the present case concerns the context of the freedom of expression of a trade union representative. Here, the aim of the expression was not to raise the public awareness of an unlawful conduct but to advocate for the socio-economic interests of the Trade Union's members and certain safety concerns. It is worth recalling, to the extent relevant, that the impugned letter was addressed to the State officials overseeing LGS, a State-owned company, and not disseminated publicly. The Court emphasises that advocating for the interests

of trade union members is the very function of trade union representatives and constitutes a fundamental element of trade union freedom. It should also be distinguished from situations in which employees express their own personal opinions, as actions and statements aimed at furthering the interests of trade union members as a whole call for a particularly high level of protection (compare *Herbai v. Hungary*, no. 11608/15, § 44, 5 November 2019, with respect to the freedom of expression of an employee, and *Vellutini and Michel v. France*, no. 32820/09, §§ 37-39, 6 October 2011, with respect to the freedom of expression of trade union representatives). The arguments pertaining to whistle-blowing were also not raised before and analysed by the domestic courts.

103. In view of the case-law concerning trade unions' freedom of expression (see the above cited cases of *Palomo Sánchez and Others*; *Szima*; and *Vellutini and Michel*), the Court considers the following elements to be relevant: the context within which the statements were made (including whether they formed part of a legitimate trade union activity); the nature of the statements (including whether the limits of acceptable criticisms were crossed); the damage suffered by the employer or other persons; and the nature and severity of the sanctions or other repercussions.

104. The Court observes that the letter of 2 March 2012 addressed various socio-economic issues and practices that were considered to negatively affect LGS' employees and the performance of their tasks as ATCOs and that had already been raised with the employer (see paragraphs 8-16 above). By this letter these labour-related concerns were relayed to the State institution that owned and oversaw the employer. While the Court does not have enough information to conclude that the writing of this letter constituted an exercise of the right to engage in collective bargaining as argued by the applicant, it did form part of the Trade Union's efforts to express the demands by which it sought to improve the situation of its members and safeguard the performance of their duties. Accordingly, the applicant was representing the Trade Union in its exercise of a legitimate trade union activity. Moreover, it concerned an essential element of the trade union freedom – seeking to persuade the employer to hear what it had to say on behalf of its members.

105. The Court observes that aside from disregarding the fact that the letter was written by a Trade Union's representative, the domestic courts also paid no attention to the trade union context when analysing its contents. This prevented the domestic courts from applying the relevant standards and appropriately assessing the pertinent facts, which led to contradictory conclusions. For example, the courts stated that the applicant had written the letter to obtain socio-economic benefits for herself, even though the majority of the issues addressed in the letter had not personally applied to her. Similarly, the courts concluded that the applicant had been under an obligation to stop performing her employment duties if she considered that there were circumstances affecting aeronavigation safety, even though she

herself had not caried out the ATCO training that had been subjected to unrecorded overtime work.

106. The Government argued that the letter contained statements about threats to aeronavigation safety, which had gone beyond the scope of legitimate trade union interests. However, the Court observes that after describing various shortcomings in the organisation of ATCO work, including unregistered overtime work, the letter submitted that these deficiencies could fatigue the employees, demoralise them, cause senior staff to leave and reduce the quality of the training. It further inferred that this, in turn, could lower flight safety and the sustainability of LGS (see paragraphs 11-16 above).

107. The Court reiterates that drawing inferences from existing facts is generally intended to convey opinions and is thus more akin to value judgments (see *Marunić v. Croatia*, no. 51706/11, § 61, 28 March 2017). Moreover, in the circumstances of the present case, these inferences could be regarded as a professional assessment of the potential impact of the identified deficiencies. However, the domestic courts, in finding that the applicant had distributed "untruthful information" and "untruthful opinion", looked at the statements concerning the potential consequences and verified only whether those potential consequences had already occurred. In particular, they relied on documents and statements attesting, in general terms, that air traffic was safe and that ATCOs were not endangering aeronavigation safety. At the same time, they did not verify the statements of facts that had formed the basis for these inferences and did not analyse whether the deficiencies alleged had indeed existed. Most notably, the domestic courts did not determine whether the ATCO training had indeed taken place on the basis of unregistered overtime work, despite evidence supporting that allegation being presented at a hearing (see paragraph 31 above). Accordingly, the domestic courts failed to carry out a proper assessment of whether the existence of facts stated in the letter had been demonstrated and whether the opinions expressed therein had had a sufficient factual basis.

108. The documents submitted to the Court indicate that the statements made in the letter were not devoid of factual grounds and did not amount to a gratuitous attack on the LGS board. They constituted a description of labour-related concerns and were made within the legitimate aim of protecting the labour-related interests of the Trade Union members and the effective performance of their work. They did not exceed the limits of acceptable criticism (compare *Heinisch*, §§ 79 and 85, and contrast *Szima*, § 31, and *Palomo Sánchez and Others*, § 67, all cited above). In addition, the Court notes that while employees have a duty of loyalty, reserve and discretion to their employer and certain expressions that may be legitimate within other contexts are not appropriate in labour relations (see the above-cited cases of *Guja*, § 70; *Trade Union of the Police in the Slovak Republic and Others*, § 57; *Palomo Sánchez and Others*, § 76; and *Herbai*,

§ 38; though for the limits of this duty with respect to the freedom of expression see *Marunić*, cited above, § 52), within the context of trade union activities, criticism of social or economic policies or occupational safety and health measures constitutes a legitimate trade union activity and employees' right that is guaranteed under Article 11. The duty of loyalty cannot be relied upon to deprive trade unions and their representatives of the very essence of their right to defend their members' interests.

109. With respect to the argument about the potential damage that could be caused by disseminating the information included in the letter, the Court points out that the letter was only sent to the State officials that oversaw the employer – a State owned company – and was not published or otherwise distributed to the wider public (compare *Matalas v. Greece*, no. 1864/18, § 55, 25 March 2021). The public shareholder in a State-owned company such as LGS had a right to be informed of matters affecting the socio-economic circumstances and well-being of the staff and potentially influencing the quality and safety of the service provided (compare *Heinisch*, cited above, § 89). In fact, addressing the issues raised in the Trade Union letter could only have served the interests of the employer and the public, which is even further augmented by the fact that the letter discussed potential breaches of safety and health regulations in a "safety critical" environment. The Court therefore acknowledges that the ATCOs work, by its very essence, is related to public safety. The Court cannot, however, conclude in the circumstances of the present case that the detriments imposed on the applicant for seeking to protect the labour-related interests of the Trade union members and safeguard the performance of their duties pursued the legitimate aim of protecting the rights and freedoms of the wider public or public safety, as argued by the Government.

110. With respect to the nature and severity of the repercussions, the Court considers that they were exceptionally harsh and clearly incompatible with the exercise of a legitimate trade union activity. By disregarding the trade union context the domestic courts ignored the applicant' s position as a trade union representative and made her individually responsible for the Trade Union's decision to communicate the grievances of its members to the employer's owner. Furthermore, these sanctions were particularly punitive with respect to the applicant, given the sector she was employed in – LGS was the sole employer of civilian ATCOs in Latvia and her dismissal meant that her career as an ATCO in Latvia was terminated, with undeniable consequences for her private and professional life (compare *Vogt v. Germany*, 26 September 1995, § 60, Series A no. 323, and *Gawlik*, cited above, § 84).

111. The Court additionally notes that the detriments imposed on the applicant were in themselves capable of having a chilling effect on the Trade Union's members (compare *Ognevenko*, cited above, § 83). However, there were still further actions taken by the LGS board – as confirmed by the case materials – that were directed at the Trade Union's members, such as

requiring them to sign statements under the threat of suspension, pressuring them to distance themselves from the Trade Union letter and the applicant, and calling for the Trade Union's leadership to be changed (see paragraphs 17, 19, 20, 22 and 28 above), that were clearly aimed at exerting pressure on them.

(iii) Conclusion

112. While the Court is mindful of the fundamentally subsidiary role of the Convention system, in the present case the domestic courts cannot be said to have applied standards that were in conformity with the principles deriving from Article 11 of the Convention, read in the light of Article 10, or to have based themselves on an acceptable assessment of the relevant facts. The Court accordingly concludes that the detriments imposed on the applicant were not compatible with the strict requirement of a "pressing social need" and were not proportionate to the legitimate aim pursued, and therefore could not be regarded as "necessary in a democratic society".

113. There has accordingly been a violation of Article 11 of the Convention, read in the light of Article 10.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

114. The applicant complained that the hearings had been held in closed sessions and that the judgments were not available to the public, contrary to Article 6 of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ..."

A. Admissibility

115. The Government submitted that the applicant could not claim to be a victim in relation to this complaint, as she had participated in all court hearings and had received the full texts of the judgments.

116. The applicant did not comment on this point.

117. The Court observes that the applicant's complaint did not address her own participation in the proceedings within the context of her ability to present her case effectively but rather the exclusion of the public from the hearings and the absence of any public pronouncement of the judgments, depriving her of the right to have the administration of justice subjected to public scrutiny. The Court reiterates that the right to a public hearing and public pronouncement of judgments constitutes a fundamental principle

enshrined in Article 6. The applicant's complaint concerns proceedings to which she was a party; therefore, she is the direct victim of the violation complained of. The Government's objection is therefore dismissed.

118. The Court notes that this complaint 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 applicant

119. The applicant complained that all the domestic courts had held their hearings in closed sessions, so the public had been unable to hear the evidence submitted and to scrutinise the court proceedings. Moreover, the judgments, aside from the operative parts thereof, had been secret too, so the public had not been able to evaluate the reasoning contained therein. That had deprived the applicant of the possibility of having her case sympathetically reported by the media. The case was of great importance for trade unionists, who could know only that the courts had upheld as legitimate a battery of what she considered discriminatory measures that had culminated in her dismissal. This had a chilling effect on trade unions.

120. There had been no valid reason for the courts to sit in camera. There had been nothing confidential about the issues raised by the letter, and no matters of national security had arisen in this case. The Government's argument about the need to protect "the specific and vulnerable nature of the State sector" had not come close to the threshold of invoking national security as grounds for excluding the public. The Security Police document that had been classified as "restricted" had been the report stating the applicant had committed no breaches of security. Similarly, the evidence about the applicant's state of health had merely indicated that she was perfectly healthy.

2. The Government

121. The Government argued that the first-instance court had held five hearings, of which three had been closed, one had been partly closed, and one had been open to the public, thus at this level of jurisdiction some publicity had been ensured. The decision to hold closed hearings had been based on (i) the need to protect "information about the specific and vulnerable nature of the State sector where the company [provided] its services", (ii) a document issued by the Security Police with a "restricted" classification status, (iii) the fact that during the three closed hearings specific internal procedures governing aeronavigation services had been discussed, and (iv) one of the witnesses had given testimony regarding the applicant's state of health.

122. The operative parts of court judgments were always pronounced in public, and this rule had also been followed in this case. Full texts of the judgments in cases that had been examined in closed hearings were generally not available to the public; however, third persons could access anonymised copies of those judgments if they lodged a reasoned request with the court and their necessity was sufficiently justified. Such requests were then reviewed by the president of the court. Hence, even though the judgments in the present case were not widely accessible online or in the court's registry, there were other means of obtaining them, which had been effectively used by researchers and students.

3. The third-party interveners

123. The European Transport Workers' Federation, the European Trade Union Confederation, and the International Federation of Air Traffic Controllers' Associations all emphasised the importance of public hearings in cases involving allegations of oppression of trade union representatives. Such publicity protected the litigants against administration of justice in secret and without public scrutiny. A reference to flight safety was not sufficient for the exclusion of the public.

4. The Court

(a) The relevant principles

124. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle that is enshrined in paragraph 1 of Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1 – namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society (see, for example, *Martinie v. France* [GC], no. 58675/00, § 39, ECHR 2006-VI; *Malhous v. the Czech Republic* [GC], no. 33071/96, § 55, 12 July 2001; and *Nikolova and Vandova v. Bulgaria*, no. 20688/04, § 67, 17 December 2013). These principles apply to both the public holding of hearings and to the public delivery of judgments, which have the same purpose (see *Fazliyski v. Bulgaria*, no. 40908/05, § 64, 16 April 2013).

125. Article 6 § 1 does not prohibit courts from derogating from these principles on the grounds listed in this provision in the event that holding proceedings in camera, either wholly or partly, is strictly required by the circumstances of the case in question (see the above-cited cases of *Martinie*, § 40, and *Nikolova and Vandova*, § 68). However, Article 6 § 1 encompasses a procedural obligation on the part of the courts to consider whether the exclusion of the public from a particular set of proceedings is necessary in

the specific circumstances in order to protect the public interest, and to confine the measure to what is strictly necessary in order to attain the objective pursued (see *Nikolova and Vandova*, cited above, § 74).

126. As to the requirement that judgments be publicly pronounced, the Court has applied some degree of flexibility. Despite the wording of Article 6 § 1, which would seem to suggest that reading a judgment out in open court is required, other means of rendering it public may be compatible with that provision. As a general rule, the form of publicity to be given to the judgment under domestic law must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see *Moser v. Austria*, no. 12643/02, § 101, 21 September 2006, and *Lorenzetti v. Italy*, no. 32075/09, § 37, 10 April 2012). Even where full disclosure could compromise national security or the safety of others, the courts can use techniques that could accommodate legitimate security concerns without fully negating fundamental procedural guarantees such as the publicity of judicial decisions (see *Fazliyski*, cited above, § 69, and *Raza v. Bulgaria*, no. 31465/08, § 53, 11 February 2010).

(b) The application of the relevant principles

(i) The right to a public hearing

127. According to the material presented to the Court, before the first-instance court the first hearing, which was public, was adjourned prior to the examination of the merits of the case, as the defendant lodged a counterclaim. During the second hearing, the first-instance court decided to examine the case in closed proceedings for the purposes of the "more efficient and successful administration of justice" (see paragraph 30 above). By contrast, the appellate court cited section 11(3)(1) of the Civil Procedure Law, which allows for closed hearings when they are "necessary for the protection of a State secret or a commercial secret", without giving any further reasons (see paragraphs 39 and 53 above). The appeal on points of law was examined in written proceedings. Accordingly, the Court observes that no public hearing within the meaning of Article 6 § 1 was held in respect of the merits of the applicant's case.

128. However, the Court is unable to conclude that the exclusion of the public was demonstrated as being required in order to protect the public interests listed in Article 6 § 1 and that the domestic courts complied with their procedural obligation to carefully consider the necessity for such a measure. Firstly, the domestic courts did not invoke any grounds that would correspond to the exceptions laid down in the second sentence of Article 6 § 1 (compare *Malhous*, cited above, § 56). Secondly, they provided no explanation as to how the grounds that they did rely on related to the circumstances of the case. The mere reference to a "more efficient and successful administration of justice" made by a first-instance court without

further elaboration is not sufficient to justify the exclusion of the public from trial proceedings. Moreover, the courts have not stated and the Government have not argued that the case concerned State secrets or commercial secrets; therefore, the appellate court's reference to the need to preserve such secrecy as grounds for excluding the public cannot be sustained. The only document that did have "restricted" status indicated that the applicant had committed no breaches of security, and in any case had limited relevance to the dispute in question. It clearly could not serve as grounds for excluding the public.

129. With respect to the argument advanced by LGS and reiterated by the Government to the effect that the case concerned sensitive information regarding flight safety, the Court notes that also this consideration was not analysed by the domestic courts to justify the closed hearing. The case concerned the question of whether the applicant as a trade union representative could be penalised for expressing the opinion that deficiencies in ATCOs' employment and training conditions could affect flight safety in the future. The Court has not been presented with information demonstrating that in determining this question the domestic courts needed to examine sensitive information on flight safety justifying the exclusion of the public. On the other hand, the case dealt with a fundamental aspect of the trade union freedom. Not only did it directly affect the Trade Union that the applicant represented, it was also of great importance to other trade unions, which manifested their interest by requesting the appeal court to hold the hearing in public and by holding a public demonstration outside the courthouse (see paragraph 39 above). In the present case the specific nature of the subject matter rendered the need for public scrutiny particularly strong (compare *Lorenzetti*, cited above). Despite that, the domestic courts did not carry out an assessment on whether the exclusion of the public from the proceedings was necessary, and did not attempt to confine the measure to what was strictly necessary in order to attain the objective pursued.

(ii) *The right to the public delivery of judgments*

130. The Court observes that none of the judgments were pronounced publicly, with only the operative part of the appellate court's judgment being read out in a public hearing (see paragraphs 32, 40 and 42 above). Hence, it has to be established whether the publicity of those judgments was sufficiently ensured by other means.

131. Where public hearings have been held by lower instance courts the Court has deemed that the requirement of publicity was ensured if anyone who established an interest could consult the judgment or obtain a copy at the registry, coupled with the fact that decisions of special interest were routinely published (see *Lorenzetti*, cited above, §§ 37-38, and the references cited therein). Where, however, dispensing with a public hearing was not justified, such means of rendering decisions public was not considered sufficient to

have ensured compliance with the requirements of Article 6 § 1 (see *Moser*, cited above, § 103).

132. In the present case, the full texts of the judgments were not available to the public owing to the fact that the case was examined in closed hearings. Even though the Government argued that requests could be lodged for anonymised copies of the judgments, interested persons had to provide sufficient justification for such a request, and the decision was left to the discretion of the president of the court in question. This option appeared to be primarily intended to accommodate requests lodged for research purposes, and the Government have not shown that there were rules or practice ensuring that requests were granted systematically. Seeing that the decisions to examine the instant case in closed hearings were not sufficiently justified, the available means for rendering the decisions public were not sufficient to meet the requirement that judgments be pronounced publicly.

(iii) Conclusion

133. In the present case, the object pursued by Article 6 § 1 – that of ensuring the scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial – was not achieved, as the reasoning that might have made it possible to understand why the applicant's claims had been rejected was inaccessible to the public (compare *Ryakib Biryukov v. Russia*, no. 14810/02, § 45, ECHR 2008). There has accordingly been a violation of Article 6 of the Convention with respect to the failure to ensure the rights to both a public hearing and the public delivery of the judgments.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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."

A. Damage

135. The applicant claimed 103,446.98 euros (EUR) in respect of pecuniary damage. The claim was composed of EUR 5,335.43 regarding salary arrears from 14 May 2012 until 26 June 2012, when the applicant had been suspended without pay, plus an additional sum of EUR 98,111.55 regarding the income that she would have earned up until 31 March 2017 had she not been dismissed (minus the income that she had acquired after her dismissal from other sources). The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

136. The Government considered that a finding of a violation would constitute sufficient redress in respect of both pecuniary and non-pecuniary damage sustained. As to the calculation of the applicant's unpaid salary during her suspension, they noted that the applicant's calculation was based on her gross daily wage (EUR 172.11) and should rather be based on her basic net daily wage, which excluded all benefits and bonuses (EUR 127.65).

137. The Court considers that the pecuniary damage sustained owing to the revocation of the applicant's pay during the suspension period was the direct consequence of the violation of Article 11 found. The Court further observes that the applicant has submitted a calculation, issued by the LGS' accountancy department on 16 July 2012, concerning her gross daily wage for the past six months prior to her suspension (120.96 Latvian lati or EUR 172.11, applying the fixed exchange rate), which according to the Latvian Labour Law had to be used when calculating compensation for unjustified suspension. The Court also notes that the benefits and bonuses formed an integral part of the applicant's salary and there is no reason to assume that she would not have received those payments, had the violation of Article 11 not occurred.

138. With respect to the remainder of the claims regarding pecuniary damage, the Court observes that they concern the income the applicant would have received had she not been dismissed. However, the applicant's claim that she would have continued working on the same post and earned the same salary until 31 March 2017, that is, until the moment she formulated her just satisfaction claim sent to the Court on 4 April 2017, is speculative. Also, it would be speculative for the Court to assume that the full difference between the applicant's salary before her dismissal and the income she earned after that was a direct consequence of her dismissal. Nonetheless, the Court considers that the applicant must have suffered pecuniary damage as a result of her dismissal. The Court also notes that owing to the domestic prescription periods (see paragraph 50 above) the applicant can no longer bring a claim concerning her unfair dismissal.

139. The Court further finds that the applicant has suffered non-pecuniary damage on account of the breaches of Article 6 § 1 and Article 11 of the Convention, read in the light of Article 10.

140. Consequently, ruling on an equitable basis, the Court awards the applicant EUR 25,000, plus any tax that may be chargeable, with respect to both pecuniary and non-pecuniary damage.

B. Costs and expenses

141. The applicant also claimed EUR 4,607.62 for the costs and expenses incurred before the domestic courts and EUR 6,954.66 for those incurred before the Court.

142. The Government agreed to the costs and expenses claimed with respect to the domestic proceedings, noting only that according to the official conversion rate the sum should be set at EUR 4,588.76. However, with respect to the costs and expenses incurred before the Court, the Government argued that there was no proof that those costs had been actually and necessarily incurred, as only invoices (but no proof of payment) had been submitted. They also argued that the costs claimed were exorbitant and unreasonable.

143. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. A representative's fees are actually incurred if the applicant has paid them or is liable to pay them (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case, the invoices submitted by the applicant demonstrate her obligation to pay the legal fees charged by her British representatives with respect to the proceedings before the Court. Accordingly, regard being had to the documents in its possession and the above-noted criteria, the Court considers that the legal costs claimed by the applicant with respect to the domestic proceedings and the proceedings before the Court both were actually incurred and relate to the violations it has found. It does not agree with the Government that the claim for costs is excessive. Accordingly, the Court considers it reasonable to award the sum of EUR 11,562.28 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

144. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there has been a violation of Article 6 of the Convention;

4. *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:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
(ii) EUR 11,562.28 (eleven thousand five hundred and sixty-two euros and twenty-eight cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-mentioned amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

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

Victor Soloveytchik Registrar	Síofra O'Leary President