



## Public disclosure of Estonian's past employment as a driver for the KGB, 13 years later, breached his right to respect for his private life

In today's **Chamber** judgment<sup>1</sup> in the case of [Sõro v. Estonia](#) (application no. 22588/08) the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

The case concerned Mr Sõro's complaint about the fact that information about his employment during the Soviet era as a driver for the Committee for State Security of the USSR (the KGB) had been published in the Estonian State Gazette in 2004.

The Court found that in Mr Sõro's case this measure had been disproportionate to the aims sought. In particular, under the relevant national legislation, information about all employees of the former security services – including drivers, as in Mr Sõro's case – was published, regardless of the specific function they had performed.

### Principal facts

The applicant, Mihhail Sõro, is an Estonian national who was born in 1948 and lives in Tartu (Estonia).

From 1980 to 1991 Mr Sõro was employed as a driver by the Estonian branch of the Committee for State Security of the USSR (the KGB). In February 2004 the Estonian Internal Security Service presented him with a notice according to which he had been registered under the national legislation on "Disclosure of Persons who Have Served in or Co-operated with Security Organisations or Intelligence or Counterintelligence Organisations of Armed Forces of States which Have Occupied Estonia" ("the Disclosure Act"). Under the Disclosure Act, which had entered into force in 1995, the persons concerned were to be registered and information about their service or cooperation with the security or intelligence organisations was to be made public unless they had made a confession about it to the Estonian Internal Security Service within a year from the Act's entry into force.

The notice received by Mr Sõro stated that an announcement about his past employment would be published in an appendix to the State Gazette. It stated that the person concerned had the right to have access to the documents proving his or her links to the security or intelligence organisations and to contest that information before the Estonian Internal Security Service or the courts. According to Mr Sõro, his request to be shown the material gathered in respect of him was not met. The Estonian Government contested that allegation.

In June 2004 the announcement about Mr Sõro's having worked for the Committee for State Security as a driver was published in the appendix to the State Gazette, both in its printed version and on the Internet. He subsequently complained to the Chancellor of Justice, who, in a report to Parliament, concluded that the Disclosure Act was unconstitutional, in particular because information on all employees of the security and intelligence organisations was made public

<sup>1</sup> 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).

irrespective of whether they had merely performed technical tasks not related to the main functions of the organisations. However, the Parliament's constitutional law committee disagreed with this assessment and the Chancellor of Justice did not bring constitutional review proceedings.

In 2006, Mr Sõro lodged a complaint before the administrative court, asking for the text published in the Gazette to be declared unlawful and, in particular, to delete the word "occupier" (in the reference to States having occupied Estonia). He noted in particular that he had never been accused of or provided with any evidence showing that he had participated in the forceful occupation of the Estonian territory. He asserted that he had only worked for the Committee for State Security as a driver and did not know anything about gathering information. Moreover, as a result of the publication of the announcement he had lost his work and he had been a victim of groundless accusations by other people. The administrative court dismissed his complaint, noting in particular that he had failed to contest the notice with which he had been presented. That decision was upheld by the appeal court and, in February 2008, the Supreme Court declined to hear Mr Sõro's appeal.

## Complaints, procedure and composition of the Court

Mr Sõro complained that the publication of information about his employment as a driver of the KGB had breached his rights under Article 8 (right to respect for private and family life).

The application was lodged with the European Court of Human Rights on 3 May 2008.

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

Elisabeth **Steiner** (Austria), *President*,  
Khanlar **Hajiye**v (Azerbaijan),  
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),  
Julia **Laffranque** (Estonia),  
Paulo **Pinto de Albuquerque** (Portugal),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court considered that the publication of information about Mr Sõro's employment as a driver of the KGB had affected his reputation and therefore constituted an interference with his right to respect for his private life. The lawfulness of that interference – which had been based on the Disclosure Act – was not in dispute between the parties. The Court also considered that the interference had pursued a legitimate aim for the purpose of Article 8, namely the protection of national security and public safety, the prevention of disorder and the protection of the rights and freedoms of others.

As regards the question of whether the measure had been proportionate to the aims pursued, the Court observed that in a number of previous cases against other countries concerning similar measures it had criticised the lack of individualisation of those measures. Such considerations also applied in Mr Sõro's case. The Court noted that the Disclosure Act did not make any distinction between different levels of past involvement with the KGB. It was true that under the applicable procedure Mr Sõro had been informed beforehand of the text of the announcement to be published, and given the possibility to contest the factual information it contained. However, there was no procedure to evaluate the specific tasks performed by individual employees of the former

security services in order to assess the danger they could possibly pose several years after the end of their career in those institutions. The Court was not convinced that there was a reasonable link between the legitimate aims sought by the Act and the publication of information about all employees of the former security services, including drivers, as in Mr Sõro's case, regardless of the specific function they had performed in those services.

Furthermore, while the Disclosure Act had come into force three and a half years after Estonia had declared its independence, publication of information about former employees of the security services had stretched over several years. In Mr Sõro's case, the information in question had only been published in 2004, almost 13 years after Estonia had declared its independence. The Court considered that any threat which the former servicemen of the KGB could initially have posed to the new democracy must have considerably decreased with time. There had been no assessment of the possible threat posed by Mr Sõro at the time the announcement was published.

Finally, although the Disclosure Act itself did not impose any restrictions on Mr Sõro's employment, according to his submissions he had been derided by his colleagues and had been forced to quit his job. The Court considered that even if such a result was not sought by the Act it nevertheless testified to how serious the interference with Mr Sõro's right to respect for his private life had been. In the light of those considerations the Court concluded that this interference had been disproportionate to the aims pursued. There had accordingly been a violation of Article 8.

#### Just satisfaction (Article 41)

The Court held that Estonia was to pay Mr Sõro 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,444.74 in respect of costs and expenses.

#### Separate opinions

Judge Pinto de Albuquerque expressed a concurring opinion; Judges Hajiyev, Laffranque and Dedov expressed a joint dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available only in English.*

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