Constitutional judgment 3-3-1-5-09

JUDGMENT

OF THE SUPREME COURT EN BANC

No. of case	3-3-1-5-09
Date of judgment	7 December 2009
Composition of court	Chairman Märt Rask, members Tõnu Anton, Jüri Ilvest, Peeter Jerofejev, Henn Jõks, Ott Järvesaar, Eerik Kergandberg, Hannes Kiris, Lea Kivi, Indrek Koolmeister, Ants Kull, Villu Kõve, Lea Laarmaa, Jaak Luik, Priit Pikamäe, Jüri Põld, Harri Salmann and Tambet Tampuu.
Court Case	An appeal by Romeo Kalda to declare unlawful the act of the Tartu Prison by which access to the Internet sites www.coe.ee [1],www.oiguskantsler.ee [2] and www.riigikogu.ee [3] was refused, and to issue a precept to the prison.
Contested court decision	Judgment of the Tartu Circuit Court of 31 October 2008 and judgment of the Tartu Administrative Court of 17 July 2008 in the administrative matter no. 3-07-2639.
Appellant and type of appeal	Appeals in cassation by Romeo Kalda and by the Tartu Prison.
Hearing	Written proceeding.

DECISION

1. To dismiss the appeal in cassation filed by Romeo Kalda.
2. To satisfy the appeal in cassation filed by the Tartu Prison and to annul the judgment of the Tartu Administrative Court of 17 July 2008 and the judgment of the Tartu Circuit Court of 31 October 2008 in the administrative matter no. 3 07 2639, by which the act of the Tartu Prison – refusal to grant access to the webpage www.coe.ee [1] - was declared unlawful and the Tartu Prison was obliged to grant Romeo Kalda access to the webpage www.coe.ee [1].
3. Procedural expenses will be borne by the participants in proceedings.
4. To return the security to the Tartu Prison.

FACTS AND COURSE OF PROCEEDINGS

1. Romeo Kalda filed an appeal with the Tartu Administrative Court and requested that an act of the Tartu Prison from 18 October 2007, by which he was refused access to the Internet sites www.coe.ee [1], www.oiguskantsler.ee [2] and www.riigikogu.ee [3], be declared unlawful, and to oblige the prison to ensure the appellant access to the specified Internet sites. According to the appeal, on 18 September 2007, R. Kalda submitted a request to the Tartu Prison to grant him access to the Internet sites www.coe.ee [1], www.oiguskantsler.ee [2] and www.riigikogu.ee [3]. On 18 October 2007, the Tartu Prison replied by a letter and refused access, and explained that the computer of the prison is configured so that it grants access to the electronic Riigi Teataja database, the register of court decisions, the homepage of the European Court of Human Rights and the site of the Supreme Court of the Republic of Estonia. Considering the conditions of a penal institution, access to the specified sources of public information is sufficient, and no obligation to extend access to public information is arising from legislation or an order of a superior body. On 24 October 2007, R. Kalda filed a challenge with the Ministry of Justice and the Ministry of Justice dismissed the challenge by a decision on the challenge no. 4-1-08/1739 of 23 November 2007.

The appellant found that, on the basis of the judgment of the Supreme Court in the administrative matter no. 3-3-1-20-07, the fact that the prisoner is not granted access to the published court decisions or the database of decisions of the European Court of Human Rights also restricts the right of everyone to freely obtain information disseminated for public use provided for in § 44(1) of the Constitution. This is a fundamental right ensured without reservation of the law and therefore the specified right may be restricted only on the basis of other regulations of the Constitution. As the legislator has not provided for the restriction regarding prisoners on the obtaining of information disseminated for public use, they must be ensured access equal to that enjoyed by persons who are at large. According to § 33 of the Public Information Act (PIA), every person shall be afforded the opportunity to have free access to public information through the Internet in public libraries, pursuant to the procedure provided for in the Public Libraries Act. In the Tartu Prison, the 2006 edition of the yearbook of the Chancellor of Justice is available, whereas the 2007 edition of the yearbook is not. The yearbook does not reflect all the information on the webpage. The lists of translated cases located on the webpage www.coe.ee [1] which was offered by the prison are useless as the content of the court case and the justifications therefor are not evident from the lists.

2. By a judgment of 17 July 2008, the Tartu Administrative Court satisfied the appeal filed by R. Kalda in part and declared unlawful the act of the Tartu Prison from 18 October 2007, by which the Tartu Prison refused R. Kalda access to the Internet site www.coe.ee [1], and obliged the Tartu Prison to ensure R. Kalda access to the specified site under the supervision of the prison through a computer which is configured therefor. By the same judgment, the administrative court dismissed the appeal in the part in which declaration of the unlawfulness of the acts of the Tartu Prison from 18 October 2007, by which the Tartu Prison refused R. Kalda access to the Internet sites www.oiguskantsler.ee [2] andwww.riigikogu.ee [3] was requested.

It arises from a judgment of the Supreme Court of 31 May 2007 in the administrative matter no. 3-3-1-20-07 that according to the legislation in force and under certain conditions a prisoner must be allowed access to the Internet. The Supreme Court has found that the prisoners must be ensured access to the public information through the Internet as no clearly expressed restriction thereon arises from legislation. The specified court decision stresses that a prison must ensure that prisoners have access to the public information. According to § 31^1 of the Imprisonment Act (IA) (entered into force on 1 June 2008), a prisoner is not allowed to use the Internet, with the exception of computers which are configured therefor by the prison through which access to the official databases of legislation and the register of court decisions is ensured under the supervision of the prison. The legislator has granted prisoners access to the database of court decisions which must include also the Internet site www.coe.ee [1] containing Estonian translations of the decisions of the European Court of Human Rights, which are necessary for appellants in order to protect their rights. Information on the website of the European Court of Human Rights (ECHR) which the prisoners may use in a prison is provided only in English and French. Translations of the texts of the court decisions of the European Court of Human Rights and other information is available in Estonian on the website of the Council of Europe Information Office in Tallinnwww.coe.ee [1] and the appellant cannot be obliged to have the texts of court decisions translated into Estonian. The website www.coe.ee [1] allows access to court decisions and information related thereto, and therefore it must be considered analogous to the register of court decisions, access to which is provided for in § 31^1 of the IA. On the basis of the aforementioned, the refusal of the Tartu Prison to ensure the appellant access to the website www.coe.ee [1] is unlawful as § 31^1 of the IA provides a prisoner the possibility to use the Internet under the supervision of the prison in computers which are configured therefor in order to access the register of court decisions.

As regards the request for access to the rest of the Internet sites, the administrative court dismissed the appeal of R. Kalda. The use of the websites www.oiguskantsler.ee [2] and www.riigikogu.ee [3] by prisoners in a prison through the Internet has not been provided for in the new version of § 31^1 of the IA and therefore, according to § 31^1 of the IA, prisoners have no right to access the specified sites. In order to obtain information from the specified sites, a request for information may be submitted directly to the holder of the information, specifying which information is requested, or a request for information may be submitted to the Tartu Prison.

By the possibility to use the electronic Riigi Teataja, the appellant has been ensured access to the legislation in force in the Republic of Estonia. The overviews of the Chancellor of Justice on the conformity of legislation of general application of the legislative and executive powers and of local governments with the Constitution and Acts are also available to the appellant through the electronic Riigi Teataja. Refusal to ensure access to the homepages of the Chancellor of Justice and the Riigikogu through the Internet does not violate the rights of the appellant.

3. The Tartu Prison filed an appeal against a judgment of the administrative court in which it requested annulment of the judgment of the administrative court in the part which declared the refusal of the Tartu Prison to grant R. Kalda access to the Internet site www.coe.ee [1]unlawful and obliged the Tartu Prison to ensure the appellant access to the specified website. In this part, the Tartu Prison requested a new judgment by which the appeal of R. Kalda would be fully dismissed.

The Tartu Prison is not the correct respondent in this matter as the prison cannot configure computers independently and therefore R. Kalda cannot be ensured access to the webpages requested thereby. The information technology of state agencies within the jurisdiction of the Ministry of Justice is configured by the Centre of Registers and Infosystems of the Ministry of Justice which means that organisation of access to the Internet to prisoners is only within the competence of the Ministry of Justice. The administrative court has misinterpreted § $31^1$of the IA. The meaning of the Act is to ensure access to the official registers of court decisions, including the register of the decisions of the European Court of Human Rights (HUDOC), not to the webpage www.coe.ee [1] where only the unofficial Estonian translations of court decisions are located. According to the judgment of the Supreme Court in case no. 3-3-1-20-07, prisoners must be allowed to use the Internet under certain conditions and allowed access to the public information published in the Internet

unless there is a clearly expressed restriction thereon arising from legislation. The administrative court did not consider the fact that by the time the judgment was made, a clearly expressed restriction existed in the Imprisonment Act.

4. R. Kalda filed an appeal against the judgment of the administrative court in which he requested annulment of the judgment of the administrative court in the part in which the court dismissed his appeal, and requested that new judgment be made in this regard by which the appeal would be fully satisfied.

The administrative court misinterpreted § 31^1 of the IA. A regulation must be interpreted arising from its meaning and access to the official databases of legislation which also include the Internet sites www.oiguskantsler.ee [2] and www.riigikogu.ee [3] where the judicial opinions, legislative drafting, draft Acts and other official positions and decisions are located must be ensured. The appellant cannot submit a request for information to the holder of the information in order to obtain information from the specified websites or submit the request for information directly to the Tartu Prison as he does not know what information the sites contain and is unable to specify the request for information to the sufficient extent. The Tartu Prison has rejected all requests for information that are lacking necessary detail. The Tartu Prison does not have the yearbook of the Chancellor of Justice regarding year 2007. And it is also not possible to obtain the explanatory memoranda for different Acts.

5. The Tartu Circuit Court dismissed the appeals and, by a judgment of 31 October 2008, did not change the judgment of the administrative court. The circuit court decided that procedural expenses related to the appellants (the state fee) must be borne by the appellants pursuant to § 92(1) of the Code of Administrative Court Procedure (CACP).

The circuit court found that the Tartu Prison is the correct respondent in the matter. According to § 14(2)2) of the CACP, an administrative authority against whose activities an appeal has been filed is a party in administrative court proceedings. In this case, the appeal has been filed against an act of the Tartu Prison. Thus, the Tartu Prison is the correct respondent in the matter and the opposite opinion of the Tartu Prison is not based on law as determination of the respondent must be based on the fact who performed the contested act (refusal to grant access to the Internet sites) not on the fact who is technically competent to manage computer systems in prisons. In the opinion of the circuit court, there is no sufficient justification for the statement that the administrative court has misinterpreted § 31^1 of the IA, when it found that the webpage www.coe.ee [1] must be included among the sites containing registers of court decisions to which access must be ensured. As the homepage of the European Court of Human Rights contains the official texts of court judgments in English and French, and in Estonian the site contains only basic texts (Convention and Protocols), then the circuit court agrees with the administrative court that prisoners must, through the Internet, also have access to the Estonian translations of these decisions, if existent, or summaries which are currently located on the Internet site www.coe.ee [1]. As § 31^1 of the IA was not in force at the time the contested act was performed, the positions presented in the decision of the Supreme Court no. 3-3-1-20-07 must form the primary basis for consideration. At the same time, the circuit court agreed with the administrative court that, taking account of the existing legal conditions, i.e. § 31^1 of the IA in force as of 1 June 2008, the webpagewww.coe.ee [1] must, at least which concerns the translations and summaries of the decisions of the European Court of Human Rights, be, in accordance with § 31^1 of the IA, included among the websites defined as registers of court decisions, access to which must be ensured to prisoners, as such translations cannot be found on the homepage of the European Court of Human Rights and there is no reasonable basis to deny prisoners access to the existent decisions of the European Court of Human Rights which are in Estonian.

The position of R. Kalda that also the Internet sites www.oiguskantsler.ee [2] and www.riigikogu.ee [3] should be considered official databases of legislation within the meaning of § 31^1 of the IA, since draft Acts and their explanatory memoranda, legal opinions, decisions, etc. are published there, is not justified. The administrative court correctly referred that the possibility to use the electronic Riigi Teataja ensures R. Kalda access to the legislation in force in the Republic of Estonia. Arising from § 2 of the Riigi Teataja Act, the annual overviews of the Chancellor of Justice are also available to R. Kalda through the electronic Riigi

Teataja. The circuit court agreed with the position of the administrative court that refusal to ensure access to the homepages of the Chancellor of Justice and the Riigikogu through the Internet does not violate the rights of R. Kalda.

6. R. Kalda filed an appeal in cassation against the judgment of the circuit court as regards the part in which his appeal was dismissed. R. Kalda states that courts have incorrectly interpreted the following regulations of substantive law: § 3(2), § 11 and § 44 of the Constitution, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, § 31^1 of the IP, § 3 and § 33 of the PSA and positions arising from the judgment of the Administrative Chamber of the Supreme Court in case no. 3-3-1-20-07. The appellant in cassation does not agree with the interpretation of courts as regards § 31^1 of the IP and finds that the regulation must be interpreted on the basis of its meaning, i.e. "to ensure access to official databases of legislation" means in this dispute that the Internet siteswww.oiguskantsler.ee [2] and www.riigikogu.ee [3] where the judicial opinions, legislative drafting, draft Acts (explanatory memoranda) and other official positions and decisions are located which the prisoner needs in order to protect his or her rights and shape his or her behaviour (different sections of Acts are explained in the explanatory memoranda for the Acts) etc. are also official databases of legislation. The Riigi Teataja does not contain the positions of the Chancellor of Justice regarding the year 2008 and the yearbooks do not reflect all the decisions and proposals made. Also it is impossible to obtain the explanatory memoranda for different Acts from the Riigi Teataja. Compliance with regulations cannot be required from persons if they do not have information on the existence of these regulations and they cannot examine these regulations and, thus, shape their behaviour accordingly, and at the same time being familiar to legal provisions is necessary for everyone to protect their rights effectively. The possibility to examine legal provisions must be ensured to everyone, including prisoners.

7. In its written reply, the Tartu Prison objects to the appeal in cassation filed by R. Kalda and requests that the appeal in cassation be dismissed and the judgment of the circuit court be not changed in the contested part. The Tartu Prison holds the position that the homepages of the Chancellor of Justice and the Riigikogu cannot be considered as databases of legislation within the meaning of § 31^1 of the IP and therefore the prison is not obliged to ensure access to these sites. The respondent finds that a person does not need draft Acts in order to protect his or her rights as these are not in force and, therefore, do not create, amend or terminate a person’s rights or obligations. All passed Acts are published in the Riigi Teataja and access thereto is ensured to prisoners. It is possible to buy print-outs of the explanatory memoranda for Acts available on the homepage of the Riigikogu or examine the memoranda at the library, after having submitted a corresponding application therefor beforehand. Proposals to state agencies and local government agencies published on the homepage of the Chancellor of Justice (only some twenty of thirty of the proposals concern courts and custodial institutions) are also published in the yearbook of the Chancellor of Justice, of which prisoners can buy print-outs or examine them at the library, after having submitted a corresponding application therefor. The prison has procured the yearbooks of the Chancellor of Justice at the first opportunity after their publication. In principle, it is true that everyone must have access to public information, but it does not mean that access must be ensured no matter what and only through the Internet. First and foremost, R. Kalda is interested in the positions of the Chancellor of Justice provided to other prisoners, which are not published on the homepage. These positions can be obtained from the Office of the Chancellor of Justice upon a request for information. Thus, the possibility to use the homepage of the Chancellor of Justice would not ensure the appellant in cassation access to the desired information. The respondent deems necessary to stress that R. Kalda did not address the prison with a specific request to have information printed out or to examine information and, therefore, it is inappropriate to say that the prison has not ensured him access to the desired information.

8. The Tartu Prison filed an appeal in cassation against the judgment of the circuit court in the part in which the courts satisfied the appeal of R. Kalda. The Tartu Prison finds that the appellant has no subjective right to demand access to the website www.coe.ee [1] and R. Kalda has not submitted a request to the prison for access to the specified website and that is why the prison has not performed the act (refusal), which the courts declared unlawful. Courts have incorrectly identified the website www.coe.ee [1] with the register of

court decisions within the meaning of § 31^1 of the IP. Prisoners have been ensured access to the official register of court decisions, including the register of the decisions of the European Court of Human Rights HUDOC. Inter alia, the website of the Council of Europe Information Office in Tallinn contains a link to the unofficial Estonian summaries of the decisions of the European Court of Human Rights, but the link cannot be considered the official register of court decisions. Upon making the judgment, the court should have considered whether performing the act which is applied for is within the competence of the administrative authority against whose activities the appeal had been filed. R. Kalda has not filed a request to the prison for access to specific information in any manner within the limits of the possibilities of the prison, but requested access in one particular manner. The Tartu Prison has not refused to issue the information or to provide access to the desired information, but explained that the prison has no technical means to positively resolve the request, as configuration of the computers of the prison is not within the competence of the prison but is done by the Centre of Registers and Infosystems at the order of the Ministry of Justice. Thus, the Tartu Prison is unable to comply with the conclusion of the court judgment and the respondent cannot achieve the desired objective by an appeal against the act of the prison. The prison has explained that upon receiving a corresponding request, the prison is ready to grant R. Kalda access to the unofficial translations of summaries of decisions of the European Court of Human Rights by having the Estonian translations of the decisions printed out and they can be borrowed from the library in complete form. Access to public information need not be ensured necessarily electronically, but it may be ensured also on paper.

9. In his written reply, R. Kalda objects to the appeal in cassation of the Tartu Prison and requests that it be dismissed and the judgment of the circuit court be left unamended in the contested part. The statement of the prison that R. Kalda has not requested access to the websitewww.coe.ee [1] is incorrect. The courts have ascertained that the request was submitted by the appellant on 18 September 2007 and the Supreme Court must rely on the ascertained facts. The courts have correctly found that www.coe.ee [1] must be included among the sites of the registers of court decisions within the meaning of § 31^1 of the IP and access to the site must be ensured. The statement of the prison that the decisions of the European Court of Human Rights are available in the library of the prison in Estonian is incorrect.

Actually only the list of decisions of the European Court of Human Rights is available, but the list is useless because it does not reveal the content of the cases. In order to know which decision of the European Court of Human Rights should be referred to, e.g. by way of analogy, upon protection of one's rights, one must examine all cases. The prison has refused to print out all court judgments as this is excessively burdensome on the prison from the aspect of both time and money.

10. The Administrative Chamber of the Supreme Court gave the matter by a ruling of 18 May 2009 for hearing to the Supreme Court *en banc*pursuant to § 70(1^1) of the CACP as the Chamber found that adjudication of the matter requires adjudication of an issue subject to hearing on the basis of the Constitutional Review Court Procedure Act.

JUSTIFICATIONS OF PARTICIPANTS IN PROCEEDINGS

11. In his opinion to the Supreme Court *en banc*, R. Kalda finds that blocking access to the webpages www.coe.ee [1], www.oiguskantsler.ee [2] andwww.riigikogu.ee [3] has no legitimate objective. The restriction is contrary to § 12 of the Constitution as persons who are at large can use the information contained in the aforementioned webpages. At the same time, the restriction provided for in § 31^1 of the IP is disproportionate.

R. Kalda holds on to his statements made in the appeal in cassation.

12. The Minister of Justice finds that the Supreme Court *en banc* must assess whether § 31^1 of the IP is in conformity with § 44(1) and § 12(1) of the Constitution:
1) the legitimate objective of § 31^1 of the IP is to prevent commission of offences through the Internet and to ensure the protection of victims of crimes. The unrestricted and unsupervised access of prisoners to the Internet may endanger public safety;
2) § 31^1 of the IP is an appropriate measure to achieve the objective. Restriction on the use of the Internet

which is one of the most important means to obtain and use information is necessary in order to achieve the legitimate objective. As the intensity of infringement of interference with fundamental rights is low and the objective is important, the measure may be considered moderate, i.e. proportionate. Therefore, the restriction provided for in § 31^1 of the IP is in conformity with § 44(1) of the Constitution;
3) § 31^1 of the IP is in conformity with § 12(1) of the Constitution;
4) on the basis of the position of the specialists of the Centre of Registers and Infosystems (CRI), the use of each single webpage brings about risks arising from infotechnological possibilities. It is impossible to totally preclude the misuse of even limited Internet access by prisoners (security holes on a site, changes have been made on a site by the administrator administering the site, the Internet site is attacked from the outside). Also, it is possible to ensure by infotechnological applications that there will remain no traces of the sites visited and of the time when they were visited. Detection and fixing of security holes is complicated especially in cases when an Internet site is administered by a cooperation partner of a state agency or another agency (e.g. the webpage of the Riigikogu or the Council of Europe Information Office).

It cannot be precluded that it is possible to restrict access to other sites through links available on the webpages www.coe.ee [1],www.oiguskantsler.ee [2] and www.riigikogu.ee [3], but it is impossible to totally preclude access to other websites, e.g. in the case when the administrator of a website has been careless or malicious (the sites of most state agencies are administered by private companies).

It is possible to block participation in forums and surveys but it requires a lot of time and does not ensure that other functions which should be available for prisoners will continue to function correctly on the webpage. The average time which an administrator of the CRI needs in order to review a webpage and close down and check prohibited functions is 5 to 8 hours. The restrictions must be periodically verified. Provision of access to prisoners only to the webpages of Estonian state agencies and public agencies means that one third of the CRI administrators would only be engaged in the specified work, which is impossible without additional financing. In the European context it is impossible to detect all sites, language problems will also arise.

Even upon existence of user accounts, it might be impossible to detect operations performed in the Internet in some cases. The creation and administration of user accounts includes significant work as the number of imprisoned persons is around 3600 to 3700. The state incurs additional expenses also because there is a need for additional computers and IT support staff. The abovementioned would mean the work of at least one person in the Tartu Prison, one person in the Viru Prison and two persons in the Tallinn Prison, in the Murru Prison and in the Harku Prison.

13. The Constitutional Committee and the Legal Affairs Committee of the Riigikogu find that the restriction on the use of the Internet provided for in § 31^1 of the IP is in conformity with § 12(1) and § 44(1) of the Constitution.

14. The Tartu Prison finds that broadening of the use of the Internet does not help exercise of the rights and freedoms of prisoners. Prisoners have not been deprived of their right to obtain information intended for public use, but the means to acquire such information have been restricted. This is necessary in order to reduce the risk of commission of new criminal offences.

15. The Chancellor of Justice finds that:
1) § 31^1 of the IP is a relevant regulation;
2) § 31^1 of the IP is formally in conformity with the Constitution;
3) as www.oiguskantsler.ee [2] and www.riigikogu.ee [3] are the webpages of Estonian institutions and www.coe.ee [1] is the webpage of an institution of the Council of Europe, then it must be assessed whether the requested information belongs to the protection area of § 44(1) or (2) of the Constitution. The website www.coe.ee [1] contains information disseminated for public use. As according to § 31^1 of the IP, prisoners do not have the right to access the website, this constitutes infringement of § 44(1) of the Constitution. As § 31^1 of the IP restricts access to the webpages www.riigikogu.ee [3] and www.oiguskantsler.ee [2], then the provision under dispute infringes the protection area of § 44(2) of the Constitution;

4) determining the broad content of the general fundamental right of equality provided for in the first sentence of § 12(1) of the Constitution, where the feature uniting different groups is everyone, has no independent meaning. As the justification for the restriction of fundamental rights applied in respect of a person (in this case in respect of a prisoner), including specifications regarding access to information, is weighed in the framework of § 44(1) and (2) of the Constitution respectively. Therefore, there exist no additional arguments which have to be considered pursuant to the first sentence of § 12(1) of the Constitution. Thus, the first sentence of § 12(1) of the Constitution does not apply in this case;
5) arising from the preamble of the Constitution, one of the constitutional values is the need to ensure internal peace in the state. Ensuring public safety (the security of the prison and ensuring the safety of prisoners, which are closely connected to achievement of the objectives of imprisonment) is also connected with the internal peace of the state. At the same time it is also linked to the need to protect public order. One of the objectives of imprisonment is to separate a person who has committed a criminal offence from the rest of the society in order to prevent the person from continuing potentially criminal behaviour and to protect other members of the society thereby. Information disseminated for public use may concern information which is contrary to the objectives of enforcement of imprisonment and may endanger the security of the prison. Access to information disseminated through the Internet for public use may involve the possibilities to use the Internet for other purposes. Arising from the need to preserve public safety and achieve the objectives of the imprisonment of prisoners, it is possible to restrict the fundamental right provided for in § 44(1) and (2) of the Constitution;
6) the restriction in question is appropriate for achieving the desired objective because it specifies websites where there is no security risk. Also, the measure in question corresponds to the criterion of necessity. Although, public safety is a very substantial benefit, in the given case, the measures used to achieve it are not moderate as information published on the website www.coe.ee [1] helps to achieve the objectives of the fundamental right in question and at the same time, the use of the aforementioned website does not pose a substantial danger to public safety. There are no possibilities to use the website in any other manner. Thus, § 31^1 of the IP is in conflict with § 44(1) of the Constitution in the part in which access to the website www.coe.ee [1] is not granted;
7) § 31^1 of the IP which restricts access to the webpages www.riigikogu.ee [3] and www.oiguskantsler.ee [2] corresponds to the criteria of appropriateness and necessity. Examination of the positions of the Chancellor of Justice may help a prisoner upon protection of his or her rights. At the same time, a prisoner may have justified interest to examine draft Acts and explanatory memoranda on the homepage of the Riigikogu. The aforementioned sites are the homepages of Estonian institutions the use of which generally does not endanger public safety and is in conformity with the objectives of enforcement of imprisonment. Thus, § 31^1 of the IP is in conflict with § 44(2) of the Constitution in the part in which access to webpages www.oiguskantsler.ee [2] and www.riigikogu.ee [3] is not granted.

RELEVANT PROVISIONS

16. § 31^1 of the Imprisonment Act provides for the following:

"§ 31^1. Use of Internet

A prisoner is not allowed to use the Internet, with the exception of computers which are configured therefor by the prison service, through which access to the official databases of legislation and the register of court decisions is ensured under the supervision of the prison service.

[RT I 2009, 39, 261 – entered into force 24.07.2009]"

OPINION OF SUPREME COURT EN BANC
17. In order to adjudicate the appeal in cassation by R. Kalda, first of all a question must be answered whether § 31^1 of the IP according to which a prisoner is not allowed to use the Internet, with the exception of computers which are configured therefor by the prison service, through which access to the official databases of legislation and the register of court decisions is ensured under the supervision of the prison service, grants the appellant in cassation the right to demand access to the websites www.riigikogu.ee [3], www.oiguskantsler.ee

[2] and www.coe.ee [1]and allows to oblige the Tartu Prison to ensure access to these sites.

18. The Supreme Court *en banc* agrees with the opinions of the Administrative Chamber of the Supreme Court that § 31^1 of the IP cannot be interpreted in a way which would allow to satisfy the appeal in cassation of R. Kalda, as it is expressly provided for in § 31^1 of the IP that prisoners are ensured access only to the official databases of legislation and the register of court decisions. Access to all websites which are not qualified as such is prohibited. Webpages www.oiguskantsler.ee [2], www.riigikogu.ee [3] and www.coe.ee [1] cannot be deemed to be official databases of legislation or the register of court decisions. These are the homepages of the Office of the Chancellor of Justice, the Riigikogu and the Council of Europe Information Office in Tallinn and information published on these sites concerns the aforementioned institutions. The fact that the webpage www.coe.ee [1] also contains the unofficial summaries of matters of the Court of Human Rights does not make the site an official register of court decisions, access to which should be ensured, because it is used for informative purposes. Therefore, the websites to which the appellant in cassation requests access are not included among the exceptions set out in this provision.

Consequently, if § 31^1 of the IP is in conformity with the Constitution, the appeal in cassation cannot be satisfied. Therefore, § 31^1 of the IP is a relevant provision within the meaning of § 14(2) of the Constitutional Review Court Procedure Act upon adjudication of this matter. If this provision is not in conformity with the Constitution, the Supreme Court *en banc* should decide otherwise than in the case when the provision is in conformity with the Constitution, i.e. satisfy the appeal in cassation of R. Kalda (in this regard see e.g. judgment of the Supreme Court *en banc* of 28 October 2002 in case no. 3-4-1-5-02, p 15). Nevertheless, the provision in question is relevant only to the extent which concerns the request set out in the appeal in cassation, i.e. in the part which denied access to the websites www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1].

19. Next, the Supreme Court *en banc* ascertains the fundamental right which is infringed by the prohibition provided for in § 31^1 of the IP and thereafter assesses the objective of the infringement (II) and the proportionality of the infringement (III). Last, the Supreme Court *en banc* adjudicates the appeals in cassation of R. Kalda and the Tartu Prison (IV).

I

20. According to the Supreme Court *en banc*, the relevant provision infringes the right of everyone to freely obtain information disseminated for public use arising from § 44(1) of the Constitution.

21. The wording of § 44(1) of the Constitution does not differentiate between data media and data distributors, but differentiates information which is disseminated for public use from information which is not disseminated for public use. In the opinion of the Supreme Court *en banc*, all information, regardless of its distributor or media, which is made available to a circle of persons not individually identified is deemed to be information which is disseminated for public use. This definition is based on the need to ensure to this fundamental right a protection area which is as broad as possible.

It may be concluded from the aforementioned that information which a state or local government agency or a person who performs functions in public law has made available on its website (whether voluntarily or upon performance of a duty arising from an Act), has, as a result of the publication, become information disseminated for public use. As all persons may access the information through the website, it is included in the protection area of § 44(1) of the Constitution. § 44(1) of the Constitution protects persons from the restrictions of public authorities upon accessing such information.

The exercise of the fundamental right provided for in § 44(1) of the Constitution is infringed by any obstacle set by public authorities for the receipt of information directed at a circle of persons not individually identified.

22. On the websites www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1], the Chancellor of

Justice, the Riigikogu and the Council of Europe have made some of the information concerning their activities accessible to everyone. Upon publication in the Internet, the information has become information disseminated for public use and by restricting the "free receipt of the information", i.e. the free access to the information, the state infringes the right granted to everyone by § 44(1) of the Constitution. § 311 of the IP does not allow prisoners to access information published on these websites and, therefore, the right granted to prisoners by § 44(1) of the Constitution is infringed.

23. Thus, the Supreme Court *en banc* does not agree with the opinion of the Chancellor of Justice that restriction of access to the websites of the Riigikogu and the Chancellor of Justice infringes the right which arises from § 44(1) of the Constitution.

24. In § 44(2) of the Constitution, all state agencies, local governments and their officials are assigned the obligation to provide information about their activity, pursuant to the procedure prescribed by law, to an Estonian citizen at his or her request. The right of an Estonian citizen (and, unless otherwise provided by law, also of a citizen of a foreign state or a stateless person) to receive information at his or her request corresponds to the obligation.

The material area of protection of the right includes such information about the activity of agencies exercising public authority that is not disseminated for public use by these agencies. In order to ensure the transparency of the exercise of public authority, citizens of the state and other persons must also have access to information which state agencies have for some reason not voluntarily made available through public information channels.

25. § 44(2) of the Constitution is not a special provision in respect of subsection (1) of the same section, which concerns the dissemination of information for public use by state agencies, local governments and their officials. This provision concerns the obligation to provide, primarily, information on their activities which has not been published, at persons' request, and the right of persons to receive such information which corresponds to the obligation, at their request. The fact that the state has decided, in order to exercise the right (and to prevent the requests for information), to provide for in the Public Information Act the obligation to disseminate, inter alia, in the Internet the information included in the area of protection of the right, does not change the content of the behaviour required from the state and a local government by the provision of the Constitution. It may be concluded from this that if information about the activities of public authorities has been published or made available to a circle of persons not individually identified, then, on the one hand, everyone has the right to freely access the information pursuant to § 44(2) of the Constitution and, on the other hand, Estonian citizens and others have the right to request and receive the information from state and local government agencies. However, if a state or local government agency refuses to comply with a request for information because the information requested has been made public and therefore available to the person who requested it, the Supreme Court *en banc* adds that there is no reason to consider the situation to be a violation of § 44(2) of the Constitution (see § 22 of the PSA in this regard).

26. If a state agency or a local government agency refuses to provide information about its activity, although a person requests the information, this constitutes infringement of the right provided for in § 44(2) of the Constitution. A situation where certain conditions have been provided by law for the request or issue of information must also be considered infringement of the right (e.g. the prohibition to issue information at request, which is provided by law, infringes the right).

27. Regarding the case at hand, the fundamental right set out in § 44(2) of the Constitution is not relevant. In the case of the websiteswww.riigikogu.ee [3] and www.oiguskantsler.ee [2], the relevant provision does not restrict the right of prisoners to receive, at their request, information about the activities of the institutions which is set out on the websites, or the print-outs of the websites. The administrator of the website www.coe.ee [1] is not a state agency or a local government agency and, therefore, the obligation set out in § 44(2) of the Constitution and the right corresponding to the obligation does not extend to the information about its activities.

28. In this dispute, the fundamental right to equality provided for in § 12 of the Constitution is not a relevant fundamental right. In paragraph 22 of the ruling of the Administrative Chamber by which the administrative matter was transferred for adjudication to the Supreme Court *en banc*, the Administrative Chamber has noted as regards the fundamental right to equality that all persons who are at large can freely use the information published through the websites www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1], but all priosners have, conversely, been deprived of the right to receive such information.

The Supreme Court *en banc* finds that in this dispute, when it comes to fundamental right to equality, prisoners and persons who are at large do not constitute comparable groups. The situation of prisoners differs from that of the persons who are at large, as prisoners serve a sentence and are subjected to the regime of a prison.

II

29. Next, the Supreme Court *en banc* will assess whether the restriction provided for in § 311 of the IA which causes infringement of the fundamental rights provided for in § 44(1) of the Constitution is a legitimate objective. When answering the question why the restriction based on § 31^1 of the IA has been established, first, it must be ascertained what is the objective of the punishment and, more precisely, of enforcement of the imprisonment.

30. The content of imprisonment is the deprivation of a person's liberty, i.e. the freedom of movement of a person and the possibility to exercise the subjective (fundamental) rights related thereto are restricted for a certain period of time. Imprisonment should not be perceived only as a restriction on the physical movement. The life of a prisoner will be entirely conditioned by the prison – his or her freedom will be subjected to restrictions arising from Chapters 2 and 3 which are necessary in order to enforce imprisonment as punishment. At the same time, the Imprisonment Act determines the extent of restriction of the fundamental rights of a prisoner. The restrictions listed in the Imprisonment Act do not determine the specific fundamental rights the exercise of which is hindered thereby. This must be ascertained in each specific case on the basis of the nature of the restriction. In the opinion of the Supreme Court *en banc*, imposition of imprisonment will, by hindering a person's right to free self-realisation arising from § 19 (1) of the Constitution, restrict, inter alia, a person's right to freely decide upon his or her circle of communication, channels of communication and content of communication.

31. According to § 6(1) of the IA, the objective of the enforcement of imprisonment is to help prisoners lead law-abiding life and to protect public order. According to the Supreme Court *en banc*, helping prisoners lead law-abiding life means such enforcement of punishment which would give the prisoner the ability to cope with life in the future being socially responsible without violation of the legal order. This includes, on the one hand, the application of measures and the creation of conditions for prisoners which would help them re-socialise and, on the other hand, subject prisoners to the prison order which constitutes a framework for directing their behaviour. Helping prisoners lead law-abiding life must be considered the central objective of enforcement of imprisonment. Protection of public order as the objective of enforcement of punishment primarily means ensuring that a convicted offender would not commit a new criminal offence during the time of serving the sentence. In such way, inter alia, the objective of ensuring public safety (the security of the prison and also the safety of persons outside of the prison) and more broadly the internal peace of the state as a constitutional value will be ensured by imprisonment.

32. Thus, the purposefulness of the prohibition on the use of the Internet by prisoners depends on whether the specified restriction can be included among one of the objectives of the imprisonment which is specified above – helping prisoners lead law-abiding life or the need to protect public order.

33. As technically the abuse of the right of prisoners to use the Internet cannot be precluded, then according to § 31^1 of the IA, prisoners are prohibited from using the Internet. An exception has been made only with regard to the official databases of legislation and the register of court judgments. The exception is necessary

in order to ensure prisoners an effective possibility to protect their rights. In such case, the fact that the official texts of legal instruments are available to prisoners only through the Internet must be taken into account. Also, prisoners can obtain an overview of court practice only through the Internet.

34. The prohibition on the use of the Internet primarily arises from the need to preclude the communication of a prisoner with those outside of prison in ways which are not prescribed in the Imprisonment Act and which, in the opinion of the legislator, do not necessarily help achieve the objectives of enforcement of punishment, including in order to preclude obtaining such information from the Internet which could endanger the security of the prison, public safety outside the prison or work against the objective of helping prisoners lead law-abiding life. The fact that the Internet can be used for the commission of offences and that the number of such violations is on the raise is well-known. Therefore, the opening of each new website constitutes an increasing security risk for prisoners who might access information which is in conflict with the objectives of the enforcement of imprisonment. Besides, access to information disseminated for public use through the Internet may bring about possibilities to use the Internet in other manners.

35. Therefore, the Supreme Court *en banc* concludes that prevention of access to the Internet sites www.riigikogu.ee [3], www.oiguskantsler.ee [2]and www.coe.ee [1], i.e. the infringement arising from § 31^1 of the IA to the constitutional right of R. Kalda arising from § 44(1) of the Constitution is justified by the need to achieve the objectives of enforcement of imprisonment, including particularly the need to ensure public safety.

III

36. Next, the Supreme Court *en banc* will assess whether the restriction provided for in § 31^1 of the IA which denies prisoners access to the websites www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] is proportionate for achieving the objectives set out in Part II of this Judgment.

37. The principle of proportionality is provided for in the second sentence of § 11 of the Constitution according to which restrictions on rights and freedoms need to be necessary in a democratic society. Upon conformity with the principle of proportionality, the Supreme Court *en banc*will first, verify the appropriateness of the measure, then the necessity of the measure and, if necessary, also the proportionality of the measure in a narrower sense, i.e. the moderation of the measure. A measure is appropriate if it helps achieve the objective of the restriction. As regards appropriateness, a measure which, in no case, helps achieve the objective of the restriction is undisputedly disproportionate. The essence of the requirement of appropriateness is to protect a person from the unnecessary interference of public authority. A measure is necessary when the objective cannot be achieved by another measure which is less burdensome for a person and at least as effective as the first one. In order to decide on the moderation of a measure, on the one hand, the extent and intensity of interfering with the fundamental right must be considered and, on the other hand, the importance of the objective of the restriction must be considered. The greater the infringement of the fundamental right, the stronger justification is required for the infringement (see judgment of the Constitutional Review Chamber of the Supreme Court of 6 March 2002 in case no. 3-4-1-1-02, paragraph 15).

38. § 31^1 of the IA precludes access to the websites www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1]. Therefore, it is precluded that a prisoner may use the Internet through the sites under dispute in a manner which might endanger the objectives of enforcement of imprisonment and thereby public safety. Thus, a measure provided for in § 31^1 of the IA is an appropriate measure for achieving the desired objective. It precludes any possibility, as set out in the position of the Minister of Justice, to misuse the Internet through the websites under dispute and thereby protects public safety.

39. Ensuring access to the webpages www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] may create additional possibilities for prohibited communication. Also, if wider access is permitted, it would be necessary to additionally supervise the use of the Internet by a prisoner, therefore the supervision would

bring about additional expenses and, upon failure to incur these expenses, a situation may develop where there is no actual control over the activities of prisoners. Thus, use of the websites concerned cannot be ensured in a manner which would be as effective for achieving the objective as the prohibition provided for in § 31^1 of the IA. Therefore, the prohibition on the access to the sites under dispute is a necessary measure to achieve a legitimate objective.

40. According to the Supreme Court *en banc*, the restriction provided for in § 31^1 of the IA which concerns access to the webpageswww.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] is also moderate.

As a prisoner can address the Riigikogu and the Chancellor of Justice by post and by submitting a request for information, then access to the public information set out on the webpages www.riigikogu.ee [3] and www.oiguskantsler.ee [2] is not precluded. According to § 31^1 of the IA, prisoners are ensured access to the homepage of the European Court of Human Rights and, therefore, access to the decisions of the European Court of Human Rights contained on the website www.coe.ee [1] is ensured. Also, through the webpage www.riigiteataja.ee [4], access to the Conventions and Treaties of the Council of Europe which are ratified by Estonia is ensured. And the Supreme Court *en banc* does not doubt that through the library of the prison, prisoners have access to the publications of the Council of Europe. Additionally, a prisoner may address the Council of Europe in writing. Therefore, the Supreme Court *en banc* finds that the infringement caused by the preclusion of access to the webpages www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] has low intensity.

The Supreme Court *en banc* agrees with the Minister of Justice that, upon excessive use of the Internet, the probability that the prison loses the ability to supervise the activities of prisoners is higher, as it cannot be totally precluded that a prisoner, through the webpages under dispute, attains the possibility to use the Internet for other purposes.

The Supreme Court *en banc* finds that as the infringement is of low intensity and the objective, the achievement of which is desired by the restriction, is stronger, the infringement of § 44(1) of the Constitution is moderate.

41. Arising from the aforementioned, the Supreme Court *en banc* finds that the restriction provided for in § 31^1 of the IA according to which prisoners cannot use the webpages www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] is proportionate and in conformity with the Constitution.

IV

42. Last, the Supreme Court *en banc* adjudicates the appeals in cassation by R. Kalda and the Tartu Prison.

43. Above, the Supreme Court *en banc* concluded that according to § 31^1 of the IA, the Tartu Prison is not required to ensure access to the webpages www.riigikogu.ee [3], www.oiguskantsler.ee [2] and www.coe.ee [1] (see paragraph 18 of this judgment) and § 31^1 of the IA is in conformity with the Constitution (see Parts I-III of this judgment).

44. The Supreme Court *en banc* finds that if law in force during the making of a court judgment does not allow to oblige an administrative authority to perform an act, then, arising from § 6 (1) of the State Liability Act, a court cannot oblige the administrative authority to perform the act and a corresponding appeal must be dismissed.

The object of the appeal filed by R. Kalda is the request to oblige to perform an act. R. Kalda has not submitted an independent request for ascertainment of the unlawfulness of an act together with an independent justified interest. R. Kalda has not changed his appeal. According to § 311 of the IA, the Tartu Prison is not required to ensure access to the webpages www.oiguskantsler.ee [2], www.riigikogu.ee [3] and www.coe.ee [1].

Therefore, the Supreme Court *en banc* finds that as the appeal to oblige cannot be satisfied and there is no independent justified interest for the ascertainment of unlawfulness, the judgments of the Tartu Administrative Court and the Tartu Circuit Court must be annulled in the part in which the act of the Tartu Prison to refuse access to the webpage www.coe.ee [1] was declared unlawful and the Tartu Prison was obliged to ensure R. Kalda access to the webpage www.coe.ee [1].

45. Due to the aforementioned, the appeal in cassation by R. Kalda must be dismissed and the appeal in cassation by the Tartu Prison must be satisfied.

46. The Tartu Prison does not request the ordering of payment of procedural expenses and, therefore, procedural expenses will be borne by the parties. The security which was paid when the Tartu Prison filed the appeal in cassation must be returned.

Dissenting Opinion of Judges Tõnu Anton, Indrek Koolmeister, Jüri Põld and Harri Salmann regarding Judgment of the Supreme Court en banc in Administrative Matter no. 3-3-1-5-09

1. We agree with the majority of the Supreme Court en banc that § 31^1 of the IA infringes the right of everyone to freely obtain information disseminated for public use arising from § 44(1) of the Constitution and does not concern § 44(2) of the Constitution (see paragraphs 20-27 of the judgment).

2. We do not share the opinion of the majority of the Supreme Court *en banc* that the aforementioned infringement is proportionate and constitutional as regards the websites of the Riigikogu (www.riigikogu.ee [3]), the Chancellor of Justice (www.oiguskantsler.ee [2]) and the Council of Europe Information Office (www.coe.ee [1]) (see paragraphs 40 and 41 of the judgment). We find that the Supreme Court *en banc* has not provided adequate justification for the position. Rather, the judgment has provided justification for another and, in our opinion, also correct position that prohibition on the free use of the Internet by prisoners is sensible and constitutional.

3. The judgment states with justification that the purposefulness of the prohibition on the use of the Internet depends on whether the restriction can be included among the objectives of imprisonment (see paragraph 32 of the judgment). The Supreme Court *en banc* has disregarded the need to assess the objective of the prohibition on access to the specific websites under dispute. The legitimate purpose of the infringement has been assessed in respect of the whole Internet not in respect of the websites www.oiguskantsler.ee [2], www.riigikogu.ee [3] andwww.coe.ee [1]. It must also be taken into account that the legislator has already allowed prisoners to use the Internet in a restricted manner through computers which have been configured therefor and through which access to the official databases of legislation and the register of court decisions is granted under the supervision of the prison service. To our knowledge, the databases of legislation and the register of court decisions have not been used in order to commit offences.

We conclude from paragraphs 33-35 of the judgment that the majority of the Supreme Court *en banc* does not consider such a safe infotechnological solution whereby a prisoner has access only to specified websites as technically possible. In the case of such attitude, the assistance of a specialist or expert with special knowledge in information technology should have been used.

The position of the Chancellor of Justice (see paragraph 15 6) and 7) of the judgment), according to which use of the websites of the Council of Europe Information Office, the Riigikogu and the Chancellor of Justice by prisoners does not generally pose a danger to public safety and is in compliance with the objectives of enforcement of imprisonment, should definitely have been taken into account.

4. Upon assessment of the appropriateness, necessity and moderation of the prohibition on the access to the websites under dispute, the majority of the composition, in our opinion, has departed from an erroneous and unjustified position that regardless of provision of access to only predetermined websites a prisoner still

might “[---] use the Internet through the sites under dispute in a manner which might endanger the objectives of enforcement of imprisonment and thereby public safety” (see paragraph 38 of the judgment).

5. It remains not understandable what the additional significant expenses consist in for the state in the case of the websites under dispute in a situation where, according to the law in force, prisons have computers which have been configured therefor and the prison service already exercises supervision over the use of the official databases of legislation and the register of court decisions. There is no reason to presume that enabling access to the websites under dispute involves expenses which are higher than would be the case upon ensuring a possibility to acquire information for prisoners in another manner specified in the second sub-indent of paragraph 40.

6. We cannot agree with the majority of the Supreme Court *en banc* that the restriction provided for in § 31^1 of the IA constitutes an infringement of low intensity (fourth sub-indent of paragraph 40). The infringement regulates an important area and it is strong - an absolute prohibition.

7. Upon exercise of the right to file appeals provided for in § 15 of the Constitution, knowledge about the will of the legislator upon conducting proceedings regarding one or another draft Act, the positions of the Chancellor of Justice performing the functions of the Ombudsman or the positions which the European Court of Human Rights has expressed in its decisions undoubtedly become useful.

Pursuant to the Public Information Act, a prisoner can submit a request for information in order to receive materials which have been published on the websites www.riigikogu.ee [3] and www.oiguskantsler.ee [2]. Processing of a request for information inevitably takes time due to which the term for filing a challenge or an appeal may expire and a prisoner has to apply for restoration of the term for the filing of a challenge or an appeal.

In the case of the Riigikogu, the submission of a request for information is easier as it will suffice if one knows the draft Act whose explanatory memorandum or the shorthand notes regarding the proceedings of which are desired. But in order to submit a request for information to receive information published on the websites of the Chancellor of Justice, it is necessary to know what information the sites contain.

Pursuant to the Public Information Act, a prisoner cannot submit a request for information to the Council of Europe Information Office in Tallinn in order to receive information in the framework of the Internet site www.coe.ee [1].

It cannot be concluded from the fact that pursuant to § 31^1 of the IA, prisoners are ensured access to the database of decisions of the European Court of Human Rights HUDOC (in paragraph 40 of the judgment of the Supreme Court *en banc* it is erroneously called the homepage of the European Court of Human Rights) that access to the unofficial translations of decisions of the European Court of Human Rights into Estonian contained on the website www.coe.ee [1] has also been ensured. Decisions published in the database of decisions of the European Court of Human Rights HUDOC (http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en [5]) are not in Estonian, differently from decisions published on the website www.coe.ee [1] and it cannot be presumed that a prisoner is sufficiently proficient in English or French. Publications of the Council of Europe which may be available through the library of the prison do not contain all the information which has been published on the website www.coe.ee [1]. In order to order the publications of the Council of Europe through the library of the prison, first, it is necessary to know which publications have been published. The library of the prison might not have information on which of the publications of the Council of Europe have been published in Estonian. Also the delivery of the specified publications takes time.

8. The fundamental right to obtain information disseminated for public use, including official information, is restricted by § 31^1 of the IA. The Supreme Court *en banc* has justified the restriction on the obtaining of such information which is disseminated through the Internet by public safety in order to preclude communication beyond the confines of prison. Generally, the restriction on the communication between

prisoners outside and inside of prison, not the obtaining of information disseminated for public use by a state agency may be justified by the objectives of public safety and enforcement of imprisonment. Restrictions on the obtaining of official information disseminated for public use are possible in the case of prisoners in certain specific situations and as regards specific information, e.g. it is justified to restrict, on grounds of security considerations, the access of prisoners to information which concerns disorders in another prison in real time.

Restriction on the use of means of obtaining information, e.g. the Internet, also constitutes a restriction on the fundamental right provided for in § 44(1) of the Constitution (see regulation of the Administrative Chamber of the Supreme Court of 18 May 2009 in case no. 3 3-1-5-09, second sub-indent of paragraph 21).

9. We find that the appeal in cassation filed by R. Kalda should have been satisfied and R. Kalda (and also other prisoners) should have been granted access to the websites under dispute www.oiguskantsler.ee [2], www.riigikogu.ee [3] and www.coe.ee [1] as regards the predetermined websites. As regards the websites, § 31^1 of the IA is in conflict with the Constitution, as to this extent the restriction is not purposeful and is inappropriate (see also paragraph 22 of the above decision of the Administrative Chamber).

Links
[1] http://www.coe.ee/
[2] http://www.oiguskantsler.ee/
[3] http://www.riigikogu.ee/
[4] http://www.riigiteataja.ee/
[5] http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en