



## Refusal to grant prisoner access to Internet websites containing legal information breached his right to receive information

In today's **Chamber judgment**<sup>1</sup> in the case of **Kalda v. Estonia** (application no. 17429/10) the European Court of Human Rights held, by six votes to one, that there had been:

**a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned a prisoner's complaint about the authorities' refusal to grant him access to three Internet websites, containing legal information, run by the State and by the Council of Europe. Mr Kalda, the applicant, complained in particular that the ban under Estonian law on his accessing these specific websites had breached his right to receive information via the Internet and prevented him from carrying out legal research for court proceedings in which he was engaged.

The Court found in particular that Contracting States are not obliged to grant prisoners access to Internet. However, if a State is willing to allow prisoners access, as is the case in Estonia, it has to give reasons for refusing access to specific sites. In the specific circumstances of Mr Kalda's case, the reasons, namely the security and costs implications, for not allowing him access to the Internet sites in question had not been sufficient to justify the interference with his right to receive information. Notably, the authorities had already made security arrangements for prisoners' use of Internet via computers specially adapted for that purpose and under the supervision of the prison authorities and had borne the related costs. Indeed, the domestic courts had undertaken no detailed analysis as to the possible security risks of access to the three additional websites in question, bearing in mind that they were run by an international organisation and by the State itself.

### Principal facts

The applicant, Romeo Kalda, is an Estonian national who was born in 1974. He is serving a life sentence in prison and complains that in October 2007 the prison authorities in Tartu Prison refused his request to be granted access to the website of the Council of Europe Information Office in Tallinn and two State-run databases, namely the websites of the Chancellor of Justice and the Estonian Parliament, containing legal information. More precisely, these websites contained translations and summaries of ECtHR judgments (CoE information office), legal opinions (Chancellor of Justice) and draft laws, explanatory memoranda, records and minutes of sittings (Estonian Parliament).

Mr Kalda complained to the Ministry of Justice but his complaint was dismissed in November 2007. In the ensuing proceedings before the national courts, the Supreme Court ultimately – in December 2009 – dismissed Mr Kalda's appeal, concluding that the ban on detainees' access to the three websites in question was justified by security and economic considerations. Notably, it found that granting access to additional Internet sites could increase the risk of detainees engaging in prohibited communication, thus necessitating increased monitoring and therefore costs.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Kalda complained that the ban on his accessing the websites had breached his right to receive information via the Internet, submitting that his aim was to be able to undertake legal research in view of a number of court proceedings in which he had been engaged against the Estonian prison system.

The application was lodged with the European Court of Human Rights on 16 March 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Işıl Karakaş (Turkey), *President*,  
Julia Laffranque (Estonia),  
Nebojša Vučinić (Montenegro),  
Paul Lemmens (Belgium),  
Ksenija Turković (Croatia),  
Jon Fridrik Kjølbro (Denmark),  
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

The Court considered that the central question was not the authorities' refusal to release information, as Mr Kalda's request concerned information that was already freely available in the public domain. Rather, Mr Kalda's complaint concerned a particular means, namely the Internet, of accessing information published on specific websites. The Court reiterated in this connection that the Internet played an important role in enhancing the dissemination of information in general. Moreover, as concerned prisoners, an increasing amount of services and information is only available on the Internet, as evidenced by the fact that the official publication of legal acts in Estonia now only takes place via the online version of *Riigi Teataja* (which carries Estonian summaries and translations of the European Court's judgments) and no longer through its paper version.

Nevertheless, imprisonment inevitably involved a number of restrictions on prisoners' communication with the outside world and Article 10 could not be interpreted as obliging Contracting States to provide access to Internet to prisoners. The Court found though that, since access to certain sites containing legal information was granted to prisoners under Estonian law, the restriction on their access to other sites that also contain legal information had therefore constituted an interference with Mr Kalda's right to receive information. That interference, based on the Imprisonment Act, which limits prisoners' Internet access to the official databases of legislation and the database of judicial decisions, had been "prescribed by law" and served the aim of the protection of rights of others and the prevention of disorder and crime.

Thus, Estonian law did grant prisoners limited access to the Internet. If a Contracting State was willing to give such access, it had to give reasons for refusing access to specific sites. In that connection, it observed that the sites to which access had been denied essentially stored information related to fundamental rights, including the rights of prisoners. Such information was used by the Estonian courts themselves and Mr Kalda needed access to it when it came to asserting and defending his rights before the domestic courts. Indeed, when Mr Kalda had lodged his complaint with the domestic courts, the Estonian translations and summaries of the Court's judgments had only been available on the website of the Tallinn Council of Europe Information Office to which he was denied access.

On examining the Government's argument that there were security and costs implications in allowing prisoners access to Internet sites of the type denied to Mr Kalda, the Court noted that the

Estonian authorities had already made security arrangements for prisoners' use of Internet via computers specially adapted for that purpose and had borne the related costs. Furthermore, the domestic courts had undertaken no detailed analysis as to the possible security risks of access to the three additional websites in question, bearing in mind that they were run by an international organisation and by the State itself. Moreover, the Supreme Court had limited its analysis on this point to a rather general statement that granting access to additional Internet sites could increase the risk of detainees engaging in prohibited communication.

The Court was not therefore persuaded that the reasons for not allowing Mr Kalda access to the three Internet sites in question had been sufficient to justify the interference with his right to receive information. It thus concluded that that interference, in the specific circumstances of Mr Kalda's case, had not been necessary in a democratic society and held that there had been a violation of Article 10 of the Convention.

#### Article 41 (just satisfaction)

The Court held, by six votes to one, that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by Mr Kalda.

#### Separate opinion

Judge Kjølbrot expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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#### Press contacts

[echrp@echr.coe.int](mailto:echrp@echr.coe.int) | tel.: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.