



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

SECOND SECTION

CASE OF KALDA v. ESTONIA

(Application no. 17429/10)

JUDGMENT

STRASBOURG

19 January 2016

FINAL

06/06/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kalda v. Estonia,

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

Işıl Karakaş, *President*,
Julia Laffranque,
Nebojša Vučinić,
Paul Lemmens,
Ksenija Turković,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 8 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 17429/10) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Estonian national, Mr Romeo Kalda (“the applicant”), on 16 March 2010.

2. The applicant, who had been granted legal aid, was represented by Mr J. Valdma, a lawyer practising in Tallinn. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged that his right under Article 10 of the Convention to receive information through the Internet without interference by public authority had been violated.

4. On 23 October 2013 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1974. He is serving a life sentence in prison.

A. The applicant's complaint against Pärnu Prison

6. On 21 July 2005 the applicant requested from the Governor of Pärnu Prison access to (i) the online version of *Riigi Teataja* (the State Gazette), (ii) the decisions of the Supreme Court and administrative courts, which are available on the Internet, and (iii) the HUDOC database of the judgments of the European Court of Human Rights. The Governor refused his request. The applicant's subsequent complaint was dismissed by the Pärnu Administrative Court; the Tallinn Court of Appeal dismissed his further appeal. The applicant then appealed to the Supreme Court.

7. The Administrative Law Chamber of the Supreme Court delivered its judgment on 31 May 2007 (case no. 3-3-1-20-07). In respect of Estonian legislation and the Supreme Court's rulings, the Supreme Court noted that these were available in the paper version of *Riigi Teataja*; it considered access to the paper version sufficient and found that the prison's refusal to grant the applicant access to the online version of *Riigi Teataja* had been lawful.

8. However, the Supreme Court noted that from 1 January 2007 the primary official version of *Riigi Teataja* had been its online version and that since then only five "control copies" of each edition had been printed. Despite that fact, the prisons had a duty to ensure that detainees had a reasonable possibility of searching for and familiarising themselves with legal acts.

9. Furthermore, the Supreme Court considered that the refusal of the prison administration to grant detainees access to the rulings of the administrative courts and of the European Court of Human Rights interfered with their right to freely obtain information disseminated for public use. Given that the legislature had not specified any restrictions in this regard in respect of prisoners, their right – enshrined in Article 44 § 1 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) – to obtain information had to be given an equal level of protection as that afforded to persons at liberty. Accordingly, the refusal of Pärnu Prison to grant the applicant access to the rulings of the Estonian administrative courts and the European Court of Human Rights had been unlawful.

B. The applicant's complaint against Tartu Prison

10. On 18 October 2007 Tartu Prison – to which the applicant had been transferred in the meantime – refused the applicant's request to be granted access to the Internet sites www.coe.ee (the Council of Europe Information Office in Tallinn), www.oiguskantsler.ee (the Chancellor of Justice, or *Õiguskantsler*) and www.riigikogu.ee (the Estonian Parliament, or *Riigikogu*). According to the applicant, he was involved in a number of legal

disputes with the prison administration and needed access to those Internet sites in order to be able to defend his rights in court.

11. On 23 November 2007 the applicant's complaint was dismissed by the Ministry of Justice.

12. By a judgment of 17 July 2008 the Tartu Administrative Court upheld the applicant's complaint in respect of the Internet site www.coe.ee and ordered Tartu Prison to grant him supervised access to that site via a computer adapted for that purpose. The Administrative Court noted that Tartu Prison had afforded its detainees access to the online version of *Riigi Teataja*, the database of judicial decisions, and the Internet sites of the European Court of Human Rights and the Supreme Court. The Administrative Court further referred to the Supreme Court's judgment of 31 May 2007 (see paragraphs 7 and 9 above) and to section 31-1 of the Imprisonment Act (*Vangistusseadus*) (see paragraph 21 below), which had entered into force on 1 June 2008. It noted that the Internet site of the European Court of Human Rights – to which detainees had been granted access – contained information only in English and French, whereas translations into Estonian of the rulings of the European Court of Human Rights were available on the Internet site of the Council of Europe Information Office in Tallinn. The Administrative Court considered that the burden of having the rulings of the European Court of Human Rights translated into Estonian could not be placed on the applicant and concluded that he also had to be granted access to the Internet site www.coe.ee. It considered that this Internet site was similar to the database of judicial decisions referred to in section 31-1 of the Imprisonment Act. In respect of the Internet sites www.oiguskantsler.ee and www.riigikogu.ee, the court found that access to these sites was not foreseen by section 31-1 of the Imprisonment Act; in any case, the applicant could request information directly from the institutions concerned or from Tartu Prison.

13. Both parties appealed. On 31 October 2008 the Tartu Court of Appeal dismissed both appeals and upheld the first-instance court's judgment.

14. Both parties challenged the Appeal Court's judgment before the Supreme Court. The Administrative Law Chamber of the Supreme Court referred the case to the Supreme Court's plenary session on a point of constitutionality. By a judgment of 7 December 2009 the plenary session of the Supreme Court dismissed the applicant's appeal and upheld Tartu Prison's appeal. It quashed the lower courts' judgments in so far as these granted the applicant access to the Internet site www.coe.ee.

15. The Supreme Court found that the Internet sites in question did not fall under the exceptions provided for in section 31-1 of the Imprisonment Act (see paragraph 21 below). Thus, the Supreme Court had to determine whether that provision was in conformity with the Constitution. The Supreme Court found that section 31-1 of the Imprisonment Act interfered

with the right – enshrined in Article 44 § 1 of the Constitution – to freely obtain information disseminated for public use. It noted that the aims of imprisonment included the protection of the legal order and steering detainees towards law-abiding behaviour. As the possibility could not be technically excluded that detainees might misuse the right to use the Internet, access to the Internet was prohibited to them by section 31-1 of the Imprisonment Act. The exception made in respect of the official databases of legislation and the database of judicial decisions was necessary in order to ensure that detainees were afforded an effective possibility to protect their own rights. It had to be taken into account that the official texts of legal acts were only accessible to detainees via the Internet.

16. The Supreme Court observed that the prohibition of the use of the Internet was necessary primarily in order to restrict detainees' ability to engage in communication for purposes that did not accord with those of their detention, such as obtaining information that could jeopardise the prison's security or run counter to the directing of detainees towards law-abiding behaviour. Granting detainees access to any additional Internet site increased the security risk of their obtaining information running contrary to the aims of imprisonment. Moreover, this could create an opportunity for detainees to use the Internet for purposes other than that of freely obtaining information disseminated for public use. Thus, the Supreme Court concluded that the prohibition of detainees' access to the Internet sites www.coe.ee, www.oiguskantsler.ee and www.riigikogu.ee was justified by the need to achieve the aims of imprisonment and in particular the need to secure public safety.

17. In respect of the proportionality of the restriction the Supreme Court considered that the denial of detainees' access to the Internet sites www.coe.ee, www.oiguskantsler.ee and www.riigikogu.ee prevented them from misusing the Internet via these sites and that public safety was thereby protected. Moreover, granting detainees access to these Internet sites could increase the risk of their engaging in prohibited communication; this in turn would necessitate increased levels of control (and therefore costs). Thus, there were no alternative, equally effective means – besides the prohibition imposed by section 31-1 of the Imprisonment Act – of achieving the legitimate aim in question. Lastly, the Supreme Court noted that detainees were able to contact the *Riigikogu* and the Chancellor of Justice by mail and make a request for information (*teabenõue*). Therefore, detainees' access to the public information contained on the Internet sites in question was not unduly restricted. Detainees' access to the Internet site of the European Court of Human Rights was guaranteed, pursuant to section 31-1 of the Imprisonment Act; those of the Council of Europe's conventions and treaties that had been ratified by Estonia were accessible on the Internet site www.riigiteataja.ee. The Supreme Court noted that it did not doubt that the printed works of the Council of Europe were accessible through prison

libraries, and nor were detainees prevented from contacting the Council of Europe by post. The Supreme Court concluded that the restriction preventing detainees from accessing the Internet sites www.oiguskantsler.ee, www.riigikogu.ee and www.coe.ee was one of “low intensity”; the Supreme Court gave more weight to the aim sought by that restriction. It considered that permitting detainees extensive use of the Internet would increase the likelihood of prison authorities losing control over detainees’ activities, as it could not be completely excluded that via the Internet sites in question detainees could use the Internet for other, unauthorised purposes. Accordingly, the impugned restriction was in conformity with the Constitution.

18. Four judges out of eighteen delivered a dissenting opinion according to which the applicant should have been granted access to all three of the Internet sites in question. They considered that the use of the Internet sites in question did not generally pose a threat to public safety and was in conformity with the aims of imprisonment. It was unclear what additional costs the State would have to bear, since – in line with the applicable law – prisons were equipped with computers specially adapted to allow detainees access to the official databases of legislation and judicial decisions, and the prison service exercised supervision over the use of such resources. The information available on the Internet sites in question aided the exercising of the right of recourse to the courts. While it was true that detainees could also avail themselves of the right to make a request for information, this was a more time-consuming avenue and, particularly in the case of the Internet site of the Chancellor of Justice, required knowledge of which information was available on such Internet sites. No request for information under the Public Information Act (*Avaliku teabe seadus*) could be made to the Council of Europe Information Office in Tallinn. The rulings of the European Court of Human Rights available in the HUDOC database – which was accessible to detainees – were not in Estonian (unlike the unofficial translations published on the Internet site www.coe.ee), and it could not be presumed that detainees had sufficient command of English or French to be able to read them. The printed works of the Council of Europe that were available in prison libraries did not include all the information that was published on the Internet site of the Council of Europe Information Office in Tallinn. Thus, the four dissenting judges concluded that the restriction in question was unconstitutional.

II. RELEVANT DOMESTIC LAW

19. Article 44 § 1 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides that everyone has the right to freely obtain information disseminated for public use.

20. The Public Information Act (*Avaliku teabe seadus*) stipulates the conditions and procedure for accessing information that is obtained or created in the course of carrying out public duties. A request for information (*teabenõue*) may be made orally or in writing (section 13) and the holder of such information, subject to certain exceptions, must release the information in the manner requested by the person making the request (section 17).

21. Section 31-1 of the Imprisonment Act (*Vangistusseadus*), which entered into force on 1 June 2008, provides that prisoners are prohibited from using the Internet, except on computers specially adapted for said purpose by a prison which has allowed such access (under the supervision of the prison authorities) to the official databases of legislation and the database of judicial decisions. This provision is still in force and has not been substantially amended.

III. RELEVANT INTERNATIONAL INSTRUMENTS

A. Council of Europe documents

22. The Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies, read as follows:

Rule 6 – Information to the Committee of Ministers on the execution of the judgment

“2. When supervising the execution of a judgment by the High Contracting Party concerned, pursuant to Article 46, paragraph 2, of the Convention, the Committee of Ministers shall examine:

...

b. if required, and taking into account the discretion of the High Contracting Party concerned to choose the means necessary to comply with the judgment, whether:

...

ii. general measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations.”

A footnote relating to the above provision mentions – as an example of general measures to be taken – publication of a judgment of the Court in the language of the respondent State and its dissemination to the authorities concerned.

23. On 28 May 2003, at the 840th meeting of the Ministers' Deputies, the Committee of Ministers of the Council of Europe adopted a Declaration on freedom of communication on the Internet. The relevant part of the Declaration reads as follows:

Principle 4: Removal of barriers to the participation of individuals in the information society

“Member states should foster and encourage access for all to Internet communication and information services on a non-discriminatory basis at an affordable price. Furthermore, the active participation of the public, for example by setting up and running individual websites, should not be subject to any licensing or other requirements having a similar effect.”

24. On 16 April 2014 Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users was adopted. The relevant part of the Recommendation reads as follows:

“3. The Internet has a public service value. People, communities, public authorities and private entities rely on the Internet for their activities and have a legitimate expectation that its services are accessible, provided without discrimination, affordable, secure, reliable and ongoing. Furthermore, no one should be subjected to unlawful, unnecessary or disproportionate interference with the exercise of their human rights and fundamental freedoms when using the Internet.”

Furthermore, the relevant parts of the Guide read as follows:

Access and non-discrimination

“1. Access to the Internet is an important means for you to exercise your rights and freedoms and to participate in democracy. You should therefore not be disconnected from the Internet against your will, except when it is decided by a court. In certain cases, contractual arrangements may also lead to discontinuation of service but this should be a measure of last resort.”

Freedom of expression and information

“You have the right to seek, receive and impart information and ideas of your choice, without interference and regardless of frontiers. This means:

1. you have the freedom to express yourself online and to access information and the opinions and expressions of others. This includes political speech, views on religion, opinions and expressions that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others. You should have due regard to the reputation or rights of others, including their right to privacy;

2. restrictions may apply to expressions which incite discrimination, hatred or violence. These restrictions must be lawful, narrowly tailored and executed with court oversight;

...

4. public authorities have a duty to respect and protect your freedom of expression and your freedom of information. Any restrictions to this freedom must not be arbitrary, must pursue a legitimate aim in accordance with the European Convention on Human Rights such as, among others, the protection of national security or public order, public health or morals, and must comply with human rights law. Moreover, they must be made known to you, coupled with information on ways to seek guidance and redress, and not be broader or maintained for longer than is strictly necessary to achieve a legitimate aim ...”

B. Other international documents

25. The UN Human Rights Council's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated the following in his report of 16 May 2011 to the Human Rights Council (A/HRC/17/27):

“60. The Internet, as a medium by which the right to freedom of expression can be exercised, can only serve its purpose if States assume their commitment to develop effective policies to attain universal access to the Internet. Without concrete policies and plans of action, the Internet will become a technological tool that is accessible only to a certain elite while perpetrating the “digital divide”.

61. The term “digital divide” refers to the gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all ... [D]igital divides also exist along wealth, gender, geographical and social lines within States. ...

62. The Special Rapporteur is thus concerned that without Internet access, which facilitates economic development and the enjoyment of a range of human rights, marginalized groups and developing States remain trapped in a disadvantaged situation, thereby perpetuating inequality both within and between States. ...

65. In some economically developed States, Internet access has been recognized as a right. For example, the parliament of Estonia passed legislation in 2000 declaring Internet access a basic human right. The constitutional council of France effectively declared Internet access a fundamental right in 2009, and the constitutional court of Costa Rica reached a similar decision in 2010. Going a step further, Finland passed a decree in 2009 stating that every Internet connection needs to have a speed of at least one Megabit per second (broadband level). The Special Rapporteur also takes note that according to a survey by the British Broadcasting Corporation in March 2010, 79% of those interviewed in 26 countries believe that Internet access is a fundamental human right.

...

85. Given that the Internet has become an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress, ensuring universal access to the Internet should be a priority for all States. Each State should thus develop a concrete and effective policy, in consultation with individuals from all sections of society, including the private sector and relevant Government ministries, to make the Internet widely available, accessible and affordable to all segments of population.

...

87. Where the infrastructure for Internet access is present, the Special Rapporteur encourages States to support initiatives to ensure that online information can be accessed in a meaningful way by all sectors of the population, including persons with disabilities and persons belonging to linguistic minorities.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant complained that the authorities' refusal to grant him access to certain websites violated his right to receive information "without interference by public authority", in breach of Article 10 of the Convention, which reads as follows:

"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."

27. The Government contested that argument.

A. Admissibility

28. The Government considered that the application was manifestly ill-founded. They pointed out that the applicant could have requested access to the information contained on the websites in question by means other than through the Internet.

29. The applicant considered the Government's argument not appropriate and contended that his wish to undertake legal research on the Internet sites in question in order to understand his rights was a very different matter from making specific requests to be sent the information in question.

30. The Court considers that the applicant's complaint relates to his right to receive information and as such falls under Article 10 of the Convention. It considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

31. The applicant considered that the ban on his accessing the websites of the Council of Europe Information Office in Tallinn, the Chancellor of Justice and the *Riigikogu* violated his right to receive information and was in breach of Article 10 of the Convention. He submitted that he had been engaged in a number of court proceedings against the Estonian prison system. The information available on the websites in question was relied on by the Estonian courts; thus, the applicant also needed access to this information in order to be able to protect his rights.

32. The applicant pointed to the sheer scope of information accessible nowadays through the Internet (legal acts, case-law, parliamentary activities, newspapers, and so on). He argued that a ban on Internet access actually amounted to a total ban on access to information.

33. The applicant submitted that his aim was to be able to undertake legal research in order to understand his rights and obligations and in order to be able to defend his rights in court on an equal footing, if necessary. Undertaking legal research and making specific requests for information were two very different matters. His aim was to keep himself informed and to undertake legal research via the three above-mentioned websites.

34. The applicant rejected the Government's arguments concerning the information-technology threats posed by the three websites in question. He argued that the authorised websites also contained references, search engines, links (including links to social networks), and so on. However, he noted that those links were effectively blocked by the Ministry of Justice server. Thus, there was no reason to distinguish the websites to which the applicant sought access from those to which access was already granted.

35. According to the applicant, the means that the Government suggested that he employ (as an alternative to using the Internet) to obtain the information that he sought were clumsy, roundabout and unreasonable. Furthermore, the total weight of belongings (including paper documents) that detainees were allowed to possess was limited to 30 kilograms. This restriction, along with a 21-page limit on free print-outs of documents, constituted a further restriction on prisoners' freedom of information.

(b) The Government

36. The Government maintained that there had been no violation of Article 10 of the Convention. They argued that neither the Estonian Constitution nor the Convention prescribed that everyone should be entitled to obtain through the Internet information such as that in issue in the present case. The State had a discretion to restrict the right of specific groups of

people (such as prisoners) to access information through specific channels. According to the Government, prisoners were not in a position comparable to that of persons at liberty.

37. The Government submitted that the restriction of prisoners' access to the Internet had a legal basis in section 31-1 of the Imprisonment Act. The aim of that provision was to maintain prison security and the safety of persons outside the prison, as well as the prevention of crime and the protection of victims.

38. The Government considered that the restriction was proportionate to the aims pursued. Granting access only to specific websites that constituted the official databases of legislation and the database of judicial decisions was justified by the demands of security. Making additional websites available and technically as secure as possible would incur additional expense. In view of the fact that all websites contained references, search engines, links (including to social networks), and the like, and having regard to the fact that websites were updated on a daily basis, it was impossible to completely avoid or prevent security vulnerabilities. It could not be ruled out, for technical reasons, that prisoners could misuse the Internet. Thus, granting prisoners access to additional websites would increase the risk that they might obtain information prejudicial to the realisation of the objectives of imprisonment. The effort needed to reduce the risks arising from such additional access – such risks could not be completely eliminated – would be excessive in comparison with the benefits gained by granting prisoners wider access to the Internet. Thus, the distinction between permitted and prohibited websites was a carefully weighed compromise between the applicant's rights and public safety.

39. The Government pointed out that the restriction in question only concerned one channel of information and did not restrict the right of prisoners to engage in correspondence and make telephone calls as alternative ways of obtaining public information. Thus, the applicant was still able exercise his right to information under Article 10; the applicable legislation only restricted the possibility to obtain such information through the Internet. The Government also provided a detailed overview of the information contained on the websites in question and explained how the applicant could access it by means other than the Internet.

40. The Government noted that the website of the Council of Europe Information Office in Tallinn had been operational until 29 December 2010. Since 2010 the Ministry of Foreign Affairs had published retroactively Estonian translations of the Court's judgments made in respect of Estonia and summaries in Estonian of key judgments made in respect of other countries. On 20 January 2012 the online version of *Riigi Teataja* had started publishing Estonian summaries of the judgments of the Court, and since 2013 it had also contained Estonian translations of all judgments in respect of Estonia.

2. The Court's assessment

41. The Court has consistently recognised that the public has a right to receive information of general interest. Within this field, it has developed case-law in relation to press freedom, the purpose of which is to impart information and ideas on such matters. The Court has also found that the function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate (see, for example, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, no. 39534/07, §§ 33-34, 28 November 2013, with further references).

42. Furthermore, the Court has held that the right to receive information basically prohibits a Government from preventing a person from receiving information that others wished or were willing to impart (see *Leander v. Sweden*, 26 March 1987, § 74, Series A no. 116). It has also held that the right to receive information cannot be construed as imposing on a State positive obligations to collect and disseminate information of its own motion (see *Guerra and Others v. Italy*, 19 February 1998, § 53, *Reports of Judgments and Decisions* 1998-I).

43. In the present case, however, the question in issue is not the authorities' refusal to release the requested information; the applicant's request concerned information that was freely available in the public domain. Rather, the applicant's complaint concerns a particular means of accessing the information in question: namely, that he, as a prisoner, wished to be granted access – specifically, via the Internet – to information published on certain websites.

44. In this connection, the Court reiterates that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 133, ECHR 2015; *Ahmet Yildirim v. Turkey*, no. 3111/10, § 48, ECHR 2012; and *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009).

45. Nevertheless, the Court notes that imprisonment inevitably involves a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information. It considers that Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners. However, it finds that in the circumstances of the case, since access to certain sites containing legal information is granted under Estonian law, the restriction of access to other sites that also contain legal information constitutes an interference with the right to receive information.

46. The Court observes that it is not in dispute that the restriction on prisoners' use of the Internet was based on the Imprisonment Act, which limits prisoners' Internet access to the official databases of legislation and the database of judicial decisions. Internet access beyond the authorised websites was prohibited. The Court is thus satisfied that the interference at issue was "prescribed by law" within the meaning of Article 10 § 2 of the Convention.

47. Furthermore, the Court accepts the Government's argument that the interference in question served the aims of the protection of the rights of others and the prevention of disorder and crime.

48. As regards the issue of whether the interference was "necessary" within the meaning of Article 10 § 2, the Court notes that according to the Government, granting prisoners access to a greater number of Internet sites would have increased security risks and required the allocation of additional material and human resources in order to mitigate such risks. By contrast, the applicant was of the opinion that allowing access to three more websites (in addition to those already authorised) would not have given rise to any additional security issues. Possible security issues were already effectively managed by the Ministry of Justice, which blocked any links or other such features on already authorised websites that could cause security concerns; there was no reason, according to the applicant, why this should be different in the case of the three requested additional websites.

49. The Court reiterates that under section 31-1 of the Imprisonment Act, prisoners are granted limited access to the Internet – including access to the official databases of legislation and the database of judicial decisions available on the Internet.

50. The Court notes that the websites of the Council of Europe Information Office in Tallinn, the Chancellor of Justice, and the *Riigikogu*, to which the applicant wished to have access, predominantly contained legal information and information related to fundamental rights, including the rights of prisoners. For example, the website of the *Riigikogu* contained bills together with explanatory memoranda to them, verbatim records of the sittings of the *Riigikogu*, and minutes of committee sittings. The website of the Chancellor of Justice (who is also an ombudsman in Estonia) contained his selected legal opinions. The Court considers that the accessibility of such information promotes public awareness and respect for human rights and gives weight to the applicant's argument that the Estonian courts used such information and the applicant needed access to it for the protection of his rights in the court proceedings. The Court has also taken note of the applicant's argument that legal research in the form of browsing through available information (in order to find relevant information) and making specific requests for information were different matters and that the websites were meant for legal researches rather than making specific requests. Indeed, in order to make a specific request one would need to be

aware of which particular information is available in the first place. The Court also notes that the domestic authorities have referred to alternative means of making available to the applicant the information stored on the websites in question (for example, by mail – see paragraph 17 above), but did not compare the costs of these alternative means with the additional costs that extended Internet access would allegedly incur.

51. The Court further notes that in the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, publication of the Court's judgments in the language of the respondent State is mentioned as an example of the general measures to be taken in order to execute judgments (see paragraph 22 above). The Court notes, in this connection, that when the applicant lodged his complaint with the domestic courts, the Estonian translations and summaries of the Court's judgments were only available on the website of the Council of Europe Information Office and it was only later that this information was published elsewhere – in the online version of *Riigi Teataja* (see paragraph 40 above).

52. The Court cannot overlook the fact that in a number of Council of Europe and other international instruments the public-service value of the Internet and its importance for the enjoyment of a range of human rights has been recognised. Internet access has increasingly been understood as a right, and calls have been made to develop effective policies to attain universal access to the Internet and to overcome the “digital divide” (see paragraphs 23 to 25 above). The Court considers that these developments reflect the important role the Internet plays in people's everyday lives. Indeed, an increasing amount of services and information is only available on the Internet, as evidenced by the fact that in Estonia the official publication of legal acts effectively takes place via the online version of *Riigi Teataja* and no longer through its paper version (see paragraph 7 above). The Court reiterates that the online version of *Riigi Teataja* also currently carries Estonian summaries and Estonian translations of the Court's judgments (see paragraph 40 above).

53. Lastly, the Court reiterates that under the Imprisonment Act the prisoners have been granted limited access to the Internet via computers specially adapted for that purpose and under the supervision of the prison authorities. Thus, the Court observes that arrangements necessary for the use of the Internet by prisoners have in any event been made and the related costs have been borne by the authorities. While the security and economic considerations cited by the domestic authorities may be considered as relevant, the Court notes that the domestic courts undertook no detailed analysis as to the security risks allegedly emerging from the access to the three additional websites in question, also having regard to the fact that these were websites of State authorities and of an international organisation. The Supreme Court 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, thus giving rise to the need for increased levels of monitoring. The Court also considers that the Supreme Court and the Government have failed to convincingly demonstrate that giving the applicant access to three additional websites would have caused any noteworthy additional costs. In these circumstances, the Court is not persuaded that sufficient reasons have been put forward in the present case to justify the interference with the applicant's right to receive information.

54. The Court concludes that the interference with the applicant's right to receive information, in the specific circumstances of the present case, cannot be regarded as having been necessary in a democratic society.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed compensation for the non-pecuniary damage he had sustained as a result of the alleged violation of his rights and asked the Court to determine a fair level of compensation.

57. The Government considered that given that the Convention had not been violated in respect of the applicant, there was no basis for awarding any compensation. Furthermore, they submitted that, should the Court find a violation of the applicant's rights, such a finding would in itself constitute sufficient just satisfaction.

58. The Court considers that in the circumstances of this case the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

59. The applicant claimed reimbursement of courier costs, without specifying the sum claimed.

60. The Government asked the Court to reject this claim as the sum had not been specified and no evidence regarding the costs borne had been submitted.

61. 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 have been actually and necessarily incurred and are reasonable as to quantum. However, in the present case the applicant failed to submit documentary evidence proving his costs and expenses. Therefore, the Court rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 10 of the Convention;
3. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Işıl Karakaş
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge J.F. Kjølbrot is annexed to this judgment.

A.I.K.
S.H.N.

DISSENTING OPINION OF JUDGE KJØLBRO

1. In the present case, the Court has found that the Estonian authorities' refusal to grant the applicant, a prisoner serving a life sentence, access to three specific webpages on the Internet violates the applicant's right to receive information as protected by Article 10 of the Convention. I respectfully disagree.

2. I share the majority's view that the refusal to grant the applicant access to the three webpages amount to an interference with the applicant's right to receive information as protected by Article 10 of the Convention (see paragraph 45 of the judgment). However, I do not find it decisive for the assessment of the existence of an interference that access to certain sites containing legal information is already granted under Estonian law (section 31-1 of the Imprisonment Act). In my view, refusal to grant access to the Internet, thus rendering access to specific information either impossible or more difficult, will in general amount to an interference with the right to receive information (see *Ahmet Yildirim v. Turkey*, no. 3111/10, §§ 47-56, ECHR 2012; *Akdeniz v. Turkey* (dec.), no. 20877/10, §§ 18-29, 11 March 2014; and *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, §§ 47-58, 1 December 2015). Therefore, it is sufficient for me that prisoners in Estonia are, with a few exceptions, generally prohibited from using the Internet.

3. I also share the view of the majority that the interference was prescribed by law and pursued legitimate aims (see paragraphs 46-47). However, I respectfully disagree with the majority that the interference was not "necessary in a democratic society" as required by Article 10 of the Convention.

4. The question of prisoners' right to access to the Internet, in general or in some restricted form, is a novel issue in the Court's case-law, and in the present case the Court has for the first time stated that denying a prisoner access to the Internet may amount to a violation of Article 10 of the Convention. In my view, the majority fails to take sufficient account of the fact that the applicant is a prisoner serving a life sentence in a closed prison.

5. In general, prisoners continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, save for the right to liberty (see, for example, *Yankov v. Bulgaria*, no. 39084/97, §§ 126-45, ECHR 2003-XII (extracts), and *Donaldson v. United Kingdom* (dec.), no. 56975/09, § 18, 25 January 2011). That being said, the Court has in a number of cases found that justification for restrictions on prisoners' rights under the Convention may be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (see *Donaldson v. United Kingdom* (dec.), cited above, § 18).

6. In order to justify the interference, the domestic authorities relied on the risk of misuse of access to the Internet as well as the inherent security

risks. In my view, it goes without saying that the purpose of serving a prison sentence and of preventing crime are very important in the context of prisoners' access to means of communication, including access to the Internet. To grant prisoners access to the Internet, be it in general or in some restricted form, inevitably imposes a risk of misuse and gives rise to security risks. Therefore, the question is whether the restriction on the applicant's access to three specific webpages was justified in the specific circumstances of the case.

7. The majority attach significance to the fact that prisoners in Estonia are already granted limited access to the Internet (see paragraphs 49 and 53 of the judgment). In deciding its policy on the matter, the Estonian legislature has sought to balance the competing interests of prisoners against the interests of society, namely prisoners' right to access to information about legislation and judicial decisions against the risk of misuse and risk to security. In doing so, the Estonian legislature has decided to grant prisoners limited access to the Internet. In my view, it should not be held against the Respondent Government that Estonia, in the interest of prisoners, has decided to provide prisoners with limited access to the Internet. Doing so may in practice discourage other States from taking a similar step, if providing access to certain webpages on the Internet may be used as an argument for granting access to other webpages too.

8. The majority also attaches importance to the content of the three webpages to which the applicant requested access, as well as to the importance and relevance of the information for the applicant (see paragraph 50 of the judgment). However, the domestic authorities' refusal was not based on an assessment of the nature and content of the webpages in question, but on a general assessment, made by the legislature when adopting section 31-1 of the Imprisonment Act, of the risk of misuse and risks for security if prisoners are granted access to the Internet. In my view, the Court has no basis for calling into question the assessment of the domestic authorities according to which granting – further – access to the Internet would increase the risk of misuse and risks to security.

9. The majority also attaches importance to a number of Council of Europe and other international instruments concerning the importance of the Internet (see paragraph 52 of the judgment). The Internet, including access to the Internet, is unquestionably very important for the individual in contemporary society, but I cannot but notice that none of the international instruments mentioned in the judgment (see paragraphs 22-25 of the judgment) concern prisoners' access to the Internet. Thus, the international instruments cited underline only the general importance of the Internet, but do not support an interpretation of Article 10 of the Convention according to which prisoners should be granted access to the Internet, either in general or in some restricted form.

10. It is also a cause of concern to me that the judgment includes no information on comparative law and practice. To my knowledge, in many European as well as other countries prisoners serving sentences in closed institutions are, for security reasons and due to the risk of misuse, not granted access to the Internet, and if they are granted such access, it is done to a limited degree and under adequate control and restrictions. Thus, the information provided in the judgment does not establish a sufficient basis for stating that there is a European consensus according to which prisoners serving sentences in closed institutions are granted access to the Internet, be this in general or in some restricted form.

11. In my view, the risk of misuse and the inherent security risks are so significant that the Court should be careful not to impose an obligation on States to grant prisoners' access to the Internet, as granting access will inevitably necessitate adoption of control measures and have practical and financial implications for the Member States. In theory, it will always be possible to implement the necessary monitoring, but the burden and the costs for the State may be excessive.

12. In the assessment of proportionality it is, in my view, important that the information on the three webpages to which the applicant sought to have access was available to the applicant by other means (see paragraph 17 of the judgment), even though access to the information would most probably be more difficult without access to the webpages in question.

13. The judgment concerns the applicant's request to have access to three specific webpages, but the reasoning in the judgment will be equally applicable if – or when – the applicant, encouraged by the judgment, decides in the future to request access to other webpages or if other prisoners, inspired by the judgment, decide to request access to other webpages and can demonstrate the relevance and necessity of access to the information provided on the webpages. Thus, in practical terms, the judgment is close to recognising a right of prisoners to access to relevant webpages on the Internet. This significant step is taken without sufficient support in international instruments concerning prisoners and without an assessment of European law and practice.

14. Having regard to the inherent risks concerning misuse and security, the technical and financial burdens imposed on Member States if prisoners are to be granted access to the Internet, the lack of information about European law and practice as well as the lack of support in international instruments on prisoners' rights, the State should, in my view, be granted a wide margin of appreciation. Therefore, even though I fully subscribe to the general importance of the Internet for the individual in contemporary society, there is, in my view, insufficient basis for finding a violation of Article 10 of the Convention.

15. Having regard to the novelty of the legal question raised by the application, the general importance of prisoners' access to the Internet as

well as the practical and financial implications of granting prisoners access to the Internet, the question should, in my view, not have been decided by a Chamber, but by the Grand Chamber (Article 30 of the Convention).