CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 2192/03
by Allar HARKMANN
against Estonia

The European Court of Human Rights (Fourth Section), sitting on 1 March 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr J. ŠIKUTA, *judges,*
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 10 January 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Allar Harkmann, was born in 1955 and lives in Tallinn.

A. The circumstances of the case

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

In 1995 or 1996 the applicant was charged under Article 174 § 1 of the Criminal Code with submitting knowingly false accusations concerning the commission of a criminal offence by another person. On an unspecified date the applicant was subjected to a prohibition to leave his residence (*allkiri elukohast mittelahkumise kotha*) as a preventive measure in order to secure the conduct of the court proceedings.

On 30 September 2002 the Tartu County Court (*Tartu Maakohus*) authorised the police to take the applicant into custody in order to secure his attendance at a court hearing. According to the decision he had previously been subjected to a prohibition to leave his residence. However, he had not accepted service of summonses, at the same time continuing his correspondence with the court. The County Court concluded that the applicant was hindering the court proceedings and, therefore, should be taken into custody. The court apparently relied on Article 73 of the Code of Criminal Procedure.

According to the applicant he was taken into custody on 2 October 2002 at a public hearing in the Tallinn Administrative Court (*Tallinna Halduskohus*) with the consent of the judge who had been presiding at the hearing of an administrative case in which the applicant was one of the parties. He was kept in custody until 17 October 2002. On that date the Tartu County Court held a hearing and, subsequently, the applicant was released.

The applicant appealed to the Tartu Court of Appeal (*Tartu Ringkonnakohus*), asking it to appoint a lawyer for him at the expense of the State; to invalidate the 30 September 2002 decision of the County Court; to award him compensation for unlawful arrest (as he had not been served with the court order authorising his arrest nor been summoned to the hearing in the County Court where the order had been issued); to submit and join documents to file in the criminal case and to refer the criminal case for further pre-trial investigation. He also challenged the jurisdiction of the court.

The Tartu Court of Appeal rejected the appeal on 11 November 2002. It held that the County Court had good grounds to believe that the applicant was evading the criminal proceedings and that he was in breach of the prohibition 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 was released. The Court of Appeal noted that it could not resolve in these proceedings the questions of compensation and of sending the criminal case for further pre-trial investigation. Under the provisions of the applicable criminal procedure law, this ruling was final.

On 14 November 2002 the Tartu County Court decided to seek a psychiatric expert opinion with regard to the applicant's ability to participate in the court proceedings. On 14 March 2003 the County Court ordered the police to take the applicant to a hospital if he failed to appear there as had been the case on three previous occasions. After being taken to the hospital by the police, he stayed there for half an hour, refusing cooperation with the medical staff and requesting several legal documents concerning the activities of the hospital.

On 12 May 2003 the Tartu County Court decided to seek an expert opinion from another hospital. The applicant was given ten days to appear there, failing which the police were to take the action. On 6 June 2003 the Tartu Court of Appeal rejected an appeal against the decision of the County Court.

B. Relevant domestic law

According to Article 69 of the Code of Criminal Procedure a prohibition to leave a place of residence may be imposed on a suspect, accused or accused at trial, i.e. he or she may be obliged to undertake a written commitment not to leave his or her permanent or temporary residence without the permission of a preliminary investigator, prosecutor or court. If the suspect, accused or accused at trial violates such a commitment, a more severe preventive measure may be applied with regard to him or her, against which the suspect, accused or accused at trial is cautioned upon the obtaining of his or her signature.

According to Article 73 of the Code, a preventive custody measure may be applied in respect of a suspect, accused or accused at trial in order to prevent him or her from evading the criminal proceedings or committing a new crime as well as to ensure the enforcement of a court judgment (§ 1).

An investigator must notify the defence counsel and prosecutor of a custody application beforehand; the counsel and prosecutor have the right to participate in the hearing of the application by the county or city court judge (§ 3).

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 the defence counsel, except when the person's whereabouts are unknown (§ 4).

A county or city court judge must give a reasoned ruling on the permission or refusal of the preventive custody measure (§ 5).

Article 78-3 of the Code provides that compulsory attendance may be ordered by a preliminary investigator or by a court with regard to an accused, if he or she failed to appear before the preliminary investigator or the court and the summons indicates that a person may be compelled to attend in case of failure to appear (§ 1).

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

COMPLAINTS

1. The applicant complains under Article 5 § 2 of the Convention that he was not informed of the reasons for depriving him of his liberty and he was not provided with the court order authorising his arrest. He was not present at the hearing in which the Tartu County Court authorised his arrest.

2. The applicant further complains, invoking Article 5 §§ 3 and 4, that he was not taken to court immediately and that the lawfulness of his detention was not decided speedily. Moreover, he complains under Article 5 § 5 that the Tartu Court of Appeal did not award him compensation for unlawful arrest.

3. Invoking Article 5 § 4, the applicant complains that he could not challenge the ruling of the Tartu County Court of 14 March 2003 on the basis of which he was deprived of his liberty.

4. The applicant complains that the 12 May 2003 decision of the Tartu County Court and the 6 June 2003 decision of the Tartu Court of Appeal violated his rights under Article 6 §§ 1 and 3.

5. Finally, the applicant makes several complaints under Article 6 §§ 1 and 3 and Article 13 about the activities of the police, the Prosecutor's Office and the courts. He alleges that he has never been given detailed information about the nature and grounds of the charges; he has not been given a possibility to defend himself or to have a lawyer of his choice; court hearings either do not take place or take place *in absentia*; on one occasion the prosecutor's witness was not allowed to be questioned; some documents taken away from him when he was taken into custody, have not been returned. The judges are not independent and impartial institutionally, as the courts are supervised by the executive power.

THE LAW

1. The applicant complains that he was not informed of the reasons for depriving him of his liberty and he was not given a copy of the court order authorising his arrest. He further complains that he was not present at the hearing in which the Tartu County Court authorised his arrest. He invokes Article 5 § 2 of the Convention, which reads:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

The Court finds that 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. Neither does the provision referred to require that a person must be provided with the court order authorising his or her arrest.

The County Court noted in its decision of 30 September 2002 that the applicant had been subjected to a prohibition to leave his residence. He had refused to accept summonses sent to his address, at the same time continuing his correspondence with the County Court. The Court is satisfied that the applicant was well aware of the criminal proceedings that had already been instituted against him in 1996. There is no reason to doubt that he had an adequate knowledge of the reasons for his arrest even if he was not provided with the court order. The Court finds no indication of a violation of Article 5 § 2.

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

2. The applicant complains under Article 5 §§ 3, 4 and 5 that he was not ensured the speedy hearing of the matter within a reasonable time and he was not taken to court immediately. Furthermore, he complains that he has not been awarded compensation for unlawful arrest.

The relevant parts of Article 5 of the Convention read 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.
>
> 4. 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.
>
> 5. 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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicant complains that he could not challenge the ruling of the Tartu County Court of 14 March 2003 on the basis of which he was deprived of his liberty. He invokes Article 5 § 4 of the Convention.

The Court finds this complaint to be unsubstantiated. According to the 14 March 2003 decision of the County Court the applicant was subjected to compulsory attendance under Article 78-3 of the Code of Criminal Procedure. The Court is of the view that the judicial control over the deprivation of the applicant's liberty was incorporated in the very same decision of the County Court (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, pp. 40-41, § 76). The Court also recalls that the once a person has been released Article 5 § 4 ceases to be applicable, save insofar as he complains about the speediness with which the lawfulness of his detention was considered by the court (see *Tyrrell v. the United Kingdom*, no. 28188/95, Commission decision of 4 September 1996, unreported). In the present case the applicant was released some hours after he had been taken to the psychiatric hospital.

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

4. The applicant challenges the decisions of the County Court and the Court of Appeal by which he was subjected to psychiatric expert examination and by which the police were authorised to secure his appearance in the hospital, in the event of his failure to appear.

The Court notes that the applicant has failed to provide any substantiation as to why he considers that these court decisions violated his rights under the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Finally, the applicant makes several complaints under Article 6 §§ 1 and 3 and Article 13 about the activities of the police, the Prosecutor's Office and the courts. He alleges that he has never been given detailed

information about the nature and grounds of the charges; he has not been given a possibility to defend himself or to have a lawyer of his choice; court hearings either do not take place or take place *in absentia*; on one occasion the prosecutor's witness was not allowed to be questioned; some documents taken away from him when he was taken into custody, have not been returned. He also disputed that the judges were independent and impartial institutionally, as the courts were supervised by the executive branch of power.

The Court notes, as regards the complaint concerning lack of legal assistance, that the applicant has, in fact, had at least three different attorneys at his disposal. The possible interruptions, if any, seem to have occurred due to his permanent conflicts with the appointed attorneys and the fact that he has also ruled out the appointment of several attorneys. The Court is satisfied that, on the whole, the applicant has had the benefit of having qualified legal assistance at his disposal.

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

As regards the remainder of the complaints, the Court notes that according to the submissions by the applicant the Tartu County Court has not delivered a judgment in the proceedings concerning the charge against him.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint that he was not brought promptly before a judge, that he was not ensured the speedy hearing of the lawfulness of his detention and that he was not awarded compensation for unlawful arrest;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President