



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

FOURTH SECTION

**CASE OF HARKMANN v. ESTONIA**

*(Application no. 2192/03)*

JUDGMENT

STRASBOURG

11 July 2006

**FINAL**

*11/10/2006*

*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 Harkmann v. Estonia,**

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr M. PELLONPÄÄ,

Mr S. PAVLOVSKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

Mrs J. LAFFRANQUE, *ad hoc judge*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 20 June 2006,

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

## PROCEDURE

1. The case originated in an application (no. 2192/03) 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 Mr Allar Harkmann (“the applicant”), on 10 January 2003.

2. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Hion, Director of the Human Rights Division of the Legal Department of the Ministry of Foreign Affairs.

3. On 1 March 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the applicant’s detention to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the latter part of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 in Estonia and lives in Tartu.

### A. Criminal proceedings against the applicant

5. In 1995 or 1996 the applicant lodged an application with the Public Prosecutor's Office in which he requested that criminal proceedings be initiated against four persons, including two police officers. The applicant had allegedly been beaten by these men. A prosecutor refused to initiate criminal proceedings.

6. Subsequently, the same four persons made a report concerning an offence allegedly committed by the applicant. They argued that the applicant had submitted false accusations concerning the beating. On 8 October 1996 criminal proceedings were instituted against the applicant under Article 174 § 1 (submitting knowingly false accusations concerning the commission of a criminal offence by another person) of the Criminal Code (*Kriminaalkoodeks*).

7. In the following years, the applicant repeatedly failed to appear at the police prefecture when summoned. On several occasions it proved to be impossible to compel him by force to appear (*sundtoomine*), as he was not present at the address he had indicated and his whereabouts were unknown. On some occasions, when the authorities found him, he refused to familiarise himself with the charges, to give statements or to sign an undertaking not to leave his place of residence (*allkiri elukohast mittelahkumise kohta*).

8. According to a forensic psychiatric expert opinion given in 2000 on the request of an investigator, the applicant was not mentally unsound but had a paranoid personality disorder. He was considered to be able to give statements, attend court hearings and serve any punishment.

9. Also in 2000 a new criminal case was instituted against the applicant, again under Article 174 § 1 of the Criminal Code. The case was joined with the case initiated in 1996.

10. In 2000 and 2001 the period of the preliminary investigation was extended repeatedly due to the applicant's alleged ill-health. On 28 November 2001 he was compelled by the police to appear in the police prefecture. On the next day, he was presented with the formal charges under Article 174 § 1 of the Criminal Code. He refused to make any statements, to familiarise himself with any documents or to sign them.

11. On 15 January 2002 the prosecutor approved the summary of charges and the criminal case file was sent to the Tartu County Court (*Tartu Maakohus*).

12. On 17 January 2002 the County Court committed the applicant for trial and maintained the signed undertaking not to leave his residence as a preventive measure against him. The hearing was scheduled for 26 March 2002.

By a letter of 24 March 2002 the applicant informed the court that he could not participate in the hearing due to his ill-health. He requested that the hearing be adjourned.

On 26 March 2002 the hearing was adjourned due to the absence of the applicant and a new hearing was scheduled for 13 June 2002. The court decided that the applicant should be compelled by the police to appear before it on that date.

As the police was unable to find the applicant and to secure his attendance at the court hearing on 13 June 2002, the hearing was adjourned until 30 September 2002. The court again decided that the applicant had to be compelled by the police to appear in court.

### **B. Proceedings related to the applicant's custody**

13. On 30 September 2002 the applicant failed to appear in court. The police had been unable to secure his attendance, as during repeated checks no one had opened the door at his residence. The applicant's appointed lawyer, the prosecutor and one of the victims had appeared before the court. The County Court decided to adjourn the hearing and to declare the applicant a fugitive. It decided that when found he should be taken into custody (*vahi alla võtmine*) and that a new hearing would be scheduled then. The court relied on Articles 66, 68, 73 § 1, 209, 218 and 223 of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*).

14. The applicant was taken into custody on 2 October 2002 in Tallinn.

15. He subsequently lodged a complaint addressed to the Tartu Court of Appeal (*Tartu Ringkonnakohus*). As stated by the applicant in the complaint, "[it was] handed over on 05.10.2002, in the presence of witnesses, to the officer in charge of the Arrest House of the Tallinn Police Prefecture to be transmitted to the Tartu Court of Appeal".

A copy of the complaint submitted to the Court by the Government bears a handwritten note "Complaint received. Tartu County Court. 10.10.02" and a seal and signature of a judge of the County Court.

According to the complaint, the deprivation of the applicant's liberty was unlawful, as he had not been presented with the decision of the County Court on the basis of which he had been arrested. Moreover, the decision had been taken by the County Court in his absence. He alleged that the registration of his residence at the address where the City Court had sent the summonses had been cancelled. He noted that, according to the Civil Code (General Principles) Act (*Tsiviilseadustiku üldosa seadus*), in case the residence of a person could not be determined, the place where he or she was actually staying should be deemed his or her residence. On 2 October 2002 he had stayed in Tallinn and prior to that in Tartu. However, he had not received the summonses. He requested that he be immediately released

from custody and that the County Court's decision concerning his arrest be invalidated.

16. The applicant was kept in custody until 17 October 2002. On that date the Tartu County Court held a hearing in the presence of the applicant, his appointed lawyer and the prosecutor. The court decided that, as the applicant and his lawyer had not familiarised themselves with the case file, the hearing had to be adjourned. As the applicant alleged that he had not received the summons for the hearing of 30 September 2002 and promised to appear before the court when invited in the future, he was released from custody. The court applied a more lenient preventive measure in respect of the applicant – a signed undertaking not to leave his place of residence.

17. On 5 November 2002 the Tartu Court of Appeal adjourned the hearing concerning the applicant's appeal against the County Court's decision of 30 September 2002, since the applicant's lawyer had not appeared.

On the same day the Court of Appeal received the applicant's amendments to his appeal. He alleged, *inter alia*, that he had never signed an undertaking not to leave his place of residence and claimed compensation for his unlawful detention.

18. On 11 November 2002 the Court of Appeal held a hearing and dismissed the applicant's appeal. It noted that, under Article 73 § 1 of the Code of Criminal Procedure, preventive custody could be applied in order to prevent a defendant at trial from evading the criminal proceedings or committing a new crime. It held that the County Court had had good grounds to believe that the applicant was evading the criminal proceedings and that he was in breach of a signed undertaking not to leave his place of residence. He had not reacted to summonses sent to his place of residence and had not answered phone calls. The fact that the applicant had been taken into custody had made it possible, on 17 October 2002, to conduct a hearing, after which the applicant had been released. In respect of the applicant's allegation that he had never signed an undertaking not to leave his place of residence, the Court of Appeal established, based on the case file, that the applicant had been presented with a decision according to which a prohibition to leave his place of residence had been applied as a preventive measure. The fact that the applicant had refused to sign it could not be interpreted to mean that the measure had not been applied. The preventive measure in the form of a signed undertaking not to leave one's place of residence was not meant to restrict one's freedom of movement; its purpose was rather to keep the court informed of the person's whereabouts so that the criminal proceedings could be conducted without delays. However, in the particular instance, the criminal case could not be conducted without delays, as the applicant had failed to comply with the preventive measure applied under Article 69 § 1 of the Code of Criminal Procedure. The Court of Appeal noted that it was not possible in those

proceedings concerning the appeal against the County Court's ruling to decide on the compensation claim for damage.

Under the provisions of the applicable criminal procedure law, the decision of the Court of Appeal was final.

### **C. Subsequent developments in the criminal case**

19. In late 2003 and 2004 the hearings in the criminal case were repeatedly adjourned, mainly due to the applicant's failure to appear before the court and to comply with the court's orders concerning his forensic psychiatric expert examination. At the same time, the applicant lodged numerous complaints and appeals against various institutions.

20. According to a forensic psychiatric examination's report of 3 August 2005, the state of the applicant's mind did not allow him to understand and control his acts. He was considered to be unable to give statements before a court or to serve punishment. His compulsory treatment was deemed to be unnecessary, as he presented no danger to himself or to society.

21. By a decision of 21 September 2005, the County Court found it established that the applicant had committed the acts that he had been charged with. However, since his state of mind had deteriorated, as evidenced by the forensic psychiatric examination's report, and he was unable to give statements before a court and serve punishment, the criminal proceedings were discontinued. The decision could be appealed against within ten days.

22. By a decision of 27 September 2005, the Supreme Court (*Riigikohus*) rejected the applicant's appeal against several decisions of lower courts, including the Court of Appeal's decision of 11 November 2002. It held that only a lawyer – and not the applicant himself – could appeal against a decision of an appellate court. Moreover, the above decision of the Court of Appeal had been final according to the applicable criminal procedure law.

23. On 22 October 2005 the applicant lodged an appeal against the County Court's decision of 21 September 2005.

## **II. RELEVANT DOMESTIC LAW**

24. The relevant provisions of the Code of Criminal Procedure (*Kriminaalmenetluse koodeks*), as in force at the material time, provided:

### **Article 66**

“(1) If there is sufficient reason to believe that an accused or a defendant at trial who is at liberty might abscond from an investigation or court proceedings or impede the establishment of the truth in a criminal matter or continue to commit criminal

offences, or in order to ensure the enforcement of a court judgment, one of the following preventive measures may be applied with regard to him or her:

1) a signed undertaking not to leave place of residence (*allkiri elukohast mittelahkumise kohta*);

...

3) taking into custody;

...”

#### **Article 68**

“(1) In the choice of preventive measure, there shall be taken into account the seriousness of the criminal offence in question, the personality of the suspect, accused, or defendant at trial, the possibility that the suspect, accused, or defendant at trial may abscond from the investigation or from the court proceedings or may impede the establishment of the truth, and the state of health, age, marital status and other facts concerning the suspect, accused or defendant at trial which may be relevant to the application of a preventive measure.

...”

#### **Article 69**

“(1) A signed undertaking not to leave a place of residence means a written commitment obtained from a suspect, accused or defendant at trial not to leave his or her permanent or temporary residence without the permission of a preliminary investigator, prosecutor or court.

(2) If the suspect, accused or defendant at trial violates such a commitment, a more severe preventive measure may be applied with regard to him or her, the consequences of which the suspect, accused or defendant at trial shall be warned of at the time of obtaining his or her signature.”

#### **Article 73**

“(1) A preventive custody measure may be applied in respect of a suspect, accused or defendant at trial in order to prevent him or her from evading the criminal proceedings or committing a new offence, as well as to ensure the enforcement of a court judgment.

...

(4) ... A person to be taken into custody has the right to request his or her interrogation by a county or city court judge with the participation of defence counsel ... Such requirements are not applied if the person to be taken into custody is a fugitive, or if his or her whereabouts are unknown.

(5) A preventive custody measure ... shall be granted or refused by a reasoned ruling of a county or city court judge. ...”

#### **Article 77-1**

“A person taken into custody ... may challenge the custody measure by an appeal lodged within five days...”

#### **Article 78**

“...

(3) A preventive measure applied in respect of a defendant at trial may be altered or annulled by the trial court or a higher court.

...”

#### **Article 78-1**

“(1) A person who has been summoned ... has to promptly inform ... the court ... if he or she is unable to appear at the time indicated in the summons.

...”

#### **Article 78-3**

“(1) Compulsory attendance (*sundtoomine*) may be ordered ... by a court with regard to ... an accused ..., if he or she fails to appear before ... the court and the summons indicates that the person concerned may be compelled to attend in case of failure to appear.

...

(2) Compulsory attendance is effected by the police.

(3) A person subject to compulsory attendance who is staying in the same district as ... the court may be detained for up to eighteen hours prior to the commencement of ... a court session. In the case of the compulsory attendance of a person who is staying in another district, the term of detention shall not exceed forty-eight hours.

...”

#### **Article 208**

“(1) A criminal matter shall be heard in a session of a court of first instance in the presence of the defendant at trial whose appearance in court is mandatory.

...”

**Article 209**

“If the defendant at trial fails to appear in a court session, a court shall adjourn the hearing of the criminal matter ... . The court shall impose a fine on a defendant at trial who fails to appear ... and shall decide on the application of compulsory attendance or other preventive measures with regard to the defendant at trial.”

**Article 222**

“In the course of a court hearing of a criminal matter, the court has the right to choose, amend or annul ... the preventive measures previously chosen with regard to the defendant at trial.”

25. According to section 7(1) of the State Liability Act (*Riigivastutuse seadus*), a person whose rights are violated by the unlawful activities of a public authority in a public law relationship may claim compensation for damage caused to him or her.

26. A special law – Unjust Deprivation of Liberty (Compensation) Act (*Riigi poolt isikule alusetult vabaduse võtmisega tekitatud kahju hüvitamise seadus*) –, which entered into force on 1 January 1998, deals with the issues of compensation for damage caused by unlawful deprivation of liberty. According to section 1(3)(2) of the Act, damage caused by deprivation of liberty shall not be compensated for in a case where the person concerned absconded from the criminal proceedings, violated the obligation arising from a preventive measure not to leave his residence without the permission of a court, escaped or was in hiding.

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

27. The applicant complained that he was not taken to court immediately after he had been arrested as required by Article 5 § 3 of the Convention. Article 5, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

...”

28. The Government contested that argument.

### **A. Admissibility**

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. Whether the deprivation of liberty was justified under subparagraphs (b) or (c) of Article 5 § 1*

30. The Government were of the opinion that the applicant's detention had been justified under Article 5 § 1 (b) of the Convention. They argued that in the present case the reason for his detention had not been so much a reasonable suspicion of his having committed a crime, in which cases Article 5 § 1 (c) applied, but rather his regular non-compliance with the court's orders and the aim of securing the fulfilment of an obligation prescribed by law. They emphasised that the defendant's attendance at the court hearings was compulsory. In case of the defendant's failure to attend, there were three possibilities: first, the defendant could be sent a summons and would voluntarily attend a hearing; second, the defendant could be compelled by the police to attend the hearing; third, it was possible to take the defendant into custody. In the present case the court had used the first two possibilities with no success. Thus, the applicant's detention – authorised under Article 73 of the Code of Criminal Procedure – had been the only remaining possibility to secure his attendance at the court's hearing. The Government pointed out that the court was obliged to hear the criminal case within a reasonable time and, in case the defendant absconded

from the proceedings, the court had to take measures to ensure the judicial hearing of the case and secure the defendant's presence. Otherwise, an issue of compliance with Article 6 § 1 of the Convention could arise.

The Government noted that the domestic courts had found that the interest in holding a judicial hearing outweighed the applicant's deprivation of liberty for a short period of time.

31. The Court notes that the Court's Registry transmitted the Government's observations to the Post Offices indicated by the applicant on three occasions. However, the letters were returned by the postal service, as the applicant had failed to collect them. Nor has the applicant made any relevant comments in any of his submissions sent to the Court after the Government's observations were submitted. Thus, the Court has not received his observations in reply to those of the Government. However, he has indicated that he wishes the Court to continue the examination of his case. Therefore, the Court sees no reason to strike the application out of its list of cases pursuant to Article 37 § 1 (a) of the Convention.

32. The Court reiterates that Article 5 § 1 of the Convention requires that the detention be "lawful", which includes the condition of compliance with "a procedure prescribed by law". The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. Moreover, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 752-53, §§ 40-41).

Article 5 § 1 contains an exhaustive list of permissible grounds of deprivation of liberty. However, the applicability of one ground does not necessarily preclude that of another; a detention may, depending on the circumstances, be justified under more than one sub-paragraph (see, for example, *Eriksen v. Norway*, judgment of 27 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 861-62, § 76 and *Enhorn v. Sweden*, no. 56529/00, § 34, ECHR 2005-...). Taking into account that the applicability of sub-paragraph (c) of Article 5 § 1 triggers also the protection provided by Article 5 § 3, which constitutes an important additional guarantee for an arrested person, the Court considers it appropriate to analyse first whether this sub-paragraph is applicable to the present case.

33. The Court observes that in the present case the applicant was obliged under domestic law to appear before the Tartu County Court where criminal charges against him had to be dealt with. However, he failed on several occasions to comply with the summonses sent to him and the judicial authorities were in serious difficulties in trying to find him. Subsequently, his custody was ordered by the County Court on 30 September 2002 on the

basis of relevant provisions of the Code of Criminal Procedure. There is nothing to indicate that the procedure prescribed by domestic law was not followed.

34. The Court recalls that the applicant was summoned by the County Court in the context of criminal proceedings against him. Moreover, he was taken into custody on the basis of provisions of the Code of Criminal Procedure, which authorise the taking into custody of a defendant at trial. He was released after a hearing in the criminal case had been held. In fact, there was no other reason for the authorities to compel the applicant to appear before the court save for the criminal proceedings against him. The Court concludes that his detention falls within the ambit of sub-paragraph (c) of Article 5 § 1 of the Convention.

35. The Court sees no reason not to agree with the Government's argument that sub-paragraph (b) of Article 5 § 1 is also applicable to the present case. However, having found that sub-paragraph (c) is applicable, the Court will proceed to examine whether the more stringent guarantees provided by Article 5 § 3 were complied with.

*2. Whether the guarantees provided by Article 5 § 3 were complied with*

36. The Court reiterates that Article 5 § 3 of the Convention provides persons arrested or detained on suspicion of having committed a criminal offence with a guarantee against any arbitrary or unjustified deprivation of liberty (see, for example, *Aquilina v. Malta* [GC], no. 25642/94, § 47, ECHR 1999-III).

Article 5 § 3 is aimed at ensuring prompt and automatic judicial control of police or administrative detention ordered in accordance with the provisions of Article 5 § 1 (c) (see *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, p. 24, § 51 and *Aquilina*, cited above, §§ 48-49).

The Court has pointed out that under Article 5 § 3, there is both a procedural and a substantive requirement. The procedural requirement places the "officer" under the obligation of hearing himself the individual brought before him; the substantive requirement imposes on him the obligations of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there are reasons to justify detention and of ordering release if there are no such reasons (see *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, pp. 13-14, § 31, with further references).

37. Unlike in several cases dealt with by the Court, the detention of the applicant in the present case was from the outset ordered by a court. Thus, the Court is called upon to determine whether the judicial involvement in the applicant's arrest was sufficient in order to meet the requirements of Article 5 § 3.

38. The Court observes, first, that the text of Article 5 § 3 requires that a person shall be brought promptly before a judge or other judicial officer after having been arrested or detained. The text of the provision does not provide for any possible exceptions from that requirement, not even on grounds of prior judicial involvement. To conclude otherwise would run counter to the plain meaning of the text of the provision.

Moreover, the Court recalls that, according to its case-law, the judicial control foreseen by Article 5 § 3 must meet certain requirements, one of those being that the judicial officer must himself or herself actually hear the detained person before taking the appropriate decision (see *De Jong, Baljet and Van den Brink*, cited above, p. 24, § 51 and *Aquilina*, cited above, § 50). The Court notes that in the present case the applicant – unlike his lawyer – chose not to appear before the County Court when the decision concerning his arrest was taken. This fact in itself does not give rise to an issue under Article 5 § 3, as a requirement cannot be derived from the Convention to the effect that a person who is evading court proceedings should be present at the court hearing where authorisation for his or her arrest is dealt with (see *Harkmann v. Estonia* (dec.), no. 2192/03, 1 March 2005). However, the Court observes that the applicant had no chance to present the court with possible personal reasons militating against his detention after his actual arrest on 2 October 2002, despite the authorities' obligation under Article 5 § 3 to give him a possibility to be heard.

39. The Court notes that the applicant was released after a hearing of his criminal case on 17 October 2002, that is before the lawfulness of his detention was examined. Until then, he had been kept in custody for fifteen days. The Court finds that such a period is incompatible with the requirement of "promptness" under Article 5 § 3 (see, for example, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 33-34, § 62).

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

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

41. The applicant complained of the fact that the lawfulness of his detention had not been decided on speedily. He relied on Article 5 § 4 of the Convention, which reads as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

42. The Government contested that argument.

### Admissibility

43. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. The question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see *Rehbock v. Slovenia*, no. 29462/95, § 84, ECHR 2000-XII, with further references).

The Court further recalls that once an individual has been released Article 5 § 4 ceases to be applicable, save in so far as he complains about the speediness with which the lawfulness of his detention was considered by the relevant national court (see *Tyrrell v. the United Kingdom*, no. 28188/95, Commission decision of 4 September 1996, unreported).

44. Turning to the present case, the Court notes that the applicant instituted proceedings to challenge the lawfulness of his detention on 5 October 2002 by lodging an appeal against his detention order. Although the Court of Appeal rendered its decision concerning the appeal only on 11 November 2002, the applicant's immediate release had already been ordered by the County Court on 17 October 2002.

The Court considers that the applicant was released before an issue under Article 5 § 4 could arise (see, for comparison and *mutatis mutandis*, *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, p. 22, § 56).

45. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

46. Lastly, the applicant complained of the violation of his right to compensation for unlawful detention. He relied on Article 5 § 5 of the Convention, which stipulates:

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

47. The Government contested that complaint.

#### A. Admissibility

48. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

49. The Government submitted that, although the applicant could not rely on the Unjust Deprivation of Liberty (Compensation) Act before the termination of the criminal proceedings, there had been other remedies available to him to seek damages for the alleged unlawful activities of the officials. The Government pointed out that a person whose rights were violated by unlawful activities of a public authority could claim damages under the State Liability Act.

50. The Court reiterates that Article 5 § 5 refers to arrest or detention “in contravention of the provisions of this Article”. The arrest and detention may be lawful under domestic law, but still in breach of Article 5 § 3, in which case paragraph 5 of Article 5 is applicable (see, *mutatis mutandis*, *Brogan and Others*, cited above, p. 35, § 67). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court (see *Stoichkov v. Bulgaria*, no. 9808/02, § 72, 24 March 2005).

51. The Court notes that in the present case it had found a violation of paragraph 3 of Article 5 (see paragraph 39 above). It follows that Article 5 § 5 is applicable. The Court must therefore establish whether Estonian law affords the applicant an enforceable right to compensation for the breach of Article 5 in his case.

52. The Court recalls that in the present case the County Court ordered the applicant’s detention for the reason that he had absconded from the criminal proceedings. The County Court’s decision was upheld as being lawful by the Court of Appeal. The Court finds no reason to doubt the lawfulness of the applicant’s detention under Estonian law. In these circumstances it does not appear that a claim for compensation made by the applicant under any of the relevant provisions of the Unjust Deprivation of Liberty (Compensation) Act or the State Liability Act would have had any reasonable prospect of success. Nor did Estonian law provide for a distinct right to compensation for detention in violation of Article 5 of the Convention.

53. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 5 of the Convention.

## **IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

54. 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**

55. The applicant did not seek compensation for any pecuniary damage but claimed a total of 30,000 euros (EUR) in respect of non-pecuniary damage, namely EUR 15,000 for his detention from 2 October to 17 October 2002 and another EUR 15,000 for the Tartu Court of Appeal’s decision of 11 November 2002.

56. The Government did not comment on the claim.

57. The Court finds that the applicant must have suffered anxiety and distress as a result of the formal violations of the Convention that cannot be compensated adequately by the Court’s findings. Making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 2,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

58. The applicant did not claim any sum in respect of costs and expenses.

### **C. Default interest**

59. The Court considers it appropriate that the default interest 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 complaints under Article 5 §§ 3 and 5 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 5 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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Estonian kroons at the date of settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 11 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY  
Registrar

Nicolas BRATZA  
President