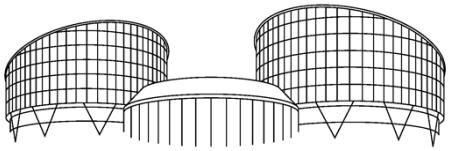

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF LIBLIK AND OTHERS v. ESTONIA

(Applications nos. 173/15 and 5 others – see appended list)

JUDGMENT

This version was rectified on 8 October 2019
under Rule 81 of the Rules of Court

STRASBOURG

28 May 2019

FINAL

07/10/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Liblik and Others v. Estonia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Julia Laffranque,
Valeriu Griţco,
Egidijus Kūris,
Marko Bošnjak
Ivana Jelić,
Darian Pavli, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 7 May 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in six applications (nos. 173/15, 181/15, 374/15, 383/15, 386/15 and 388/15) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Estonian nationals, Mr Tullio Liblik ("the first applicant"), Mr Kalev Kangur ("the second applicant"), Mr Toomas Annus ("the third applicant"), Mr Villu Reiljan ("the fourth applicant"), and two companies, E.L.L. Kinnisvara AS ("the first applicant company") and AS Järvevana ("the second applicant company").

2. The names of the applicants' representatives and the numbers and dates of their applications are set out in the Appendix.

3. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

4. The applicants complained under Article 6 of the Convention of the excessive length of criminal proceedings against them. In addition, invoking Article 8, the second and the third applicants and the applicant companies alleged that the retrospective justification of secret surveillance authorisations had violated their right to respect for private life and correspondence.

5. On 13 September 2017 the Government were given notice of the complaints concerning the length of proceedings and the retrospective justification of secret surveillance authorisations. The rest of the complaints were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Details concerning the applicants can be found in the Appendix.

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

A. General overview of criminal proceedings against the applicants

1. Secret surveillance of the third applicant during previous criminal proceedings

8. From 2 September 2004 until 2 January 2005 secret surveillance activities were carried out with respect to the third applicant in the context of ongoing criminal proceedings. The proceedings were later terminated without the applicant being prosecuted. On 4 December 2006 the information obtained via the secret surveillance in those proceedings was put in the surveillance file (*jälitusprotokoll*) of the criminal proceedings under review in the present case.

2. Pre-trial proceedings in the present case

9. The criminal proceedings under review in the instant case were instituted on 18 August 2005 without the applicants being informed of the proceedings. Those proceedings concerned suspicions of high-level corruption as regards the exchange of plots of land in conservation areas for plots in areas where development was permitted.

10. Between 23 August 2005 and 11 October 2006 the Internal Security Service (*Kaitsepolitsei*) carried out various surveillance activities in respect of the first applicant, the second applicant and the third applicant (with respect to the third applicant, the surveillance activities commenced on 16 December 2005). The third applicant was also acting as a member of the supervisory board of the two applicant companies at the material time. In the course of those activities, communications between the fourth applicant and the persons under surveillance were covertly intercepted and listened to.

11. The surveillance activities were based on authorisation decisions issued by either a prosecutor (forty-four authorisations altogether in respect of covert observation and requests for communication data) or by a preliminary investigation judge (twenty-one authorisations altogether in respect of covert listening in on conversations and the interception of communications).

12. The authorisation decisions issued by (different) preliminary investigation judges provided general reasons as to why the judges considered the secret surveillance necessary. As an example, one

authorisation read as follows: "The judge has acquainted himself with the material gathered during the criminal proceedings and is convinced that the prosecutor's application is justified. The Code of Criminal Procedure allows for evidence to be gathered by means of secret surveillance. Considering the gravity of the offence, the interests of protecting the legal order, and the fact that gathering evidence by other procedural means is either impossible or especially complicated, then, in the interests of elucidating the truth, the application is perfectly justified and lawful." The other authorisations by preliminary investigation judges included variations of the same wording, occasionally also including references such as "when public officials abuse their position, it damages their credibility in the eyes of society and damages the State's reputation" and "[t]his offence belongs to the category of offences relating to office. ... Considering that ..., this type of offence is difficult to discover and prove, and [such offences] hamper the legal rights of all people". The relevant prosecutors' decisions contained no reasoning at all.

13. In addition to surveillance activities, during the pre-trial proceedings, there were various queries, inspections, and home and office searches; (forensic) expert reports were ordered, requests for documents were made to various persons, and the material received was examined. Between 3 October 2006 and 12 November 2007, 202 persons (witnesses and suspects) were interviewed, some of them repeatedly. Between 17 March 2008 and 24 March 2008 the prosecutor's office invited the applicants to inspect a copy of the criminal file (comprising 191 volumes altogether). The applicants' representatives submitted different applications concerning the time they needed to inspect the files, ranging between six and ten months. By an order of the Office of the Prosecutor General of 13 May 2008, the applicants were given until 3 November 2008 to inspect the criminal file. Their representatives (except the first applicant's counsel) submitted requests to the Office of the Prosecutor General, asking it to remove the material which the prosecution did not intend to rely on from the criminal file, and to specify which evidence was intended to prove which facts. The Office of the Prosecutor General dismissed those requests, explaining that the applicants had been presented with all the material gathered during the pre-trial proceedings so that they could assess which material was relevant from the perspective of defence rights.

14. During the pre-trial proceedings, the second applicant discovered a surveillance device in his office on 25 September 2005. On 3 October 2006 the offices of the third applicant, the second applicant company and the first applicant were searched, and on 20 September 2007 the premises of the first applicant company were searched. On 16 October 2007 the fourth applicant was questioned as a suspect.

15. As two of the accused – the fourth applicant and E.T. – were members of the *Riigikogu* (the Estonian Parliament) at the time the pre-trial

proceedings were completed, the consent of a majority of the Members of Parliament had to be obtained to lift their immunity and bring charges against them. The Office of the Prosecutor General initiated the relevant procedure on 12 December 2008, and Parliament gave its consent on 24 March 2009.

16. Altogether, the pre-trial proceedings lasted three and a half years and ended on 31 March 2009 when the statement of charges against the applicants was submitted to the trial court. None of the applicants claimed that there had been periods of inactivity or other significant interruptions as regards the pre-trial proceedings.

3. Proceedings before Harju County Court

17. From May 2009 onwards the Harju County Court heard the case over a total of ninety-two hearing days. During that time, numerous witnesses were heard: eighty witnesses requested by the prosecution, twenty-eight witnesses requested by the defence, and two people summoned by the court as experts. In May 2009 dates for hearings in November and December 2009 and January, February, April, May and June 2010 were scheduled. Further dates were scheduled in February 2010 (for dates in September and October 2010), in June 2010 (for dates in December 2010 and February and April 2011), in April 2011 (for dates in October, November and December 2011), in November 2011 (for dates in December 2011 and January, February, April and May 2012), in December 2011 (for dates in January and February 2012), and in February 2012 (for dates in March 2012). At the request of some representatives, hearings were not scheduled to take place more than three days a week. The court also took into account the representatives' wishes that hearings not be scheduled too far in advance, as they were simultaneously involved in other criminal proceedings and therefore not always available. At the end of each hearing day, considering the evidence that was to be examined the following day, the court determined which of the accused and their representatives should appear at court the following day. This allowed persons who were not concerned by such evidence not to attend the particular hearing. Occasionally, hearings had to be rescheduled owing to illness or owing to other personal circumstances of either the accused or their representatives. In November 2009 the court noted that there was a risk that the proceedings might take too long, and decided that the number of witnesses to be heard each day must be increased.

18. An application was made to separate the first applicant's case from the case against two other accused (including E.T.), but the representatives of the second and the fourth applicants objected to the first applicant's case being separated in this way. They submitted that the cases were closely linked, and argued that separating the cases would hinder defence rights and force them to attend other parallel proceedings at the same time. The court

dismissed the application to separate the case, referring to the need to guarantee the defence rights of the other accused.

19. By a judgment of 19 June 2012 the Harju County Court acquitted the applicants of the charges against them. The proceedings before the first-instance court lasted approximately three years and three months. The court found that the surveillance activities had been unlawful and that all the evidence collected by such activities was inadmissible. It did not address the question of whether or not the secret surveillance authorisations in the case had been sufficiently reasoned at the time they had been issued.

4. Proceedings before the Court of Appeal

20. The Office of the Prosecutor General appealed to the Court of Appeal on 4 July 2012. Among other things, it challenged the first-instance court's assessment of the lawfulness of the surveillance activities.

21. On 13 July 2012 the Tallinn Court of Appeal invited the applicants to notify it of suitable dates in October, November and December 2012, so that hearings could be scheduled. As no dates suitable for everyone could be found out of the dates proposed by the applicants' representatives, the court invited them to propose new dates for 2013. On 17 August 2012 the dates were set for January and February 2013. In the meantime, the Court of Appeal had also granted an application by the prosecutor for a review of the lawfulness of the surveillance activities. It asked for the surveillance files, including all the prosecutors' and preliminary investigation judges' decisions authorising the secret surveillance, to be sent to it.

22. The Court of Appeal convicted the applicants by a judgment of 19 June 2013. After examining the surveillance files, the court found that the prosecutors' applications for authorisation of secret surveillance had contained sufficient information to assess the need for such activities. It considered that the surveillance activities had been lawful and the evidence thereby obtained admissible. In convicting the first and the second applicant companies, the court relied on Article 14 of the Penal Code (see paragraph 56 below) and found that the third applicant had acted in the interests of the two companies.

5. Proceedings before the Supreme Court

23. Between 17 and 19 July 2013 all of the applicants lodged appeals on points of law with the Supreme Court.

24. On 17 December 2013 the Supreme Court granted the applicants leave to appeal. On 22 January 2014 it gave the parties a deadline of 19 March 2014 to submit their observations. In the meantime, the Supreme Court had asked for the surveillance files to be forwarded to it. On 10 April 2014 it was decided that the case would be transferred to the full panel of

the Criminal Chamber, and the parties were given an additional deadline of 28 May 2014 to submit their observations.

25. On 30 June 2014 the Supreme Court delivered its judgment in the applicants' criminal case (no. 3-1-1-14-14). It considered the evidence gathered by means of secret surveillance to be admissible. In substance, it upheld the applicants' conviction.

B. Reasoning of the Supreme Court

1. Length of proceedings

26. In assessing whether the length of the proceedings had been reasonable, the Supreme Court relied on the criteria established in the Court's case-law.

27. As for the period to be taken into account, the Supreme Court considered that the relevant period had not necessarily started running from the date when the first steps in the criminal proceedings had been taken, but rather when the applicants could be considered to be subject to a "charge", or when they had been otherwise substantially affected by actions taken by the prosecuting authorities. The Supreme Court did not agree that the relevant period should be calculated from the date when the first secret surveillance activities had been carried out with respect to the applicants. This also applied to the third applicant and the applicant companies, who had suggested that the start date of the surveillance activities – carried out as of 2 September 2004 with respect to the third applicant in different criminal proceedings which were later terminated – should be taken as a starting point (see paragraph 8 above).

28. Against that background, the Supreme Court considered that the beginning of the relevant time period should be determined as follows: 25 September 2005 for the second applicant (when he had discovered a surveillance device in his office); 3 October 2006 for the first applicant (when his office had been searched); 3 October 2006 for the second applicant company and the third applicant, in relation to certain criminal incidents (when the premises of the company, including the office of the third applicant, had been searched); 20 September 2007 for the first applicant company and the third applicant, in relation to other criminal incidents (when the premises of the company had been searched); and 16 October 2007 for the fourth applicant (when he had been questioned as a suspect).

29. The proceedings ended on 30 June 2014 when the Supreme Court judgment was adopted and became final. This meant that the criminal proceedings had lasted: eight years, nine months and five days with respect to the second applicant; seven years, eight months and twenty-eight days with respect to the first applicant, the second applicant company and the

third applicant (in relation to certain criminal incidents); six years, nine months and eleven days with respect to the first applicant company and the third applicant (in relation to other criminal incidents); and six years, eight months and twenty-one days with respect to the fourth applicant.

30. When assessing whether the proceedings had been excessively long, the Supreme Court firstly observed that the case had been rather complex as regards the issues of law, and very complex from an evidentiary perspective. Nine persons had been accused, two of whom had been Members of Parliament whose immunity had had to be lifted (see paragraph 15 above). Complex schemes had been used to commit the offences in question, and the activities of the accused had involved a high level of conspiracy. This had made the collection of evidence concerning the offences difficult and the analysis of the (circumstancial) evidence time-consuming. Numerous witnesses had been heard during the pre-trial proceedings and in court (see paragraphs 13 and 17 above). The proceedings before the court of first instance had entailed hearings over the course of ninety-two days, and this also indicated how many questions had needed to be addressed and how complex the questions had been.

31. Secondly, the Supreme Court stated that there had been no delays during the pre-trial and trial stage of the proceedings. Rather, the lower courts had attempted to guarantee that the proceedings would not last an excessively long time. Some procedural flexibility had been lost due to the fact that the first-instance court had allowed the accused who had not been directly concerned by particular questions and evidence to be absent from the hearings altogether (see paragraph 17 above). At the same time, this had alleviated the effect of the proceedings on the accused, and had therefore been justified. The Supreme Court admitted that the organisation of the court hearings at first instance (not planning hearings sufficiently far in advance and not deciding on procedural matters quickly enough, thus allowing for long disputes between the parties), the volume and structure of the criminal file, and the presentation of the statement of charges (which had entailed unnecessary repetition and the structure of which had been illogical to some extent) might have added to the duration of the proceedings. However, the court noted that the defence representatives had opposed hearings being planned in advance, and in that regard they too had to be considered responsible. Furthermore, although it might have been reasonable for the prosecution to remove some of the material from the criminal file, the Supreme Court also considered that it had been for the defence representatives and not for the prosecution to decide whether some of the evidence in the criminal file was relevant from the perspective of the defence. The presentation of the statement of charges had not hindered defence rights either. As for separating the criminal case of E.T. from the rest of the criminal proceedings (see paragraph 79 below), the Supreme Court considered that this had related to only one of the charges against the

third applicant and the first applicant company, and the latter's counsel had not objected to the separation. Accordingly, the decision not to separate the case of E.T. from the rest of the proceedings could not be considered justified. In conclusion, the Supreme Court found that although some time might have been lost owing to the above-mentioned issues, the overall loss of time had been relatively insignificant in the context of the total duration of the proceedings.

32. Thirdly, the Supreme Court considered that the applicants had not prolonged the proceedings. In that regard, it noted that the defence representatives could not have been expected to preventively clear their timetables for possible appeal hearings in autumn 2012. Therefore, the fact that, at the appeal stage, hearings had only taken place six months after the Court of Appeal had started planning the relevant dates (see paragraph 21 above) could not be held against the applicants. Although the applicants could not be reproached for the fact that hearings had had to be cancelled or adjourned owing to their health and other personal reasons (see paragraph 17 above), such delays could not be attributed to the State either.

33. The Supreme Court admitted that the impact of the proceedings on the applicants had undoubtedly been serious, especially given the significant public interest in the case. At the same time, the court considered that other than the two months and nineteen days that the second applicant had spent in detention, and the two days when the first applicant had been under arrest, the applicants had not been detained. Moreover, on 17 February 2010 the first-instance court had annulled a restriction imposed on the first, the second and the third applicants not to leave their place of residence.

34. Assessing all those circumstances, the Supreme Court found that the proceedings, although close to being excessively lengthy, had still been concluded within a reasonable time.

2. Regulation of secret surveillance

35. The Supreme Court noted that secret surveillance interfered with people's right to privacy, and that the principle of *ultima ratio* served the purpose of ensuring the proportionality of such interference.

36. The Supreme Court then addressed the preliminary investigation judges' decisions authorising the surveillance activities. Firstly, it noted that, in accordance with Article 145 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*, hereinafter "the CCrP", see paragraph 49 below) all court decisions, including decisions authorising secret surveillance activities, had to be reasoned. That meant that, in accordance with Article 110 § 1 of the CCrP (see paragraph 45 below), authorisation decisions had to contain reasoning as to why the issuing court found that there was probable cause to believe that an offence had been committed, and why it was impossible, or especially complicated, to collect evidence by other means (the principle of *ultima ratio*). That reasoning could not be

merely declaratory. The necessary reasoning could, however, rely on general criminological knowledge, for example knowledge concerning the nature of organised crime, the high level of conspiracy involved in the case in question, a presumed lack of witnesses willing to give statements, and so on. In any event, the reasoning had to be linked to the evidence in that particular case. Owing to time pressure and the likely fragmentary nature of information available at the time, the duty to provide reasons was less extensive when authorising secret surveillance than when deciding to convict a person.

37. The Supreme Court then noted that the preliminary investigation judges' decisions (see paragraph 12 above) had not complied with the requirement of being reasoned. However, the lack of reasoning did not amount to a lack of authorisation, and did not mean that the surveillance activities had been conducted arbitrarily and beyond judicial control. This was so because the investigating authority was not competent to assess the adequacy of reasoning. It had the right to rely on the operative part of a decision authorising surveillance activities. Therefore, the failure to give proper reasons for a decision authorising surveillance activities did not result in the inadmissibility of evidence thereby collected. The Supreme Court reasoned that it was not only during the authorisation stage that the *ultima ratio* nature of the secret surveillance measures could be examined. In fact, regardless of the existence of earlier decisions authorising surveillance activities, courts subsequently hearing a criminal case also had an obligation to examine whether the substantive conditions for granting the authorisation decisions had been fulfilled at the time the decisions had been issued. If necessary, the courts could then declare the evidence thereby obtained inadmissible. A lack of requisite reasoning in an initial authorisation decision required the subsequent examination to be conducted with special diligence.

38. The Supreme Court went on to note that it had directly examined the material in the surveillance file, including the prosecutors' applications for authorisation of surveillance activities. Based on that material, it had concluded that the substantive conditions for authorising surveillance activities had been fulfilled at the time the authorisation decisions had been issued. The Supreme Court was convinced that at that time there had been probable cause to believe that offences had been committed, and that it had been impossible to collect evidence by other means to verify that suspicion. In support of its findings, the Supreme Court referred to the nature of the crimes and the high level of conspiracy involved, and considered that it was unlikely that written or electronic evidence could have been collected or that witnesses could have been found without the proceedings being jeopardised.

39. With regard to the reasoning in the prosecutors' decisions to authorise surveillance activities, the Supreme Court observed that, despite the requirement – deriving from Article 145 of the CCrP – that such

decisions also had to be reasoned, they contained only an operative part and no reasoning at all. It then reiterated its position outlined above regarding the decisions issued by a preliminary investigation judge authorising surveillance activities. The Supreme Court concluded that the conditions set out in Article 110 of the CCrP had been fulfilled at the time the decisions had been issued.

40. As the third applicant had raised the question of the compatibility of the regulation of secret surveillance with the Constitution and the Convention, the Supreme Court – also acting as a constitutional review court – analysed the regulation of the CCrP (the limitations as regards offences in respect of which secret surveillance could be conducted, the principle of foreseeability, and the permitted duration of surveillance). It found that the relevant regulation was constitutional. The Supreme Court also concluded that, in the particular circumstances of the case, the duration of the surveillance activities with respect to the second and the third applicants had not been excessively lengthy.

3. Dissenting opinion of Judge Kergandberg

41. Judge Kergandberg addressed the requirement to provide reasons for decisions authorising secret surveillance. He found that the Supreme Court had altered its earlier practice by "if not 180 degrees, then 160 degrees" by accepting that the lack of reasoning in the relevant decisions could not be equated to a lack of authorisation. Up until that judgment, it had been established case-law that, in accordance with Article 111 of the CCrP, violating the *ultima ratio* principle when issuing secret surveillance authorisations also inevitably meant that the evidence thereby obtained was inadmissible. In the instant case, the Supreme Court had distinguished between "granting authorisation for secret surveillance activities" and "obtaining evidence via secret surveillance activities", and had stated that a violation of law during the authorisation stage could not affect the admissibility of evidence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. The Constitution of the Republic of Estonia

42. Article 25 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides that everyone is entitled to compensation for intangible as well as tangible harm that he or she has suffered because of the unlawful actions of any person.

2. The Code of Criminal Procedure

(a) Regulation of secret surveillance as in force until 1 January 2013

43. The CCrP, as in force at the relevant time, provided as follows.

44. In accordance with Article 9 § 4, interference with a person's private and family life was permitted only in the cases provided for in the CCrP and pursuant to the procedure provided for in that Code, in order to prevent a criminal offence, apprehend a criminal offender, ascertain the truth in a criminal matter, or secure the execution of a court judgment.

45. Article 110 § 1 provided that the collection of evidence by surveillance activities was permitted in criminal proceedings if the collection of evidence by other procedural acts was impossible or especially complicated and the object of the criminal proceedings was a first-degree criminal offence or an intentionally committed second-degree criminal offence where a punishment of three years' imprisonment or more was within the relevant sentencing range.

46. Article 111 provided that information obtained via secret surveillance was evidence when the requirements of law had been followed when obtaining it.

47. Article 112 § 3 in conjunction with Articles 116, 118 and 119 provided that a preliminary investigating judge had to authorise the carrying out of surveillance activities such as the covert examination of postal or telegraphic items, wiretapping, or the covert observation of messages or other information transmitted by the public electronic communications network for the staging of a criminal offence. In accordance with Article 114 § 1, a preliminary investigation judge had to examine a prosecutor's reasoned application for authorisation of secret surveillance immediately, and give a decision granting or refusing authorisation to carry out the surveillance activities.

48. Article 112 § 3 in conjunction with Articles 115 and 117 provided that a prosecutor's authorisation was needed for covert surveillance, the covert examination and replacement of items, or the collection of information about messages transmitted by the public electronic communications network.

49. The requirements applicable to procedural decisions were set out in Article 145. Among other things, a procedural decision had to be given in writing and be reasoned.

50. Under Article 228 § 1, a party to criminal proceedings as well as a person who was not party to proceedings had a right, before the relevant statement of charges was prepared, to lodge an appeal with the prosecutor's office against a procedural action or order of an investigating body if he or she found that a violation of procedural requirements in the performance of a procedural action or in the preparation of an order had resulted in his or her rights being violated (*uurimiskaebemenetlus*). Under Article 228 § 2,

before the statement of charges was prepared, the same persons had a right to appeal to the Office of the Prosecutor General against an action or order of the prosecutor's office.

51. Article 230 § 1 provided that if the activities of an investigating body or prosecutor's office violating a person's rights were contested, and the person did not agree with the order prepared by the Office of the Prosecutor General reviewing the appeal, the person had a right to file an appeal with the preliminary investigation judge of the county court in whose territorial jurisdiction the contested order had been prepared or the contested procedural action had been taken.

(b) Regulation of secret surveillance as in force from 1 January 2013

52. On 1 January 2013 the regulation of the former Surveillance Act (see paragraph 54 below) was merged with the CCrP, and the regulation of the notification procedure for secret surveillance activities was amended.

53. Article 126[1] § 4 provides that information obtained by secret surveillance activities is evidence if an application for surveillance activities, grant of authorisation for surveillance activities, and the conduct of surveillance activities is in compliance with the requirements of law.

3. The Surveillance Act

54. Section 18 of the Surveillance Act (*Jälitustegevuse seadus*), in force until 1 January 2013, provided that, upon surveillance activities being carried out, anyone could lodge a challenge (*vaie*) against the activities of a surveillance agency with the head of the surveillance agency or the superior agency of the surveillance agency, or lodge a complaint with a prosecutor's office. Anyone had the right of recourse to a court pursuant to the procedure prescribed by law if his or her rights and freedoms had been violated by a surveillance activity.

4. The Act on Compensation for Damage Caused in Criminal Proceedings

55. The Act on Compensation for Damage Caused in Criminal Proceedings (*Süüteomenetluses tekitatud kahju hüvitamise seadus*) entered into force on 1 January 2015. The relevant provisions of the Act provide as follows:

Section 7. Compensation for damage regardless of the final outcome of criminal proceedings

"(1) If a body conducting proceedings is at fault for violating procedural law and thereby causes damage to a person, the person has a right to demand compensation for such damage, regardless of the final outcome of the criminal proceedings in which the damage was caused to [him or her].

(2) A body conducting proceedings is released from liability if it proves that it is not at fault for causing the damage.

(3) If the damage specified in subsection (1) of this section is caused by a court, the State is liable, pursuant to the State Liability Act.

...”

Section 11. Compensation for non-pecuniary damage

“...

(2) An individual is compensated for non-pecuniary damage on the basis of section 7 of this Act only if: the person was deprived of [his or her] liberty; he or she was tortured or treated in an inhuman or degrading manner; damage was caused to his or her health, the inviolability of his or her home or private life was violated; the confidentiality of his or her messages was violated; or his or her honour or good name was damaged in criminal proceedings. Fault on the part of a body conducting proceedings does not constitute a prerequisite for compensation for non-pecuniary damage if the person was tortured or if he or she was treated in an inhuman or degrading manner in violation of procedural law.

(3) Non-pecuniary damage is presumed. Monetary compensation is awarded for non-pecuniary damage to the extent that [such damage] cannot be remedied by other means, including by [a person] admitting a mistake and making an apology.

...”

Section 23. Implementation of the Act

“...

(3) If this Act prescribes compensation for damage caused in criminal proceedings in a case not covered by the Act on Compensation for Damage Caused to a Person by the State through Unjust Deprivation of Liberty, this Act shall apply retroactively.

(4) An application for compensation for damage specified in subsection (3) of this Act shall be submitted to a prosecutor’s office or a body conducting extrajudicial proceedings. The application shall be submitted within the time period prescribed in the Code of Administrative Court Procedure for the submission of actions for compensation, and no later than three years from the entry into force of this Act. The adjudication of the application shall comply with the provisions of Division 2 of Chapter 4 of this Act.

(5) An administrative court, the Court of Appeal and the Supreme Court [may] adjudicate appeals concerning compensation for damage on the grounds provided for in this Act only if an administrative court has accepted the appeal concerning compensation for damage.”

5. The Penal Code

56. Article 14 § 1 of the Penal Code (*Karistusseadustik*) states that in circumstances provided for by law, a legal entity may be held responsible for an act which is committed in its interests by its board, by one of its members, or by one of its senior officials or competent representatives.

Article 14 § 2 adds that the prosecution of a legal entity does not preclude the prosecution of the individual who committed the offence.

B. Relevant domestic case-law

1. *Insufficient reasoning and* ex post facto *review of lawfulness*

(a) Judgments predating the Supreme Court judgment in the present case

57. The Supreme Court acknowledged in its judgment of 5 December 2008 in case no. 3-1-1-63-08 that secret surveillance measures of which the persons subject to the measures were unaware had the potential to interfere with fundamental rights more severely than any other investigative measures. Against that background, the legislature had created a system of safeguards. The central part of those safeguards was the requirement that measures which interfered with fundamental rights particularly severely (those mentioned in Articles 116, 118 and 119 of the CCrP) be taken only when authorised under Article 114 of the CCrP by a preliminary investigation judge. The same observation was reiterated in judgment no. 3-1-1-10-11, dated 1 July 2011. The Supreme Court also stressed that all parties to criminal proceedings had to have the opportunity to verify whether the requirements of the law had been followed when evidence had been obtained via secret surveillance. Courts could therefore not dismiss an application to review the lawfulness of surveillance measures. This did not exclude the possibility of courts conducting such a review of their own motion, if the relevant suspicion arose. In the course of the review, the domestic courts had to verify, first and foremost, whether the required authorisations had existed, and whether the evidence had been obtained via authorised measures and within the authorised time period. The courts' obligation to conduct a review of the lawfulness of secret surveillance activities was also stressed in the Supreme Court's judgments no. 3-1-1-81-08, dated 23 February 2009, and no. 3-1-1-31-11, dated 28 April 2011.

58. In judgment no. 3-1-1-31-12, dated 21 May 2012, the Supreme Court emphasised that the preconditions set out in Article 110 § 1 of the CCrP were meant to protect the private life of a suspect as well as an accused's right of defence during court proceedings.

59. The Supreme Court judgment of 1 July 2011, no. 3-1-1-10-11, focused on the possibility of using evidence obtained via secret surveillance within one set of criminal proceedings in the context of other criminal proceedings. The Supreme Court found that such evidence could be used, provided that the requirements of Articles 110, 112, 113, and 114 of the CCrP had been followed. The Supreme Court stressed that in such a scenario the courts also had to conduct an *ex post facto* review in the framework of the new criminal proceedings, in order to verify whether the

evidence had been obtained lawfully and in accordance with the *ultima ratio* principle.

60. In judgment no. 3-1-1-22-10 of 26 May 2010, the Supreme Court considered that authorisation of secret surveillance that had been granted orally rather than in writing had been unlawful, and the evidence thereby obtained could not be admitted. It stressed that granting the authorisation orally inevitably meant that the preliminary investigation judge had not familiarised himself with the written documents forming the basis of the application for authorisation. This, in turn, made it more difficult, if not impossible, for the court to verify whether the preconditions, including the *ultima ratio* principle, set out in Article 110 of the CCrP had been met.

61. In judgment no. 1-12-2761 of 20 January 2014, the Tartu Court of Appeal noted that although, in accordance with Article 145 of the CCrP, decisions authorising secret surveillance had to be reasoned, there had so far been no guidance from the Supreme Court concerning requirements that the reasoning had to satisfy. The Tartu Court of Appeal found that an authorisation decision could not be based on merely declaratory statements, and its findings (including with regard to the *ultima ratio* requirement) had to be linked to concrete evidentiary material. In any event, it was unacceptable for authorisation merely to refer to a prosecutor's application and state that the judge considered it justified. The court stressed that the more possibilities the State had to interfere with persons' fundamental rights, the more responsible the State had to be in order to avoid unwarranted interferences. In this case, the Tartu Court of Appeal agreed with the reasoning of the first-instance court, finding that the authorisation decisions in the case at hand had not been sufficiently reasoned and had not satisfied the *ultima ratio* requirement. The surveillance activities had therefore been unlawful and the evidence thereby obtained inadmissible. That judgment became final on 19 February 2014. Based on the findings in that case, the applicant lodged a claim for damages (see paragraph 69 below).

(b) Judgments postdating the Supreme Court's judgment in the present case

62. Case no. 3-1-1-68-14 concerned a situation where criminal proceedings had been terminated without a statement of charges being submitted to a court. The person who had been subject to secret surveillance had been notified of this and had been provided with access to the surveillance documents, including the authorisations to conduct secret surveillance. Following that, the person had lodged an appeal, asking for those surveillance activities to be declared unlawful. In its judgment of 16 December 2014, the Supreme Court found that there had been insufficient reasons for the surveillance activities, despite the fact that they had been authorised by a preliminary investigation judge under Article 110 of the CCrP. Referring to its recent judgment in case (no. 3-1-1-14-14), the

Supreme Court went on to explain that insufficient reasoning, albeit in breach of a procedural requirement, did not automatically render surveillance activity itself unlawful. The court examining the criminal case or complaint challenging the decisions authorising the surveillance activity (as in the instant case) was obliged, despite the existence of previous authorisation, to verify whether the material requirements set out in Article 110 of the CCrP had been satisfied. After analysing the reasoning provided in the authorisation decisions and examining the relevant criminal file, the Supreme Court concluded that the authorisations had not been in accordance with the *ultima ratio* principle, and thus had been unlawful.

63. In judgment no. 3-1-1-3-15 of 6 April 2015, the Supreme Court also analysed whether the *ultima ratio* principle had in fact been followed, despite an authorisation for secret surveillance having insufficient reasoning. The court took into account the nature of the offence in question, the way in which the investigating authorities had become aware of the potential criminal activities, the suspect's characteristics and the little likelihood of finding witnesses, and came to the conclusion that the *ultima ratio* requirement had been satisfied, and in that regard the evidence obtained via secret surveillance had been admissible.

64. The obligation to carry out an *ex post facto* review of the lawfulness of secret surveillance authorisations, despite their having insufficient reasoning, was also emphasised in the Supreme Court judgment in case no 3-1-1-79-16, dated 5 December 2016. In this case, the central question was whether at the time of authorising the secret surveillance there had been sufficient grounds to believe that an offence had been committed. The Supreme Court stressed that a mere conclusion that authorisation decisions did not contain sufficient reasoning did not free a trial court from its obligation to verify, by way of an *ex post facto* review, the existence of reasonable suspicion.

2. Available remedies

65. In judgment no. 3-1-1-41-08 of 23 September 2008, referring to Articles 228-232 of the CCrP (see paragraphs 50 and 51 above), the Supreme Court noted that as actions taken during pre-trial proceedings could interfere with fundamental rights, the legislature had provided for a possibility to challenge such actions if the persons subject to them considered that their rights had been violated.

66. In judgment no. 3-3-1-11-13 of 22 March 2013, the Supreme Court explained that the procedure set out in Articles 228-232 of the CCrP did not cover decisions regarding compensation for damage. As other legal acts did not provide for any alternative procedure either, a dispute concerning compensation for damage caused by unlawful actions and orders during the pre-trial stage of criminal proceedings came under the jurisdiction of the administrative courts. However, the court explained that an administrative

court itself was competent to assess the "lawfulness" of such actions and orders only in exceptional circumstances, when the person concerned had not had any other opportunity to have the alleged unlawfulness adjudicated upon (for example, in proceedings under Articles 228-232 of the CCrP). Administrative courts' jurisdiction to exceptionally assess the lawfulness of actions taken in pre-trial criminal proceedings was confirmed in judgment no. 3-3-1-70-14, dated 17 December 2014. The same principle was further elaborated on in judgment no. 3-3-1-34-16 (see paragraph 69 below).

67. In judgment no. 3-3-1-35-10 of 31 August 2011, the Supreme Court stated that as the legislation at the time did not provide for the regulation of compensation for damage arising out of procedural actions or orders during the pre-trial stage of criminal proceedings, such claims for compensation had to be adjudicated upon based on Article 25 of the Constitution, and in accordance with the general principles concerning compensation for damage.

68. On 1 January 2015 the Act on Compensation for Damage Caused in Criminal Proceedings entered into force. In judgment no. 3-3-1-30-16 of 7 December 2016, the Supreme Court explained that until the entry into force of that Act, administrative courts had been competent to adjudicate upon compensation claims arising out of measures taken in pre-trial criminal proceedings, on the basis of either Article 25 of the Constitution or the Act on Compensation for Damage Caused to a Person by the State through Unjust Deprivation of Liberty. However, since the entry into force of the Act on Compensation for Damage Caused in Criminal Proceedings, the procedure in that Act had to be followed, and county courts were competent to adjudicate upon such claims. Moreover, in accordance with section 23(3), the latter Act had retrospective effect.

69. Case no. 3-3-1-34-16 concerned compensation for surveillance activities in circumstances where domestic courts had previously declared insufficiently reasoned surveillance authorisations and the surveillance measures taken on the basis of those authorisations unlawful (see paragraph 61 above). In a judgment of 13 June 2016, the Supreme Court found that as the surveillance activities in question had already been declared unlawful, the damage caused by them fell under section 7(1) of the Act on Compensation for Damage Caused in Criminal Proceedings. The violation of a person's home or private life or the confidentiality of his or her messages constituted grounds for compensating for non-pecuniary damage (section 11(2) of the same Act). Non-pecuniary damage was presumed (first sentence of section 11(3) of the same Act). The Supreme Court also stressed that in the event that a criminal court had already adjudicated upon the (un)lawfulness of certain measures taken in criminal proceedings and that judgment had become final, such conclusions were binding for the administrative court deciding on compensation. The court reiterated that it was only in exceptional circumstances, where a person had not had the

opportunity to ask for the lawfulness of procedural measures to be assessed in the so-called main proceedings, that a court adjudicating upon the compensation claim was competent to assess the lawfulness of actions or orders taken in criminal proceedings.

THE LAW

I. JOINDER OF THE APPLICATIONS

70. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

71. The applicants complained that the excessive length of the criminal proceedings in question had violated their rights under Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

72. The Government contested that argument.

A. Admissibility

73. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

74. The applicants, except for the third applicant and the applicant companies, accepted the starting point proposed by the Supreme Court for the purposes of calculating the length of the proceedings against them.

75. The third applicant and the applicant companies maintained that the starting point should be 2 August 2004, when the surveillance activities had been commenced with respect to the third applicant. Those measures had formed part of the criminal proceedings also directed against the two companies. In that respect, they referred to the case of *Šubinski v. Slovenia*

(no. 19611/04, 18 January 2007) and argued that a person might be substantially affected by proceedings even when they were not notified or aware of measures that had been taken. They further submitted that the third applicant had been suspicious of having been subject to covert surveillance at an earlier time. In that respect, they referred to the second applicant having been anxious about possible secret surveillance in 2000, and mentioned a telephone call made to the third applicant by another defendant in the case, E.T., who had indicated on 24 September 2006 that she suspected that she was under surveillance.

76. The applicants admitted that the case in general had been of above average legal complexity. The first applicant argued that his individual case had not been complex. The applicants submitted that the authorities' actions had contributed to the perceived complexity of the case. None of the applicants thought the case extremely complex in terms of evidence. They argued that the criminal file had been unreasonably voluminous and badly organised and had not linked the evidence to the particular charges, and that the statement of charges had been of poor quality, thus requiring more work from the defence representatives and contributing to the duration of the proceedings. The first applicant, the second applicant and the fourth applicant objected to the suggestion that the additional material in the case file had been necessary from the perspective of defence rights.

77. The first and the second applicants argued that the Government's claim that there had been no inactivity during the proceedings before the first-instance court was not substantiated. The delays that had occurred during the proceedings before the Harju County Court had been attributable to the State. Conversely, the fourth applicant considered that there had not been periods of inactivity. All of the applicants, except for the fourth applicant, also stated that the delay resulting from the Court of Appeal not scheduling hearings for six months had been unnecessary and had not been explained.

78. The fourth applicant asserted that the court of first instance had failed to schedule hearings well in advance. The second applicant noted that he had not opposed the scheduling of hearings.

79. The fourth applicant argued that the fact that E.T.'s case had not been separated from the rest of the criminal proceedings had contributed to the overall length of the proceedings with respect to the other applicants. The first applicant also noted that his case – which had been smaller in terms of the number of incidents in question and the volume of evidence, and had not overlapped in substance with the cases of the other defendants – had not been separated from the rest of the proceedings, despite an application for separation having been made. The first applicant argued that the length of the proceedings should therefore be viewed in the context of his individual case.

80. The third applicant, the applicant companies and the fourth applicant also pointed out that as the criminal charge had eventually been reclassified as offering and accepting gratuities, a lesser crime, rather than bribery – the difference between the two legal classifications being that the former required unlawful acts taken in an official capacity, whereas the second did not – unnecessary time had been spent on arguing whether or not there had been unlawful acts by public officials in return for benefits.

81. All of the applicants submitted that they could not be reproached for unnecessarily delaying the proceedings.

82. All of the applicants asserted that the stakes had been high for them. The case had been particularly important, historically the largest corruption trial in Estonia, and it had included top officials and had attracted unprecedented media attention. For the applicants, their reputation and careers (political careers, and careers in the business sector or in public service) had been at stake, and the companies had risked losing their business ventures. The second applicant added that the cancellation of the restriction on his leaving his place of residence (see paragraph 33 above) had no relevance in the context of the length of the proceedings.

(b) The Government

83. The Government asserted that the length of the criminal proceedings had not breached the "reasonable time" requirement under Article 6 § 1 of the Convention. They relied on the reasoning of the Supreme Court (see paragraphs 27 to 34 above) concerning the starting point for calculating the length of the proceedings. The Government also referred to the Supreme Court's analyses, which had taken into account the complexity of the case, the conduct of the applicants and the State at all stages of the proceedings, and what had been at stake for the applicants. The Government noted that until that time the trial had been the largest corruption trial in Estonia.

84. With respect to the third applicant and the applicant companies, the Government stressed that the starting point could not be 2 September 2004, when surveillance activities – of which the third applicant had not been aware – had started with respect to him in other criminal proceedings which had later been terminated (see paragraphs 8 and 27 above). They added that no surveillance authorisations had been issued against the two companies (of which the third applicant had been a member of the supervisory board), and surveillance had only concerned the third applicant's personal telephone number and his conversations held in public places. The Government considered that the case of *Šubinski* (cited above), which the applicants had referred to, was different from the present case and thus irrelevant.

85. The Government argued that in a situation where the acts of different defendants were justifiably and for the sake of comprehensiveness dealt with in the same criminal proceedings, the complexity of the criminal case had to be assessed in its entirety and not from the viewpoint of individual

defendants. It had therefore been correct not to separate the case of the first applicant (who, moreover, had not raised this matter in his appeal on points of law) from the rest of the proceedings (see paragraph 18 above).

86. Although the Supreme Court had pointed out that too much material might have been included in the criminal file, the Government held that the material had been added at a time when the investigation had still been ongoing and the details concerning the matters to be proved had not yet been clear. Moreover, the accused had had a right to see the whole criminal file. That material might therefore have been of interest for the applicants in relation to the preparation of their defence, and had it not been included, they could have criticised this omission. As for the Supreme Court's criticism of the quality of the statement of charges (see paragraph 31 above), the Government argued that this had been meant as guidance for the future.

87. The Government also submitted that the eventual reclassification of the criminal charge as offering and accepting gratuities rather than bribery had not affected the length of the proceedings. Both offences fell under the category of "concealed offences", and the collection of evidence concerning such offences was difficult and time-consuming.

88. The Government also noted that although the applicants and their representatives could not be reproached for exercising their defence rights (such as by submitting various applications and examining the criminal file for seven months) or for being ill or absent for some other personal reasons, their actions, viewed objectively as facts, had still contributed to the overall length of the proceedings. In any event, the State could not be reproached for the applicants' conduct either. The Government also noted that on several occasions it had been the defence representatives who had objected to scheduling the hearings further in advance (see paragraph 17 above), and the appeal stage of the proceedings had been adjourned for at least three months because the representatives had not had available dates to suit everyone (see paragraph 21 above).

89. Regarding what had been at stake for the applicants, the Government did not deny that the case had undoubtedly been important in the context of Estonia. There had been public attention and the criminal proceedings had naturally been onerous for the defendants, yet the applicants had not elaborated on this matter any further before the domestic courts. The Government submitted that in any event the case had not constituted a particularly important or sensitive dispute so as to be considered an "urgent" or "priority" case within the meaning of the Court's case-law.

2. The Court's assessment

(a) General principles

90. The Court reiterates that, in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned is officially notified that he will be prosecuted, or the date when preliminary investigations are opened (see *Malkov v. Estonia*, no. 31407/07, § 56, 4 February 2010). A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, 13 September 2016).

91. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

(b) Application of the principles to the present case

(i) The period to be taken into consideration

92. The Court notes that the first, second and fourth applicants accepted the respective starting points proposed by the Supreme Court for the purposes of calculating the length of the proceedings against them (see paragraph 28 above). The Court sees no reason to hold that these starting points should be different.

93. However, the third applicant and the applicant companies asserted that, with respect to them, the relevant period should start to run from an earlier date than that decided by the Supreme Court.

94. The Court is not convinced by the argument of the third applicant and the applicant companies that the start date of the surveillance activities in prior criminal proceedings should be taken as the relevant point of reference. Apart from referring to general doubts and to other persons who suspected that they had been put under surveillance (see paragraph 75 above), the applicants did not claim that the third applicant himself had been aware of the surveillance measures taken in respect of him, or that he had otherwise been substantially affected by those measures from 2 August 2004 onwards. The Court accordingly accepts that the relevant period

started to run on the dates established by the Supreme Court and affirmed by the Government.

95. The criminal proceedings came to an end on 30 June 2014, when the Supreme Court delivered its judgment convicting the applicants.

96. Accordingly, the proceedings lasted: eight years, nine months and five days with respect to the second applicant; seven years, eight months and twenty-eight days with respect to the first applicant, the second applicant company and the third applicant (in relation to certain criminal incidents); six years, nine months and eleven days with respect to the first applicant company and the third applicant (in relation to other criminal incidents); and six years, eight months and twenty-one days with respect to the fourth applicant. Those periods of time included the investigation stage and the period during which courts at three levels of jurisdiction considered the applicants' case.

(ii) Reasonableness of the length of the proceedings

97. The Court observes that the criminal proceedings in the instant case were considerably lengthy, varying between approximately six years and eight months and eight years and nine months with respect to different applicants. Out of this period, the relevant period for pre-trial proceedings lasted between approximately one and a half years and three and a half years, depending on the applicant and when the "reasonable time" referred to in Article 6 § 1 could be considered to have started to run. During the pre-trial proceedings, the applicants were given approximately seven months (between March 2008 and November 2008) to examine the criminal file, and the lifting by Parliament of the immunity of two of the accused took approximately three and a half months (between December 2008 and March 2009). The proceedings before the first-instance court lasted approximately three years and three months, those before the second-instance court lasted about one year, and those before the Supreme Court lasted about ten months.

98. The Court notes that, given the length of the proceedings and the applicants' criticism in that regard, the Supreme Court was exceptionally thorough in assessing the various stages of the proceedings and the parties' conduct, in order to establish whether or not the proceedings had exceeded the "reasonable time" limitation. In doing so, it gave a date-by-date account of the course of the pre-trial and trial proceedings and applied the relevant criteria outlined in the Court's established case-law (concerning the complexity of the case, the parties' conduct and the assessment of what was at stake). Although the Supreme Court came to the conclusion that the criminal proceedings, while close to being excessively lengthy, had been concluded within a "reasonable time", it highlighted some points of criticism with regard to how the proceedings could have been better conducted. The Court notes that the Government relied largely on the

Supreme Court's findings supporting their argument, whereas in arguing that the reasonable time had been exceeded, the applicants mostly stressed the critical points highlighted by the Supreme Court.

99. The Court considers that the criminal case under review was of considerable complexity. Not only did it involve several accused, but it concerned the "hidden offences" of offering and accepting gratuities, characterised by a high level of conspiracy and complex patterns of conduct between various people, which thus rendered it difficult to gather and present evidence of the alleged crimes. Moreover, the case involved the examination of a number of witnesses. Against that background, it is understandable that the investigation, the analysis and presentation of evidence and the ensuing court proceedings were time-consuming. The Court finds that, in a situation where criminal proceedings involve closely interlinked acts of several of the accused, and where separating the cases would not be attainable or procedurally reasonable (including from the perspective of defence rights – see paragraph 18 above), the complexity of the case must be assessed as a whole, not from the perspective of every single accused person.

100. As for the conduct of the authorities, the Court notes firstly that none of the applicants claimed that there had been any inactivity either during the pre-trial proceedings or during the proceedings before the Supreme Court. Despite the considerable length of the pre-trial proceedings, the Court cannot discern anything from the facts of the case which would suggest that the investigating authorities or the prosecution acted inappropriately or otherwise failed to carry out their duties with due diligence from the moment the applicants became involved. Furthermore, as regards the proceedings before the first-instance court, although the first and the second applicants claimed that there had been periods of inactivity during that stage, they did not specify when exactly those periods had occurred, and owing to which circumstances. As for the applicants' criticism about the delay resulting from the failure to schedule hearings at appellate level, the Court notes that the Supreme Court specifically explained that it had not been possible to find hearing dates that suited all of the applicants' representatives (see paragraphs 21 and 32 above). The Court takes into account that scheduling a trial of such magnitude depends not only on the courts; there must also be due regard for representatives and their availability.

101. The Court takes particular note of the critical comments of the Supreme Court concerning the presentation of the statement of charges, the composition and structure of the criminal file, and the planning and management of the hearings before the first-instance court (see paragraph 31 above). At the same time, it notes that although the Harju County Court – being aware of the risk of excessively long proceedings – took steps to speed up the proceedings (see paragraph 17 above regarding hearing

witnesses), the decisions to limit hearings to three days a week, not to plan hearings more than a year in advance and to grant flexibility to the defence representatives as regards appearing in court were taken either at the request of the applicants or in their interests. As to the criticism expressed regarding the quality of the statement of charges, the composition of the criminal file and – as raised by the applicants – the reclassification of the offence as offering and accepting gratuities rather than bribery, the Court does not find that any of these acts, viewed against the wider background of the proceedings, contributed to the length of the proceedings to such an extent as to be decisive on their own. Although separating E.T.'s case from the proceedings (see paragraph 31 above) would feasibly have had an impact on the length of the proceedings against her, the Court cannot speculate about the possible impact this could have had on the duration of the proceedings against the applicants. As noted above, the separation of the first applicant's case from the rest of the proceedings was opposed by other applicants' representatives (see paragraphs 18 above). In any event, as noted by the Government and not contested by the first applicant, he did not raise that matter before the Supreme Court (see paragraph 85 above).

102. The Court sees no reason to contradict the findings of the Supreme Court (also confirmed by the Government) that the applicants could not be reproached for inappropriately prolonging the criminal proceedings against them.

103. The Court is mindful that the long criminal proceedings must undoubtedly have been arduous for the applicants, especially given the significant media interest in the case. However, it does not consider that the applicants' positions in politics, in the civil service or as well-known businessmen would in themselves have warranted a ruling that their case merited priority treatment, even if such treatment had been possible in the domestic legal system. In that regard, the Court draws attention to the above finding that there were no periods of inactivity or delays in the present case. The Court notes that, except for the second applicant being detained for two months, the applicants were not remanded in custody (compare and contrast *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI), nor did they argue that the restriction on their leaving their places of residence, which was annulled on 17 February 2010 (see paragraph 33 above), had had any particularly aggravating effect.

104. Making an overall assessment of the length of the proceedings, the Court therefore concludes that they did not go beyond what may be considered reasonable in the particular circumstances of the case. The Court thus finds that Article 6 § 1 of the Convention has not been violated.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

105. The second and the third applicants and the first and second applicant companies complained that the Supreme Court's retroactive justification of the secret surveillance authorisations had violated their rights under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

106. The Government contested that argument.

A. Admissibility

1. The parties' arguments as to the victim status of the first and the second applicant companies

(a) The Government

107. The Government claimed that the complaint was inadmissible *ratione personae* with respect to the applicant companies. Although under certain circumstances rights under Article 8 might be construed as the right to respect for a company's registered office, branches or other business premises, no such interference had occurred in the present case. The secret surveillance authorisations (concerning covert observation, listening in on conversations and the interception of communications) had not been issued against the applicant companies, but only with respect to the third applicant, whose conversations on his personal telephone – at the time the authorisations had been issued, it had been thought that this was his personal telephone – or with other people in public places had been put under surveillance. The surveillance had not targeted the companies' telephones, nor had it concerned covert observation of the companies' employees or board members in general. Therefore, no surveillance activities had been carried out in respect of the applicant companies. The Government noted that the apparently new information submitted by the second applicant company (see paragraph 108 below) did not change their position, as the person in whose name the number had been registered was irrelevant. In any event, the surveillance activities had targeted only the third applicant and had concerned the telephone number that only he (and not the company's personnel in general) had been known to use.

(b) The applicants

108. The applicant companies asserted that they had been directly and personally affected by the secret surveillance of the third applicant, who had been a member of their supervisory boards. They had thus been *de facto* victims of the violation of their rights under Article 8 of the Convention. It was impossible to differentiate between company officials and the companies themselves. Furthermore, after submitting its observations to the Court, the second applicant company notified the Court of a new fact – according to information provided by the relevant mobile service operator, the telephone number which had been subject to secret surveillance had been registered to the second applicant company between 2003 and 2008, and not to the third applicant. In any event, the secret surveillance had been carried out in the context of the criminal investigation against the applicant companies.

2. The Court's assessment as to the victim status of the applicant companies

109. The relevant part of Article 34 of the Convention provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

110. As regards private life, the Court has previously held that it may be open to doubt whether a legal entity can have a private life within the meaning of Article 8. However, it can be said that its mail and other communications are covered by the notion of "correspondence", which applies equally to communications originating from private and business premises. The Court has previously accepted that, in the context of secret surveillance activities, legal entities are entitled to the protection afforded by Article 8, and can thus claim to be victims under that Article (see *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, § 60, 28 June 2007).

111. In the instant case, the secret surveillance authorisations in question were issued with respect to the third applicant, who was acting as a member of the supervisory boards of the two applicant companies. The Government and the applicant companies disagree as to whether the telephones that were tapped were for the third applicant's private use, or whether at least one of the telephones was registered to the second applicant company. The parties do not dispute that the information obtained via tapping the telephones was also used in convicting the applicant companies, as it was found that the third applicant – by offering gratuities – had been acting in the interests of the applicant companies, which had benefitted from the unlawful activities (see paragraph 56 above).

112. The Court considers that a situation where a person under secret surveillance also happens to be a member of a legal entity's management board does not automatically lead to an interference with that legal entity's Article 8 rights. However, in the particular circumstances of this case, and given that the third applicant, as a member of the supervisory boards of the applicant companies, also acted in the interests of those companies when offering gratuities, the Court sees no reason to distinguish between the "correspondence" of the third applicant, an individual, and that of the applicant companies, legal entities (compare *Wieser and Bicos Beteiligungen GmbH v. Austria*, no. 74336/01, § 45, ECHR 2007-IV). The fact that no secret surveillance authorisations were formally issued in respect of the two applicant companies does not alter this finding. The applicant companies can accordingly claim to be victims within the meaning of Article 34 of the Convention.

3. The Court's overall conclusion as to the admissibility of the Article 8 complaint

113. The Court notes that the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

114. Noting that the Government, despite outlining other remedies available to the applicants (see paragraph 124 below), did not raise an objection of non-exhaustion of domestic remedies, the Court further considers that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

115. The third applicant and the applicant companies considered that the present case was practically identical to the *Dragojević* case (*Dragojević v. Croatia*, no. 68955/11, 15 January 2015). They asserted that under Article 145 of the CCrP, decisions authorising secret surveillance had to be reasoned. As the decisions in question had not been sufficiently reasoned, the interference with the applicants' rights could not have been "in accordance with the law" and had failed to satisfy the foreseeability requirement. In that regard, it was of no relevance that the Supreme Court's decision had been taken only after the Court's judgment in the case of *Dragojević*. Furthermore, referring to the dissenting opinion of Judge Kergandberg, the Supreme Court judge (see paragraph 41 above), they argued that the Supreme Court's solution of retrospectively providing

reasoning for authorisation decisions opened a door to arbitrariness, and had been a radical reversal of the Supreme Court's previous approach.

116. Referring to Article 114 of the CCrP, the second applicant argued that Estonian law had not required secret surveillance authorisations to be reasoned, and the domestic law had therefore not satisfied the "quality of law" requirement. This, in turn, meant that the authorisations had not been in accordance with the law. In support of his argument, he pointed to the modification of the relevant regulation as of 1 January 2013 (see paragraph 53 above), a modification which meant that having insufficient reasoning when granting secret surveillance authorisations would result in evidence being declared inadmissible. The second applicant disagreed with the Supreme Court's line of argument that insufficient reasoning in authorisation decisions could not be equated to a lack of authorisation as such. He considered that this departed from the Supreme Court's previous case-law. In that regard, he relied on the dissenting opinion of Judge Kergandberg (see paragraph 41 above). In the *Dragojević* case, there had been no established domestic case-law on the matter in Croatia. However, in the instant case, despite the fact that there had been domestic case-law, the Supreme Court had started to retrospectively justify the necessity of secret surveillance. The second applicant doubted the necessity of the secret surveillance in his case, and doubted that the Supreme Court had considered the private life aspect when assessing the admissibility of evidence obtained via secret surveillance. He noted that the Government had not provided any case-law examples of other remedies which could have allowed privacy concerns to be addressed before the domestic courts (see paragraph 124 below).

(b) The Government

117. The Government asserted that under domestic law, secret surveillance authorisations had to be reasoned (Article 145 of the CCrP, taken together with Articles 110-114 of the CCrP). That had also been confirmed by the Supreme Court in the present case (see paragraph 36 above).

118. The Government noted that all the decisions authorising secret surveillance measures in the present case had in principle contained the information required under Article 145 of the CCrP, including references to specific applications submitted by the prosecutors, references to particular offences of which the applicants were suspected, and indications as to which particular surveillance measures had been authorised, with respect to whom and for what period. However, the Government admitted that the initial reasoning authorising the secret surveillance measures had been scant and based on standard formulations. The Supreme Court had therefore considered it insufficient.

119. The Government noted that in 2008 the Supreme Court had highlighted that *ex post facto* reviews of the lawfulness of secret surveillance activities (when examining the admissibility of evidence) constituted an important fundamental rights guarantee (see paragraph 57 above). However, there had been no prior established case-law on the practical consequences of insufficiently reasoned secret surveillance authorisations, and the instant case had been the first domestic case where the Supreme Court had assessed the matter. Therefore, the case at hand was different from the *Dragojević* case, as the Supreme Court judgment in the instant case had not been at variance with the earlier domestic case-law.

120. The Government asserted that *ex ante* and *ex post facto* reviews of lawfulness, taken together, were sufficient to provide an adequate remedy against arbitrary interference with Article 8 rights. It stressed in particular that *ex post facto* reviews of the lawfulness of secret surveillance – which allowed verification of whether compulsory *ex ante* reviews had indeed been carried out – had proved to be effective in Estonia. This applied to cases where the courts were called upon to verify whether the preconditions for authorising surveillance measures had been fulfilled (for example by assessing whether there had been written authorisation, see paragraph 60 above), or where the courts performed checks on whether the surveillance activities carried out had indeed been in accordance with such authorisation. The Government pointed to the domestic case-law whereby the Supreme Court had declared secret surveillance authorisations unlawful once it had found – as a result of an *ex post facto* review – that at the time the authorisations had been granted, the *ultima ratio* principle had not been complied with (see paragraph 62 above). The relevant authorities were aware that insufficient reasoning in authorisations could render the *ex post facto* verification of adherence to the *ultima ratio* principle impossible, and thus result in the inadmissibility of evidence. In the light of that fact, the use of *ex post facto* reviews did not open the door to arbitrariness.

121. The Government pointed out that in accordance with the new regulation of secret surveillance authorisations, in force as of 1 January 2013, insufficient reasoning in initial authorisations now resulted in the inadmissibility of evidence obtained by secret surveillance (see paragraph 53 above). It stressed that the new regulation did not mean that the earlier regulation or its interpretation had been incompatible with the Convention. In any event, the *Dragojević* judgment, which had been the first judgment of the Court to deal with the consequences of insufficiently reasoned surveillance authorisations, had been rendered after the final judgment in the present case, and thus its conclusions could not have been taken into account by the Estonian Supreme Court at the relevant time.

122. In the present case, all three levels of court had examined the surveillance files. The Supreme Court had concluded that the material conditions deriving from § 110 of the CCrP – including conformity with the

ultima ratio principle – had been fulfilled at the time the secret surveillance activities had been authorised (see paragraphs 38 and 39 above). Thus, it could be concluded that the authorities which had given permission for the secret surveillance activities had verified all the circumstances referred to before authorising such measures.

123. The Government noted that the criticism voiced in the *Dragojević* judgment – to the effect that issues arising from secret surveillance could only be challenged within criminal proceedings where an assessment was limited to the admissibility of evidence and did not go into the substance of Article 8 requirements under the Convention – could not be raised in the context of Estonia. The aim of Article 110 of the CCrP was to ensure that interferences arising from secret surveillance were compatible with the right to privacy. Also, the Supreme Court had confirmed that the preconditions set out in Article 110 CCrP were meant to guarantee suspects' privacy as well as their right of defence (see paragraphs 35 and 58 above). However, the Government pointed out that the applicants themselves had raised the issue of insufficient reasoning in authorisations, primarily in connection with the admissibility of evidence, and thus this had been the issue that the domestic courts had had to solve. Nevertheless, the Supreme Court, also acting as a constitutional court, had assessed the compatibility of the domestic regulation of secret surveillance with the guarantees provided by the Constitution and the Convention (see paragraph 40 above). It had found that, given the circumstances of the specific case, the surveillance activities had not interfered excessively with the fundamental rights of the second and the third applicants.

124. Furthermore, the Government noted that in the *Dragojević* judgment the Court had commented on not having been provided with information on the domestic remedies that might have been available to the applicants (see *Dragojević*, cited above, § 100). The Government confirmed that such remedies existed in Estonia. It had been open to the applicants to contest the relevant authorisations themselves, as well as the activities carried out on the basis of those authorisations, once they had been notified of the secret surveillance or had otherwise become aware of it (that is, at the latest, when the criminal file had been presented to them). This could have been done in the pre-trial proceedings (as regards the prosecutors' authorisations, see paragraphs 50, 51 and 54 above) or alternatively during the court proceedings (as regards both the prosecutors' authorisations and those issued by the preliminary investigation judge). The domestic courts could then have declared either the authorisations or the actions based on the authorisations unlawful, and the applicants could have lodged an application for compensation for non-pecuniary damage with an administrative court (before 1 May 2015, see paragraphs 66 to 68 above) or with a county court (after 1 May 2015, under the Act on Compensation for Damage Caused in Criminal Proceedings, see paragraphs 68 and 69 above).

It was admittedly difficult to predict the potential success of a damages claim which concerned only a procedural error, namely authorisations having insufficient reasoning. However, the applicants had not directly contested the authorisations or particular surveillance measures, but had instead raised their concerns in the context of the admissibility of evidence.

2. The Court's assessment

(a) General principles

125. The Court reiterates that telephone conversations are covered by the notions of "private life" and "correspondence" within the meaning of Article 8. Their monitoring amounts to an interference with the exercise of one's rights under Article 8 (see *Malone v. the United Kingdom*, 2 August 1984, § 64, Series A no. 82).

126. Such an interference is justified by the terms of paragraph 2 of Article 8 only if it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and is "necessary in a democratic society" in order to achieve the aim or aims. The following general principles have been consolidated in *Roman Zakharov v. Russia* [GC], no. 47143/06, ECHR 2015 (see §§ 228-234 of that judgment and the further references listed therein).

127. The wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see *Roman Zakharov*, cited above, § 228).

128. In particular, in the context of secret measures of surveillance such as the interception of communications, the requirement of legal "foreseeability" cannot mean that an individual should be able to foresee when the authorities are likely to intercept his communications so that he can adapt his conduct accordingly. However, where a power of the executive is exercised in secret, the risks of arbitrariness are evident. Thus, the domestic law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are empowered to resort to any such measures (see *Roman Zakharov*, cited above, § 229).

129. Moreover, since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive or to a judge to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent

authorities and the manner of its exercise with sufficient clarity to give the individual adequate protection against arbitrary interference (see *Roman Zakharov*, cited above, § 230).

130. In this connection, the Court has emphasised the need for safeguards. In view of the risk that a system of secret surveillance for the protection of national security may undermine or even destroy democracy under the cloak of defending it, the Court must be satisfied that there exist guarantees against abuse which are adequate and effective. This assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures, the grounds required for ordering them, the authorities competent to permit, carry out and supervise them, and the kind of remedy provided by the national law (see *Roman Zakharov*, cited above, § 232). Review and supervision of secret surveillance measures may come into play at three stages: when the surveillance is first ordered, while it is being carried out, or after it has been terminated. As regards the first two stages, the very nature and logic of secret surveillance dictate that not only the surveillance itself but also the accompanying review should be effected without the individual's knowledge. Consequently, since the individual will necessarily be prevented from seeking an effective remedy of his or her own accord or from taking a direct part in any review proceedings, it is essential that the procedures established should themselves provide adequate and equivalent guarantees safeguarding his or her rights (see *Roman Zakharov*, cited above, § 233).

131. This in particular bears significance as to the question of whether an interference was "necessary in a democratic society" in pursuit of a legitimate aim, since the Court has held that powers to instruct secret surveillance of citizens are only tolerated under Article 8 to the extent that they are strictly necessary for safeguarding democratic institutions. In assessing the existence and extent of such necessity, the Contracting States enjoy a certain margin of appreciation. However, this margin is subject to European supervision embracing both legislation and decisions applying it (see *Roman Zakharov*, cited above, § 232).

(b) Application of the principles to the present case

132. The Court considers, and it is not disputed by the parties, that the secret surveillance measures with respect to the applicants in the instant case amounted to an interference with their right to respect for "private life" and "correspondence", guaranteed under Article 8 of the Convention.

133. As regards the question of lawfulness, the parties have not cast doubt on the fact that the covert surveillance had a basis in domestic law, namely the relevant provisions of the CCrP, the accessibility of which does not raise any problems in the instant case. It has not been disputed that the use of secret surveillance measures within the context of criminal

proceedings could be seen as serving the legitimate aim of protecting public safety and the rights and freedoms of others.

134. The Court also notes that it is not called upon to assess in general the Estonian legislation allowing measures of secret surveillance. The applicants complained about specific instances where such surveillance had taken place in connection with the criminal proceedings against them. In that regard, the complaints focused particularly on the failure of the preliminary investigation judges and prosecutors who had authorised different secret surveillance measures to comply with the requirement under domestic law to set out the reasons for their decisions. The applicants considered that such a failure had led to the interference not being "in accordance with the law", the interpretation and application of domestic law being tainted by arbitrariness, and the use of the secret surveillance measures not being necessary.

135. The Court notes that the authorisations for the use of different secret surveillance measures were issued by either prosecutors or preliminary investigation judges (see paragraphs 11, 47 and 48 above). Under the domestic law, and as confirmed by the Supreme Court, both types of authorisation had to contain reasons regarding a reasonable suspicion that an offence had been committed and secret surveillance being a measure of last resort (see paragraphs 38, 39 and 45 above). Against that background, the Court dismisses the argument put forward by the second applicant to the effect that domestic law did not require secret surveillance authorisations to be reasoned (see paragraph 116 above).

136. The Court has also underlined the importance of an authority empowered to authorise the use of secret surveillance being capable of verifying "the existence of a reasonable suspicion against the person concerned, in particular, whether there are factual indications for suspecting that person of planning, committing or having committed criminal acts or other acts that may give rise to secret surveillance measures" and "whether the requested interception meets the requirement of 'necessity in a democratic society' ... for example, whether it is possible to achieve the aims by less restrictive means" (see *Roman Zakharov*, cited above, § 260, and *Dragojević*, cited above, § 94). Such verification, together with the requirement to set out the relevant reasons in the decisions by which secret surveillance is authorised, constitute an important guarantee, ensuring that the measures are not ordered haphazardly, irregularly or without due and proper consideration.

137. Despite the requirement that authorisations had to contain reasons as to the statutory conditions concerning reasonable suspicion and the *ultima ratio* principle being satisfied, in the applicants' case, the decisions issued by the preliminary investigation judges included only superficial and declaratory statements, whereas the prosecutors' authorisations did not contain any reasoning (see paragraphs 12, 38 and 39). The Supreme Court,

although acknowledging the mistake as regards the secret surveillance authorisations not containing the required reasoning, went on to assess whether those statutory conditions had, in fact, been fulfilled at the time that the measures had been authorised. It directly examined all the pertinent information (including the material in the surveillance files, as well as the applications for authorisations), and concluded that the relevant preconditions had been satisfied (see paragraphs 37-39 above). Accordingly, the Supreme Court allowed the evidence obtained via secret surveillance to be admitted.

138. The Court considers that against the outlined factual and legal situation, the instant case bears a strong resemblance to the circumstances which formed the basis for its judgment in the *Dragojević* case, where, in the course of assessing the admissibility of evidence, the domestic courts accepted the practice of compensating for initial insufficient reasoning in surveillance authorisations by retroactively providing justifications (see *Dragojević*, cited above, §§ 90-92 and §§ 95-96; see also *Matanović v. Croatia*, no. 2742/12, 4 April 2017, and *Bašić v. Croatia*, no. 22251/13, 25 October 2016).

139. The Court notes that the Government outlined arguments as to why the present case should be distinguished from the *Dragojević* case. It admits that in the particular context of the Estonian court system, where the Supreme Court may also function as a court which conducts constitutional review, the Supreme Court did indeed assess whether the secret surveillance in respect of the applicants had been proportionate. The Government also provided an overview of the potential remedies that the applicants could have used to address their Article 8 concerns, notably the possibility to claim compensation in respect of non-pecuniary damage. However, the Court notes that the Government did not provide any examples of case-law where the fact that secret surveillance authorisation had not contained sufficient reasons as required under domestic case law had been considered grounds for awarding damages. In that regard, the Government also admitted that such a claim's prospects of success could not be predicted.

140. Notwithstanding the above observations, the Court emphasises that the core of its conclusion in the *Dragojević* judgment touched upon the fact that despite the express requirement in domestic law that secret surveillance authorisations be reasoned, the domestic courts had introduced a possibility of providing such reasons retrospectively in instances where the authorising bodies had initially failed to do so. It was exactly this practice of circumventing the requirement to provide reasons at the initial authorisation stage and accepting that they could also be provided later during the proceedings which opened a door to arbitrariness contrary to the guarantees under Article 8 of the Convention. The Court cannot but find that the same concern is also at the heart of the instant case. This is so regardless of whether the prior domestic case-law was contradictory, or whether the

possibility of retrospective reasoning was first introduced only in the context of the case at hand.

141. With respect to the practice of accepting retrospectively provided reasoning, the Court notes that the effectiveness of the safeguard of prior scrutiny and obligation to provide reasons may not be the same where the obligation of prior scrutiny and provision of reasons is replaced with the possibility to provide such reasons later at the trial stage, where the courts inevitably have more information about how the alleged offences were committed. It is not merely the lapse of time, but the different procedural context in which such reasons would be provided, which calls for such caution.

142. In the light of the reasons set out above, the Court finds that as the interferences with the applicants' private life and correspondence did not comply with the requirement under domestic law that authorisations of secret surveillance be duly reasoned, those interferences were not "in accordance with the law" as required by Article 8 § 2 of the Convention.

143. There has accordingly been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

145. The applicants claimed the following amounts in respect of non-pecuniary damage. The third applicant and the applicant companies each claimed 16,500 euros (EUR) with respect to the alleged violation of Article 6 § 1 of the Convention, and EUR 10,000 with respect to the alleged violation of Article 8 of the Convention. The first and the second applicants left the amount of compensation for non-pecuniary damage to be decided by the Court. The fourth applicant left the amount of compensation for non-pecuniary damage claimed in respect of the alleged violation of Article 6 § 1 of the Convention to be decided by the Court.

146. The first and the second applicant companies also claimed compensation in respect of pecuniary damage: EUR 798,000 and EUR 127,823 respectively, amounts representing the fines imposed on them as a result of their conviction.

147. The Government argued that in so far as no violation of the Convention had occurred, no compensation for non-pecuniary damage

should be awarded. As regards the claims in respect of pecuniary damage submitted by the applicant companies, the Government submitted that there was no causal link between the fines incurred and the alleged Convention violations.

148. The Court does not discern any causal link between the violation of Article 8 of the Convention and the pecuniary damage alleged; it therefore rejects the respective claims of the first and the second applicant companies.

149. As regards non-pecuniary damage, having regard to the nature of the violation of Article 8 found in respect of the second and the third applicants and the applicant companies, the Court awards the following amounts, plus any tax that may be chargeable: EUR 2,000 each to the second applicant, the third applicant, the first applicant company and the second applicant company.

B. Costs and expenses

150. The applicants also claimed costs and expenses in the following amounts: the first applicant claimed EUR 85,647 for the costs and expenses incurred before the domestic courts, and EUR 3,900 for those incurred before the Court; the second applicant claimed EUR 121,619.76 for the costs and expenses incurred before the domestic courts, and EUR 7,800 for those incurred before the Court; the third applicant and the applicant companies claimed 961,690 kroons (EEK) and EUR 310,523 jointly for the costs and expenses incurred before the domestic courts, and 641.981 Swedish kronor (SEK) for those incurred before the Court; and the fourth applicant claimed EUR 133,707.43 for the costs and expenses incurred before the domestic courts.

151. With respect to the costs and expenses incurred before the domestic courts, the Government submitted that those related to the criminal proceedings as a whole, the results of which would not be altered by the Court's decision. Moreover, the dispute before the Court focused only on some of the issues that had been raised before the domestic courts. As regards the costs and expenses incurred before the Court (which the fourth applicant did not claim), the Government noted that the applicants had submitted several complaints to the Court, and the Government had been given notice of only the issues under Article 6 § 1 (with respect to all of the applicants) and Article 8 (with respect to the second and the third applicant and the applicant companies). With regard to the first and the second applicant having the same representative before the Court, the Government asserted that their observations concerning the length of the proceedings in question were mostly identical. They also submitted that the representative of the third applicant and the applicant companies had submitted a joint and very general reply to the Government's observations.

152. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see *Šilih v. Slovenia* [GC], no. 71463/01, § 226, 9 April 2009). Having regard to the material in its possession and the above considerations, and noting that, in the instant case, only a violation of Article 8 was found, whereas a number of the applicants' complaints were declared inadmissible (see paragraph 5 above), the Court finds it reasonable to award the second applicant EUR 1,500, and the third applicant and the applicant companies the sum of EUR 1,500 jointly, plus any tax that may be chargeable to them, covering costs under all heads.

C. Default interest

153. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications[1];

2. *Declares* the applications admissible;

3. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 8 of the Convention in respect of the second and the third applicants and the first and the second applicant companies;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 2,000 (two thousand euros) to the second and the third applicants and the first and the second applicant companies, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) to the second applicant and EUR 1,500 (one thousand five hundred euros) to the

1. Rectified on 8 October 2019: the sentence "1. *Decides* to join the applications;" was added and the following numbering changed.

third applicant and the applicant companies jointly, plus any tax that may be chargeable, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	173/15	23/12/2014	**Tullio LIBLIK** 12/11/1964 Kuressaare	Mart SUSI
2.	181/15	23/12/2014	**Kalev KANGUR** 07/07/1968 Tallinn	Mart SUSI
3.	374/15	18/12/2014	**E.L.L. KINNISVARA AS** public liability company incorporated under Estonian law with its seat in Tallinn	Percy BRATT
4.	383/15	18/12/2014	**Toomas ANNUS** 05/10/1960 Tallinn	Percy BRATT
5.	386/15	18/12/2014	**AS JÄRVEVANA** public liability company incorporated under Estonian law with its seat in Tallinn	Percy BRATT
6.	388/15	23/12/2014	**Villu REILJAN** 23/05/1953 Palamuse county	Margus MUGU