# European Court of Human Rights: Kalda v. Estonia

**IRIS 2016-4:1/2**

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For the first time the European Court of Human Rights (ECtHR) has stated that denying a prisoner access to the Internet may amount to a violation of Article 10 of the European Convention of Human Rights (ECHR). In Estonia, Mr Kalda, who is serving a life sentence in prison, requested from the governor of the prison access to the online version of the State Gazette, to the decisions of the Supreme Court and administrative courts, and to the HUDOC database of the ECtHR. The governor refused this request, and so did the Administrative Court and the Tallinn Court of Appeal. The Supreme Court, however, decided that the refusal of the prison administration to grant detainees access to the rulings of the administrative courts and of the ECtHR interfered with their right to freely obtain information disseminated for public use, and considered the refusal unlawful. Some time later, Mr Kalda made a new application, requesting to be granted access to the Internet sites www.coe.ee of the Council of Europe Information Office in Tallinn, www.oiguskantsler.ee, the website of the Chancellor of Justice and www.riigikogu.ee, the website of the Estonian Parliament. He argued that he was involved in a number of legal disputes with the prison administration and that he needed access to those Internet sites in order to be able to defend his rights in court. Again Mr Kalda's request was refused. The Supreme Court this time concluded that the prohibition of detainees' access to the three Internet sites at issue was justified by the need to achieve the aims of imprisonment and in particular the need to secure public safety. Mr Kalda lodged an application with the ECtHR, complaining that the Estonian 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 ECHR.

In its judgment of 19 January 2016, the European Court reiterated 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. It also emphasises 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. However, as imprisonment inevitably involves a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information, the Court considered that Article 10 of the Convention cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners. Nevertheless,

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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. Therefore the Court needed to examine whether this interference met the conditions of Article 10 paragraph 2 of the Convention. As there was no discussion that the interference with Mr Kalda's right to receive information was prescribed by the Imprisonment Act and pursued the legitimate aims of the protection of the rights of others and the prevention of disorder and crime, the ultimate question was whether the refusal to grant access to the websites at issue was necessary in a democratic society.

The Court noted that the websites to which Mr Kalda wished to have access predominantly contained legal information and information related to fundamental rights, including the rights of prisoners. It considers that the accessibility of such information promotes public awareness and respect for human rights and gives weight to Mr Kalda's argument that the Estonian courts used such information and that he needed access to it for the protection of his rights in the court proceedings. The Court drew attention to 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. By referring to the 2003 Declaration on freedom of communication on the Internet of the Committee of Ministers of the Council of Europe (see IRIS 2003-7/3) and to the 2011 report to the Human Rights Council (A/HRC/17/27) of the UN Human Rights Council's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (see also IRIS 2011-8/2), the Court held that Internet access has increasingly been understood as a right, and that calls have been made to develop effective policies to attain universal access to the Internet and to overcome the "digital divide". The Court considered that these developments reflect the important role the Internet plays in people's everyday lives, as an increasing amount of services and information is only available on the Internet.

Finally the Court notes that under the Imprisonment Act, prisoners in Estonia have been granted limited access to the Internet via computers specially adapted for that purpose and under the supervision of the prison authorities. Thus, 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 relevant, the Court noted 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 Court also considered that the Estonian authorities have failed to convincingly demonstrate that giving Mr Kalda access to three additional websites would have

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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 Mr Kalda's right to receive information. The Court concluded, by six votes to one, that the interference with Mr Kalda's right to receive information, in the specific circumstances of the present case, could not be regarded as having been necessary in a democratic society. Accordingly it found a violation of Article 10 of the ECHR.

In his dissenting opinion, the Danish judge Kjølbro found that there is no violation of Article 10 and that Mr Kalda's application should have been dismissed. He also argues that the question of prisoners' right to access to the Internet is a novel issue in the Court's case law and that given 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 not have been decided by a Chamber, but by the Grand Chamber. In the meantime, the Estonian Government has announced a request for a referral to the Grand Chamber in this case.

***Judgment of the European Court of Human Rights, Second Section, case Kalda v. Estonia, Application no. 17429/10 of 19 January 2016***

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