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Communication from Estonia concerning the case of Korobov and Others against Estonia (Application No. 10195/08)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Bilan d'action mis à jour

Communication de l'Estonie concernant l'affaire Korobov et autres contre Estonie (Requête n° 10195/08) (***anglais uniquement***)

18 December 2013
Amended on 20 March 2014 and 11 April 2016

ACTION REPORT

Korobov and Others v. Estonia
Application No. 10195/08
Judgment of 28 March 2013

1) Case description:

The case concerned the applicants' alleged ill-treatment and detention during riots in Tallinn in April 2007 following protests against the relocation of a monument commemorating the entry of the Soviet Red Army into Tallinn during the Second World War. Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), four of the applicants complained that they had been ill-treated during their arrest and detention, and that no effective investigation had been carried out into their complaints.

The Court found **a violation of Article 3** (ill-treatment) in respect of the fifth applicant and **no violation of Article 3** (ill-treatment) in respect of the first, fourth and seventh applicants. The Court also found a **violation of Article 3** (investigation) in respect of the first, fourth, fifth and seventh applicants. The Court declared **inadmissible** the complaints of the other three applicants. Complaints under **Article 5** were declared inadmissible.

2) Individual measures:

The Government has paid the applicants the just satisfaction awarded by the Court (in total 50 000.00 euros: 14 000 euros to one applicant; 11 000 euros for each three applicants; 3000 euros for costs and expenses; all paid on 20 September 2013).
No other individual measures are required as the just satisfaction remedies the violations, incl. the procedural violations found.

Regarding the possibility to re-open investigation the authorities note that the alleged offences committed against the applicants in 2007 would be qualified under § 291 of the Penal Code ("Abuse of authority"): an official who unlawfully uses a weapon, special equipment or violence while performing his or her official duties shall be punished by a pecuniary punishment or by 1 to 5 years' imprisonment. According to § 4(3) of the Penal Code, it is an offence of second degree (a criminal offence in the second degree is an offence the punishment prescribed for which in this Code is imprisonment for a term of up to five years or a pecuniary punishment).

According to § 81(1) of the Code no one shall be convicted of or punished for the commission of a criminal offence if the following terms have expired between the commission of the criminal offence and the entry into force of the corresponding court judgment:
1) ten years in the case of commission of a criminal offence in the first degree;
2) five years in the case of commission of a criminal offence in the second degree.

According to § 199(1) subsection 2 of the Code of Criminal Procedure criminal proceedings shall not be commenced if the limitation period for the criminal offence has expired […]. And according to § 200 of the Code if circumstances specified in § 199 of this Code which preclude criminal proceedings become evident in pre-trial proceedings, the proceedings shall be terminated on the basis of an order

of the investigative body with the permission of a Prosecutor's Office, or by an order of a Prosecutor's Office.

Thus, as the limitation period of the alleged offences has expired it is not possible to proceed the case against the alleged perpetrators, or reopen the case against them.

3) General measures:

The Government note that the violations found by the Court can normally be avoided and remedied based on existing domestic legislation and case-law.

According to § 291 of the Penal Code an official who unlawfully uses a weapon, special equipment or violence while performing his or her official duties is punishable by a pecuniary punishment or by 1 to 5 years' imprisonment.

According to § 193(1) of the Code of Criminal Procedure an investigative body or a Prosecutor's Office commences criminal proceedings by the first investigative activity or other procedural act if there is reason and grounds therefor. According to § 194(1) of the Code of Criminal Procedure the reason for the commencement of criminal proceedings is a report of a criminal offence or other information indicating that a criminal offence has taken place.

According to §§ 207 and 208 of the Code of Criminal Procedure against refusal to commence criminal proceedings and against termination of criminal proceedings one can file an appeal first to the Prosecutor's Office, thereafter to the Public Prosecutor's Office and finally to the Court of Appeal. According to § 208(6) of the Code of Criminal Procedure if a Court of Appeal judge concludes that commencement or continuation of the criminal proceedings is justified, he or she shall annul the order of the Public Prosecutor's Office and require the Public Prosecutor's Office to commence or continue criminal proceedings. According to § 208(8) of the Code of Criminal Procedure the positions set out in a decision of the Court of Appeal on annulment of the order of the Public Prosecutor's Office on the interpretation and application of a provision of law are mandatory for the Prosecutor's Office in this criminal proceeding.
Thus, based on reports submitted by individuals, criminal proceedings are commenced and should be investigated.

According to the information from the State Prosecutor's Office (Office of the Prosecutor General), as regards the penal reaction to abuse of authority, in 2011-2013 there have been 98 instances of abuse of authority where criminal proceedings have been initiated. In 2011-2013 7 persons were convicted for abuse of authority and 3 were acquitted (one person may be connected with several offences registered, or *vice versa)*. In 2013 proceedings have been terminated regarding 32 offences and with regard to 10 offences acts of indictment were brought. In the course of criminal procedure, it is possible to claim pecuniary damages from the accused. Claiming non-pecuniary damages is possible in civil or administrative proceedings, or by an application to the relevant agency (see below).

In addition, according to § 9(1) of the State Liability Act a natural person may claim financial compensation for non-pecuniary damage upon wrongful degradation of dignity, damage to health, deprivation of liberty, violation of the inviolability of home

or private life or the confidentiality of messages or defamation of honour or good name of the person. There exists also comprehensive case-law confirming the effectiveness of the above mentioned provision – i.e. that the financial compensation is awarded in practise for the listed violations (see also revised action report submitted on 8 January 2013 in *Kochetkov v. Estonia*, application no. 41653/05; especially para. 3.2 case-law examples).

Although the referred examples are related mostly to the conditions of imprisonment, they are proper examples as the legal ground - § 9(1) of the State Liability Act – upon which the compensation for non-pecuniary damage for wrongful degradation of dignity or damage to health can be claimed. It could be added that already by a judgment of 10 January 2006 in administrative case 3-987/2005 Tallinn Administrative Court awarded compensation for non-pecuniary damage upon wrongful degradation of dignity caused by an unlawful conduct of the police officer. The Tallinn City Court in a misdemeanor case had previously established that the unsatisfactory performance of procedural provisions by the police officer had caused the complainant unreasonable pain. The administrative court concluded that the application of handcuffs, violent dragging and striking the complainant down had been confirmed by the explanations given by the applicant during the court hearing and by the witness's statements. Considering the circumstances, the administrative court awarded the applicant compensation in the amount of 3000 EEK (191,73 euros).

The Ministry of Justice and the Prosecutor's Office have confirmed that compensations for pecuniary or non-pecuniary damages have been paid in different cases: to persons who have suffered infringement of their constitutional rights due to criminal proceedings or execution of imprisonment, e.g. for unreasonable time of proceedings, restrictions on liberty, including incarceration of prisoners, (including cases where compensation is not foreseen by the law) or economic rights, poor imprisonment conditions, exclusion of a suspect or an accused from office during proceedings, or prohibition on departure from the residence.
In addition, according to the Ministry of Interior subsequent measures have been taken after the events in 2007 in order for the law-enforcement authorities to be better prepared to similar incidents in the future.

- Several laws and regulations governing the area of law-enforcement have been amended. By the new Police and Border Guard Act (entered into force on 1 January 2010 – i.e. before the Court judgment in the case under evaluation!) the fundamental rights were foreseen in more detailed way. For example, a specific regulation for detention of persons was foreseen in Chapter 2^1 of the Police and Border Guard Act (especially § 7^{33}) and a specific procedure for documenting detention of a person was established on 14.12.2009 by the Minister of the Interior's regulation No. 59. Also admissibility of application of direct coercion and caution against direct coercion have been regulated in more detail in Chapter 4 of the Police and Border Guard Act; in §§ 27, 28 the special equipment and service weapons have been defined and in §§ 32-32.4 the use of handcuffs, shackles or binding means; use of water cannon; use of electric shock weapon; use of firearm and aid to injured person has been regulated.
- In addition to legislative amendments police officers, in particular members of special intervention groups are reminded – in the course of respective trainings – that ill-treatment of persons deprived of their liberty is not acceptable in whatever circumstances and will be punished accordingly. Police officers are reminded that the force used when performing their duties should not exceed what is strictly necessary

and that once a person has been brought under control, further use of force is not justified.

- Police officers are also been trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force becomes necessary, they are prepared to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend. For example in Directive No. 475 of the Director General of the Police and Border Guard Board of 28 December 2011 on "Requirements and procedure for the special and physical training of the police officers of the Police and Border Guard Board" it has been stipulated that every officer is obligated to take part in self-defence and tactical training once in every six months and in shooting training twice in every six months. The training includes techniques for applying direct force and the proportionality and legal bases thereof. The training also addresses problems that have arisen in using force in practice. In addition, officers are obligated to pass direct force and firearms tests once a year. The content of training: the skill of using the direct force means of the police, basic knowledge of security tactics, cooperation skills, the skill to use a radio station and the skill to check and detain persons as well as familiarity with and the ability to apply the legal bases of using direct force. During training days held in prefectures, instructors emphasise the importance of the issue in question and explain how mistakes have been made and how to avoid them in the future. Problems encountered at detention houses are also discussed at regular national meetings of the heads of detention houses. At training courses on using force organised for police officers, instructors have emphasised and will continue to emphasise the importance of the issue as well as the importance of professional conduct and the unacceptability of giving in to emotions.

Therefore, as the applicants' case would appear to be *sui generis* and unlikely there are similar cases, there is, in the view of the Government, no need for specific legislative or regulatory action. Should, nevertheless, such a case arise reference to the Court judgment which is now part of Estonian law would be sufficient guidance for the judicial and administrative authorities.

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.

4) Conclusions of the respondent State:

Estonia has paid the applicants the just satisfaction provided in the judgment in due time.

As the payment of just satisfaction remedied the violations and as there is no need for legislative amendments, Estonia finds that the judgment is implemented properly and fully and asks to close the examination of the case.