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Meeting: 1250 meeting (8-10 March 2016) (DH)

Item reference: Revised action report (14/12/2015)

Communication from Estonia concerning the case of Rummi against Estonia (Application No. 63362/09)

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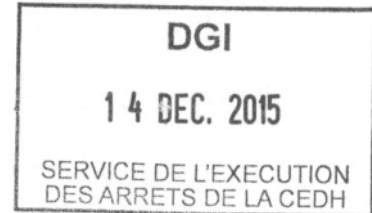
Référence du point : Bilan d'action révisé

Communication de l'Estonie concernant l'affaire Rummi contre Estonie (Requête n° 63362/09)
(anglais uniquement)

Amended on 14 December 2015

ACTION REPORT

Rummi v. Estonia
Application no. 63362/09
Judgment of 15 January 2015



1) Case description:

The case concerned the confiscation of the applicant's late husband's property in the course of criminal proceedings. Ms Rummi's husband, R., was arrested in March 2001. His home and workplace were searched and a large amount of various substances containing precious metals, as well as pure gold, silver and a number of diamonds were seized. R. subsequently committed suicide in detention. After the criminal proceedings against (other suspects) M. and J. had been discontinued in March 2009, the courts ordered the confiscation of the property which had been seized. Ms Rummi – who was her late husband's heir – appealed against that decision. Her appeal was eventually dismissed in May 2009, the courts noting in particular that she had not been a party to the proceedings in question.

The European Court of Human Rights (the ECtHR) found a violation of Article 6 § 1 on account of the lack of reasoning in the confiscation proceedings and on account of the excessive length of the proceedings; a violation of Article 1 of Protocol No. 1 and a violation of Article 13. The ECtHR awarded the applicant EUR 64 456.96 for pecuniary damage; EUR 8 500 for non-pecuniary damage and EUR 4 000 for legal costs and expenses.

2) Individual measures:

2.1 Just satisfaction

The applicant, Ms Karol Rummi, has been awarded just satisfaction and legal costs totalling EUR 76 956.96. This amount has been paid to the applicant by the Estonian Government on 30 April 2015, evidence of which has been submitted on 12 May 2015.

In addition, the Government has decided to award to both of R.'s sons, who were his heirs along with the applicant but who did not submit domestic complaints, EUR 61 359.15 each for pecuniary damages. Thus, in addition to the just satisfaction awarded to the applicant by the ECtHR, Estonia has voluntarily remedied also the pecuniary damages to the sons of R.

2.2. Review of the case

According to § 366 sub-section 7 of the Code of Criminal Procedure (the CCP) the grounds for review of a case which has entered into force is also "satisfaction of an individual appeal filed with the European Court of Human Rights against a court judgment or ruling in the criminal matter subject to review filed with the European Court of Human Rights, due to violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms or a Protocol belonging thereto if the violation may have affected the resolution of the matter and it cannot be eliminated or damage caused thereby cannot be compensated in a manner other than

by review". According to § 373 (2) and (3) of the CCP if a request for review is justified, the Supreme Court shall annul the contested decision by a judgment and send the criminal matter for a new hearing by the court which made the annulled decision or to the Public Prosecutor's Office for a new pre-trial proceeding to be conducted. If there is no need to ascertain new facts in the criminal matter subject to review, the Supreme Court may make a new judgment after the review of the criminal matter without aggravating the situation of the convicted offender.

On 26 May 2015 the representative of Ms. Karol Rummi submitted a request for re-opening of the criminal case no. 1-03-80 in which the domestic courts had decided the above referred confiscation of gold, silver and diamonds. On 15 July 2015 the Supreme Court decided to grant the request and proceed with the adjudication on the merits of the respective request. By the time of submitting this report the Supreme Court has not yet rendered a decision on the merits of the case but it should be noted that on 16 September 2015 the representative of Ms. Karol Rummi has informed the Supreme Court that he withdraws the request to compensate pecuniary damages to the heirs of R., because respective damages have already been paid.

3) General measures:

3.1 Legislative amendments

In this case violations of Article 6 § 1, Article 13 and Article 1 of Protocol No. 1 to the Convention were found mostly because the domestic courts and bodies conducting the proceedings had applied certain norms of the CCP deficiently and inconsistently. Namely, although since 1 July 2004 § 40¹ (1) of the CCP has foreseen that the body conducting the proceedings may involve a third party in the criminal proceeding if the rights or freedoms of the person which are protected by law may be adjudicated in the adjudication of the criminal matter or in special proceedings, Ms Karol Rummi was not involved in the proceedings.

Therefore, although the involvement of third parties like Ms Karol Rummi is possible under valid CCP too, the Government have decided to review the relevant legislation in order to take additional measures to prevent similar violations in the future. Namely, on 15 September 2015 the Riigikogu (the Estonian Parliament) decided to open proceedings on the draft amending the CCP (80 SE). According to the draft law, the following key changes to the CCP are envisaged:

- The inclusion of the third parties so far has been dependent on the discretion of the body conducting the proceedings. Following the amendment of § 40¹ of the CCP, the body conducting the proceedings would be obliged to involve in the criminal proceedings anyone as a third party over whose rights and freedoms may be adjudicated in the adjudication of the criminal matter or in special proceedings. The amendment aims to provide for the third parties a more secure guarantee of being included in the proceedings that affect their rights;
- Additionally, in order to avoid confusion up until which point in the proceedings the inclusion of the third party is allowed, the amended § 40¹ of the CCP would clearly state that a decision to involve a person as a third party in criminal proceedings may be done at every stage of the proceedings until the final decision of a criminal matter enters into force (§ 40¹(3));

- In order to further widen the protection of third parties' rights, a new legal basis would be created. A person who has not been involved in the criminal proceedings as a third party, may – according to the proposed amendment – request to be involved as a third party also while submitting an appeal against the decision of the court of first instance if he/she considers that the decision affects his/her rights and freedoms (§ 40¹(3)). If such request is not granted, he/she may file a further appeal against that decision (§ 228);
- In case the property is confiscated by a judgment that has already entered into force but that property belongs to a person who has not been involved in the respective criminal matter; according to the proposed amendment such person will have the right to submit a petition for review to the Supreme Court. That opportunity is now foreseen only to the parties to the criminal proceedings and not for persons who were not involved in the proceedings. With this amendment, the affected person has also been secured with a right to file for compensation for proprietary damage (§ 367(1)).

The Estonian Government considers that the above-mentioned legislative amendments are fit to address the problems the case raised. The extension of the rights of third parties and their involvement in criminal proceedings should avoid the occurrence of similar violations.

3.2 *Length of proceedings*

Concerning the length of proceedings and respective violation of Article 13 due to lack of domestic remedies, the Government refer to the Group Action Report in cases *Saarekallas OÜ v. Estonia* (application No. 11548/04; judgment of 8 November 2007), *Missenjov v. Estonia* (application No. 43276/06; judgment of 29 January 2009), *Raudsepp v. Estonia* (application No. 54191/07; judgment of 8 November 2011), *Kiisa v. Estonia* (applications nos. 16587/10 and 34303/11; Committee judgment of 13 March 2014) and *Kiisa v. Estonia* (application no. 72999/10, Committee judgment of 13 March 2014) of November 2014 – the supervision of which was closed by the Committee of Ministers on 17 December 2014 (CM/ResDH(2014)287) because – *inter alia* – the Strasbourg Court in *Treial v. Estonia* (decision of 28 January 2014) had accepted that Estonia has sufficient domestic remedy against unreasonable length of civil, administrative and criminal proceedings and had clearly stated that that remedy has to be exhausted before turning to the Strasbourg Court.

The conclusion about available domestic remedies is also applicable in *Rummi* case because the circumstances of *Rummi* case took place before the new remedy was available. Thus the situation has been remedied.

3.3 *Publication and dissemination*

For the purposes of publication and dissemination, the judgment was translated into Estonian and published on the web-site of the Ministry of Foreign Affairs (<http://www.vm.ee/?q=taxonomy/term/229>) and in the “Riigi Teataja” (in that gazette of official online publications the Estonian legislation and all other legal instruments, domestic court decisions, legal news etc. are published <https://www.riigiteataja.ee/viitedLeht.html?id=3>). It is also widely disseminated, including to the authorities directly concerned.

In this respect it should be pointed out that the ECHR and the ECtHR's judgments against Estonia have direct effect under Estonian law.

4) Conclusions of the respondent State:

Estonia has paid the applicant the just satisfaction provided in the judgment in due time. In addition to the payment made to the applicant, Estonia has also compensated damages to the sons of R.

The applicant's request for re-opening of the criminal proceedings was granted by the Supreme Court on 15 July 2015, but the applicant's representative himself has already noted that he withdraws the request for pecuniary damages as these have been compensated.

The amendments to the Estonian legislation, which will additionally guarantee the rights of third parties, have been initiated to ensure that similar violations can be avoided in the future at the domestic level. The availability of domestic remedies in respect of length of proceedings has already been acknowledged both by the Court and by the Committee of Ministers.

The Government of Estonia find that Estonia has complied with its obligations under Article 46 § 1 of the Convention – the judgment is implemented properly and fully – and ask to close the examination of this case.