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# "ACCESS DENIED" – INTERPRETING THE DIGITAL DIVIDE BY EXAMINING THE RIGHT OF PRISONERS TO ACCESS THE INTERNET IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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## **ABSTRACT<sup>1</sup>**

The present paper aims to investigate prisoners' rights to use and access the Internet, focusing on the jurisprudence of the European Court of Human Rights (ECtHR). The study's principal

<sup>1</sup> Gergely Ferenc Lendvai was supported by the ÚNKP-23-3 New National Excellence Program of the Ministry for Culture and Innovation from the source of the National Research, Development and Innovation Fund and the Rosztochy Foundation scholarship. Gergely Gosztonyi was supported by the János Bolyai Research Scholarship of the Hungarian Academy of Sciences and the ÚNKP-23-5 New National Excellence Program of the Ministry for Culture and Innovation from the source of the National Research, Development and Innovation Fund.

objective is to assess the fundamental rights aspects of Internet access, particularly within the context of relevant EU legislation, and to interpret how the digital divide impacts prisoners. The study primarily relies on a thorough review of pertinent literature and legal materials, and it incorporates case studies from Estonia, Lithuania and Türkiye to contextualize the literature findings within specific legal jurisdictions. The research findings suggest that prisoners' Internet access should be evaluated in accordance with fundamental rights, including Article 10 of the European Convention on Human Rights. Regarding the digital divide, the study concludes that limiting prisoners' access to the Internet could exacerbate the already existing societal gap, potentially hindering their reintegration into society. The particular focus on the above three countries stems from the fact that as per the precedent of the ECtHR, only four countries are involved in cases concerning restriction of access to the Internet (Estonia, Lithuania, Türkiye and Russia); however, Russia ceased to be a party of the European Convention on Human Rights, so analyzing the future of the issue of Internet access there is highly limited. Our research contributes significantly to the literature on the digital divide, particularly in terms of its legal implications. The study's comprehensive approach, which integrates both theoretical and practical aspects, is beneficial for domestic legal professionals and researchers engaged in interdisciplinary investigations of EU law and fundamental rights.

## KEYWORDS

Digital divide, ECtHR, Internet, right to information, right to education, Baltics, Türkiye.

## INTRODUCTION

Access to the internet is so easily attainable that it is simple to overlook its profound influence on our daily existence.<sup>2</sup> Especially in the Global North, marginalisation – per the statistics – because of the lack of access to the Internet is highly unusual.<sup>3</sup> One particular group, however, may present a different experience – namely, prisoners. It has taken a very long time for European legal systems to come to the point where prisoners are not faceless and disenfranchised actors in the criminal justice system, but there are many of them who must be reintegrated into society over time. As Barna Mezey has put it in the context of the medieval penitentiary: “the offender is an enemy of the community and thus a person disqualified (in his property, civil and physical capacity) by the sentence”.<sup>4</sup> The criminal law reform movements that began in the 18th century led to the civil changes in Europe in the 19th century, one of the most important of which was the need to reform criminal law. Feuerbach, Grolman, Stelzer, and Stübel marked the German criminal law thinking of the period (Koch, 2014),<sup>5</sup> where, as it was seen as a highly visible and more easily amendable area than many other branches of law, the improvement of the conditions of imprisonment was also flagged. Civilian reform brought with it the acceptance of the humanity and rights of prisoners, an era that can be seen as the foundation of the European enforcement system of our time.

<sup>2</sup> Merten Gerlitz, “The Human Right to Free Internet Access,” *Journal of Applied Philosophy* 37(2) (2019): 314.

<sup>3</sup> Jacob Pushter, *Internet access growing worldwide but remains higher in advanced economies* // <https://www.pewresearch.org/global/2016/02/22/internet-access-growing-worldwide-but-remains-higher-in-advanced-economies/>

<sup>4</sup> Barna Mezey, *A börtönügy a 17–19. században. A börtön európai útja (The prison system in the 17th-19th centuries. The European way of the prison)* (Budapest: Gondolat Kiadó, 2018), 103–104.

<sup>5</sup> Arnd Koch, “Die Entwicklung des Strafrechts zwischen 1751 und 1813” (The development of criminal law between 1751 and 1813): 49–50; in: Arnd Koch, Michael Kubiciel, Martin Löhnig and Michael Pawlik, eds., *Feuerbachs Bayerisches Strafgesetzbuch (Feuerbach's Bavarian Penal Code)* (Tübingen: Mohr Siebeck, 2014).

Today, in the age where prison radios may be understood as a legitimate way to disseminate information behind bars,<sup>6</sup> it is clear that the fundamental and inalienable rights of prisoners, such as the right to human dignity, the right to life, and the right to humane treatment, are not affected by imprisonment and that their violation is contrary to international and national law. Of course, there are some rights of prisoners that are suspended during a prison sentence (e.g., the right to freedom of movement, freedom to change residence, or freedom to choose a doctor) and others that may be restricted or modified in some instances (e.g. parental custody, the right to association or the right to private access).<sup>7</sup> The latter includes the issue of freedom of expression, one of the snippets of which is the right of prisoners to access the Internet.

## 1. EUROPEAN PRINCIPLES GOVERNING PRISONERS' RIGHT OF ACCESS TO THE INTERNET

It can be concluded today that the 1950 European Convention on Human Rights (ECHR) does not cease to apply the moment the prison gates close behind the prisoner. As the ECtHR put it, "the Convention cannot stop at the prison gate".<sup>8</sup> The jurisprudence of the European Court of Human Rights (ECtHR) is consistent in that prisoners enjoy their fundamental human rights,<sup>9</sup> including freedom of expression,<sup>10</sup> in the institution and that this right can only be restricted if there is sufficient justification for doing so.<sup>11</sup> The key to the issue is that, according to the ECtHR, prisoners serving their sentences must also be subject to conditions in which their dignity and human rights are not violated, i.e.:

The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured.<sup>12</sup>

This finding is based, on the one hand, on the aforementioned imperative of reintegration into society and, on the other,<sup>13</sup> the State's obligation to protect the sentenced person, given his or her vulnerable position, against abuses and unjustified restrictions of rights.<sup>14</sup>

In *Nilsen v United Kingdom*, the ECtHR held that "the Court recalls that some control over the content of prisoners' communication outside the prison is part of the

<sup>6</sup> Gergely Gosztanyi, "Prison Radios: Communication on the Periphery of a Society," *Mediální studia* 1 (2018).

<sup>7</sup> Irén Gaál and Anikó Müller, *A büntetés-végrehajtási jogszabályok magyarázata (Explanation of prison legislation)* (Budapest: Wolters Kluwer, 2019) // DOI:10.55413/9789632958347

<sup>8</sup> *Khodorkovskiy and Lebedev v Russia*, European Court of Human Rights (Applications No. 11082/06 and 13772/05, Judgment of the Court of 25 July 2013), para. 836; *Klibisz v Poland*, European Court of Human Rights (Application No. 2235/02, Judgment of the Court of 4 October 2016), para. 354.

<sup>9</sup> *Chochoľáč v Slovakia*, European Court of Human Rights (Application No. 81292/17, Judgment of the Court of 7 July 2022), para. 52.

<sup>10</sup> *Donaldson v United Kingdom*, European Court of Human Rights (Application No. 56975/09, Decision of the Court of 25 January 2011), para. 18.

<sup>11</sup> *Hirst v United Kingdom (No. 2)*, European Court of Human Rights (Application No. 74025/01, Judgment of the Court of 6 October 2005), para. 71.

<sup>12</sup> *Muršič v Croatia*, European Court of Human Rights (Application No. 7334/13, Judgment of the Court of 20 October 2016), para. 99.

<sup>13</sup> *Murray v Netherlands*, European Court of Human Rights (Application No. 10511/10, Judgment of the Court of 2 April 2016), para. 101.

<sup>14</sup> *Yankov v Bulgaria*, European Court of Human Rights (Application No. 39084/97, Judgment of the Court of 11 December 2003), para. 126.

ordinary and reasonable requirements of imprisonment and is not, in principle, incompatible with Article 10 of the Convention".<sup>15</sup> At the same time, the relevant restrictions should not fall through the filter of the ECtHR's classic three-part cumulative test for freedom of expression in order to ensure that the state concerned does not breach Article 10 ECHR. The use of this test means that the challenged measures must not be arbitrary: the interference must "(a) be suitable to achieve the legitimate aim pursued (suitability), (b) be the least intrusive instrument amongst those which might achieve the legitimate aim (necessity), and (c) be strictly proportionate to the legitimate aim pursued (proportionality *sensu stricto*)".<sup>16</sup>

A prominent example of the use of the three-part test in the context of the prison system and freedom of expression was the case of Mehmet Çiftçi and Suat İncedere v Turkey, which was brought because prisoners were subjected to communication restrictions for a month as a disciplinary punishment. In the case before the ECtHR, the Court applied the three-part cumulative test and held that the disciplinary sanction for reciting songs and poems to celebrate a historical event constituted a disproportionate interference with freedom of expression.<sup>17</sup>

Nonetheless, it would be unwise to conclude that prisoners' right to Internet may not be restricted legitimately. As mentioned above, the second element of the three-pronged test outlines that all restrictions of someone right to freedom of expression must be in pursuance of a legitimate aim.<sup>18</sup> As per Article 10 of the ECHR, such legitimate aims may include a restriction

in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In the case of prisoners' access to the Internet, the respondents of the respective case often cited that the restrictions imposed were necessary to assess cybersecurity concerns and maintain prison security and the safety of persons outside the prison, as well as the prevention of crime and the protection of victims<sup>19</sup> – legitimate aims, that are easy to justify and satisfy, in theory at least.<sup>20</sup>

The above polemic, nonetheless, begs a premise: if there is a legitimate way to restrict prisoners' right to access to Internet, can we even consider it a human right? More precisely, is it to be protected as a right in itself and treated as a token right to freedom of expression, or is it simply a technology in which no protection is needed if the prisoner can obtain the information he or she wants by other means.<sup>21</sup> Although the ECtHR stated in Cengiz and others v Turkey that "the Internet has now become the primary means through which persons exercise their freedom to receive and impart

<sup>15</sup> *Nilsen v the United Kingdom*, European Court of Human Rights (Application No. 36882/05, judgment of the Court of 9 March 2010), para. 51.

<sup>16</sup> Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge: Cambridge University Press), 123–124.

<sup>17</sup> *Mehmet Çiftçi and Suat İncedere v Turkey*, European Court of Human Rights (Applications No. 21266/19 and 21774/19, judgment of the Court of 18 January 2022).

<sup>18</sup> Necdet U. Orcan, "Legitimate Aims, Illegitimate Aims and the E.Ct.H.R.: Changing Attitudes and Selective Strictness," *University of Bologna Law Review* 7(1) (2022) // DOI:10.6092/issn.2531-6133/14860

<sup>19</sup> See Section 3.

<sup>20</sup> Orcan, 13.

<sup>21</sup> Here we would refer to the issue of prison libraries, where prisoners can obtain a wealth of information, although it is clear that they cannot replace the unlimited access to the internet. See: Syed Tauseef Hus-sain, et al., "Examining the status of prison libraries around the world: A literature review," *IFLA Journal* 49(1) (2022) // DOI:10.1177/03400352221078032

information and ideas”,<sup>22</sup> the concept of Internet access as a human right is far from being a reality in the world.<sup>23</sup>

The Court does not resolve the above problem in a general sense. It approaches the issue in a more nuanced manner, namely, by examining aspects of the right to access to the Internet with specificities, for instance, when prisoners aim to access legal of educational information.

## 2. WOULD THE NEED FOR JUSTICE WIDEN THE DIGITAL DIVIDE? – THE RELATIONSHIP BETWEEN DIGITAL EXCLUSION AND PRISONERS’ ACCESS TO THE INTERNET

The enforcement of digital rights in the prison system raises a complex ethical and regulatory issue, exemplified by the dilemma of ensuring prisoners’ access to the Internet. As a fundamental question of this discourse, we pose the following: is restricting prisoners’ access to the Internet an integral part of deserved punishment or, on the contrary, a step towards digital exclusion?

The concept of the digital divide was first introduced in the literature in 1995 following research by van Dijk,<sup>24</sup> while the first empirical research on the digital divide was published by the US National Telecommunications and Information Administration.<sup>25</sup> Despite its complexity and changing nature,<sup>26</sup> the concept of the digital divide can be described as “a division between people who have access and use of digital media and those who do not”.<sup>27</sup> Research on the digital divide in recent decades has examined differences in access to and use of digital technologies<sup>28</sup> based on socioeconomic,<sup>29</sup> geographical,<sup>30</sup> and demographic factors.<sup>31</sup>

The phenomenon of the digital divide is widespread in the limited internet access of marginalized groups and ethnic minorities.<sup>32</sup> Due to possible media and internet literacy deficits, older people are also excluded from the world of digital media.<sup>33</sup> This phenomenon is not only confirmed but even amplified by research after the COVID-19 pandemics. The Stanford Center for Longevity concluded in this regard that older people are not only isolated socially even before the pandemics but they have also lagged behind the rest of the population in having the means and ability to access the

<sup>22</sup> *Cengiz and Others v Turkey*, European Court of Human Rights (Applications No. 48226/10 and 14027/11, judgment of the Court of 1 December 2015), para. 49.

<sup>23</sup> Gergely Gosztanyi, *Censorship from Plato to Social Media. The Complexity of Social Media’s Content Regulation and Moderation Practices* (Cham: Springer, 2023), 157–158 // DOI:10.1007/978-3-031-46529-1

<sup>24</sup> Jan van Dijk, *The Digital Divide* (Cambridge: Polity Press), 1.

<sup>25</sup> National Telecommunications and Information Administration, “Falling through the Net: A survey of the “have nots” in rural and urban America,” (July 1995) // www.ntia.doc.gov/ntiahome/fallingthru.html

<sup>26</sup> Petr Lupač, *Beyond The Digital Divide: Contextualizing The Information Society* (Bingley: Emerald Publishing, 2019) // DOI:10.1108/9781787565470

<sup>27</sup> van Dijk, *supra* note 16, 1.

<sup>28</sup> Sophie Lythreathis, Sanjay Kumar Singh and Abdul-Nasser El-Kassar, “The digital divide: A review and future research agenda,” *Technological Forecasting & Social Change* 175 (2022) // DOI:10.1016/j.techfore.2021.121359

<sup>29</sup> Peter K. Yu, “Bridging the Digital Divide: Equality in the Information Age,” *Cardozo Arts & Entertainment Law Journal* 20 (2023).

<sup>30</sup> Daniel Piazzolo, “The Digital Divide,” *CESifo Forum* 2(3) // DOI:10.1007/s10610-021-09493-4

<sup>31</sup> Ayanda Magida and Brian Armstrong, “The Third Level Digital Divide: Millennials and Post-Millennials Online Activities in South Africa,” *ICICTID 2022: International Conference on ICT, Innovation and Development, Vancouver, Canada* (2022).

<sup>32</sup> Michele Blanchard, Atari Metcalf and Jane Burns, “Bridging the Digital Divide: Creating opportunities for marginalised young people marginalised young people to get connected,” *Inspire Foundation – University of Melbourne report* (2007).

<sup>33</sup> Farooq Mubarak and Reima Suomi, “Elderly Forgotten? Digital Exclusion in the Information Age and the Rising Grey Digital Divide,” *Inquiry: a journal of medical care organization, provision and financing* 59 // DOI:10.1177/00469580221096272

Internet.<sup>34</sup> However, it is also often the case that regionally-based infrastructure differences make Internet access much more difficult in some areas than in others.

Digital exclusion can also be framed in terms of an unequal distribution of digital resources for prisoners, i.e., a substantial difference in the enjoyment of rights between different social groups and strata.<sup>35</sup> However, projecting the digital divide onto prisoners' rights also requires a high degree of caution. For an older person who has never used the Internet, the development of a cheque payment system that does not allow physical payment but only online transactions is less controversial than for a prisoner serving a life sentence for running a terrorist group that deliberately and seriously threatens the social order, and who would be undergoing online manager training during his sentence. In the case of prisoners, then, the digital divide polarity is essentially reduced to a choice: as a means of bridging the digital divide, should prisoners serving their sentences have the right to access the Internet, or should their deprivation of digital resources be considered an integral - or, in this situation, inherent and immanent - part of their incarceration? To add a more practical and modern perspective, Blomberg et al. found that incarcerated women, who have already been at a disadvantage in terms of digital access, faced even greater problems - mainly because of the pandemic - as the lack of stable access to the internet and digital devices during COVID-19 digitally marginalised them despite serving their sentences.<sup>36</sup>

The restriction of prisoners' liberty is a complex combination of limitations. A prisoner is not only restricted in his movement but also in his communication and orientation, which, in addition to being interpreted as a form of criminal punishment, also limits and restricts the exercise of the prisoners' fundamental rights. Especially in the context of the digital marginalisation of prisoners,<sup>37</sup> this specific liberty limitation continues even after the serving of the sentence. As Reisdorf, Jewkes, and DeCook note returning citizens often lack resources and time to find Internet access and to learn how to use these technologies<sup>38</sup> - resulting in a situation that practically keeps them on the peripher of society despite their physical freedom.

The explosive change in the digital environment has magnified the complexity of this issue. As the ECtHR's jurisprudence has shown, the spread of the Internet has become an effective means of education, communication, and access to information.<sup>39</sup> The argument that denying prisoners access to the Internet perpetuates their marginalization and hinders their reintegration, thus exacerbating the digital divide that inevitably arises from imprisonment, could be a valid argument for bridging the digital divide.<sup>40</sup> The link to educational inclusion should also be highlighted because, in addition

<sup>34</sup> Susan Nash, *The Pandemic Has Accelerated The Need To Close The Digital Divide For Older Adults* // <https://longevity.stanford.edu/the-pandemic-has-accelerated-the-need-to-close-the-digital-divide-for-older-adults/>

<sup>35</sup> Sofia Ciufoletti (European Prison Litigation Network), "Out of the cage, into the net. Understanding Access to the Internet in Prison as a Human Right," (2021) // <https://www.prisonlitigation.org/internet-as-a-human-right>

<sup>36</sup> Matt Blomberg et al., "Digital divide and marginalized women during COVID-19: a study of women recently released from prison," *Information, Communication and Society* 24(14) (2021) // DOI:10.1080/1369118X.2021.1963462

<sup>37</sup> Scharff Smith, "Imprisonment and Internet-Access - Human Rights, the Principle of Normalization and the Question of Prisoners Access to Digital Communications Technology," *Nordic Journal of Human Rights* 30 (2013).

<sup>38</sup> Bianca C. Reisdorf, Julia R DeCook, "Locked up and left out: Formerly incarcerated people in the context of digital inclusion," *New Media and Society* 24 (2022) // DOI:10.1177/14614448211063178; Bianca C. Reisdorf, Yvonne Jewkes, "(B)Locked sites: cases of Internet use in three British prisons," *Information, Society and Society* 6 (2016).

<sup>39</sup> *Delfi AS v Estonia*, European Court of Human Rights (Application No. 64569/09, Judgment of the Court of 16 June 2015), para. 133.

<sup>40</sup> Ciufoletti, *supra* note 26.



to the internationally recognized fundamental right to education,<sup>41</sup> there is a dynamic development of online education, especially on online educational platforms, alongside face-to-face offline education.<sup>42</sup> Therefore, it can be deduced from the above argument that prohibiting or severely restricting prisoners' access to the Internet deprives them of the opportunity to receive education, thus severely hampering their effective reintegration upon release. At the same time, there is an argument to be made that banning or restricting prisoners' access to the Internet should be a necessary element of their punishment.

### 3. KEY CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: FOCUS ON THE BALTICS AND TÜRKIYE

For a deeper understanding of the right of prisoners to use the Internet, it is worth reviewing the relevant ECtHR case law. However, it is essential to underline that, based on the ECtHR's jurisprudence to date, the examination of prisoners' right to use the Internet seems to be a prominent legal dilemma in relation to the Baltic States (Estonia and Lithuania) and Türkiye. The narrow scope concerning the case studies is not without reason. As per the ECtHR's database, out of 13 cases directly linked to the restriction of the right to access the internet, 75% of cases involved Türkiye (59%), Estonia (8%) and Lithuania (8%) as respondents.<sup>43</sup> Nonetheless, only three cases, namely the ones below, concerned specifically the prisoners' right to access the Internet. The singling out of these cases, therefore, is a practical choice, and does not convey any regional or geographical polemic. Furthermore, as mentioned above, despite the fact that the ECtHR proposes general principles, all of the cases below – per the factsheet of the cases – concern particular aspects of Internet access. Despite these limitations, however, we propose that valuable information can be derived from the general practice of the ECtHR when it examines prisoners' right to access the Internet. First, the general rules set forth by the Court serve as a guideline for future cases in this regard. Second, the similarities between the cases highlight that there is a systemic problem when handling requests by prisoners concerning the access to the Internet. Third, though our findings are illustrative, we also aim to underline a pattern whereas prisoners are restricted to access "neutral" information, in particular, legal and educative material, possibly leading to an even deeper digital divide.

### 4. KALDA V ESTONIA (2016)<sup>44</sup>

The case of *Kalda v. Estonia* was the first ECtHR judgment to rule that denying access to the Internet to a prisoner serving a custodial sentence could constitute a violation of Article 10 of the ECHR.<sup>45</sup> The facts of the case were that the applicant was a life prisoner in Pärnu Prison in Estonia. In July 2005, the plaintiff requested access to a computer in

<sup>41</sup> Tristan McCowan, *Education as a Human Right: Principles for a Universal Entitlement to Learning* (New York: Bloomsbury Publishing, 2013), 21–46.

<sup>42</sup> Balázs Böcskei, Marianna Fekete, Adám Nagy and Andrea Szabó, "Az iskolában ennél jobb átlagom még soha nem volt: egyfolytában ötöst kaptam" – Az online oktatás a magyar fiatalok percepciói alapján," ("I never had a better average than this at school: I got straight A's all the time" – Online education as perceived by young Hungarians) *Új Pedagógiai Szemle* 72(1–2) (2023).

<sup>43</sup> Gergely Lendvai, "Hybrid Regimes and the Right to Access the Internet – findings from Turkey and Russia in the context of the judgments of the European Court of Human Rights," *ELTE Law Journal* 12(2) (2024) forthcoming.

<sup>44</sup> *Kalda v Estonia*, European Court of Human Rights (Application No. 17429/10, Judgment of the Court of 19 January 2016).

<sup>45</sup> Dirk Voorhoof, "European Court of Human Rights: *Kalda v. Estonia*," *IRIS* 4(2) (2016): 1–2.

the prison and to use the Internet to browse the Estonian gazette for the Estonian Supreme Court and administrative judgments and the ECtHR judgments in the ECtHR database HUDOC.<sup>46</sup> Kalda's request was denied by the then commandant of Pärnu prison. The applicant challenged the commander's decision before the Estonian Administrative Court and then before the Tallinn Court of Appeal, but the denial of the application was consistently upheld by lower courts in Estonia. The applicant appealed to the Supreme Court of Estonia, which delivered a mixed verdict, finding that the prison authorities' decision to deny prisoners access to decisions of the administrative courts and the ECtHR violated the prisoners' right to free access to publicly available information and declared this restriction unlawful. However, it did not consider the refusal of internet access to the Estonian Gazette to be unlawful on the grounds that the Gazette was also available to the applicant in printed form.

In another case, Kalda had a legal dispute over access to the Internet during the downloading of his prison sentence. In 2007, he wanted to visit several websites, including the Council of Europe information website, the website of the Estonian Chancellor of Justice (Õiguskantsler<sup>47</sup>), and the website of the Estonian Parliament (Riigikogu) to find out about legal issues concerning his case. Kalda's application was rejected again, as it had been two years earlier, and following his appeal, the Ministry of Justice rejected his application. The lower administrative court partially upheld the claimant Kalda, arguing that the text of the cases and information is published in Estonian translation on EU websites and that the claimant is, therefore, entitled to visit these websites. The case was eventually referred to the Supreme Court, which, contrary to the previous decision, upheld the decision refusing internet access. The Supreme Court reasoned that access to the websites could have given rise to abuse and that Kalda could have accessed the information on these websites in other ways,<sup>48</sup> and that the prohibition of access to the website was a necessary and proportionate step in relation to the purpose of the imprisonment and the protection of public order.<sup>49</sup> In both cases, Kalda appealed to the ECtHR, which dealt with the applications together. According to the applicant's application, Estonia violated his right to information under Article 10 in both cases by denying his access to certain official websites.

In the decision, the ECtHR pointed out that, despite the fact that Kalda is a prisoner and subject to a number of restrictions due to the length of his prison sentence, the restriction of his right to information, in particular concerning legal information, and the prohibition of access to certain websites, does not fall within the scope of the restrictions necessarily entailed by a prison sentence. Moreover, the Court could not ignore the fact that the public value and importance of the Internet for the enjoyment of human rights is increasingly recognized worldwide and that access to the Internet is increasingly being understood as a right. However, in its judgment, the Court underlined that the right to information does not relate to information. However, to the means of accessing information, and although the Estonian legal environment allows for restrictions on the use

<sup>46</sup> HUDOC, *Case database* // <https://hudoc.echr.coe.int>

<sup>47</sup> The powers of the Estonian Chancellor of Justice are comparable to those of ombudsmen in European countries (Hollin K. Dickerson, "Judging the Judges: The State of Judicial Reform in Eastern Europe on the Eve of Accession," *International Journal of Legal Information* 32(3) (2004) // DOI:10.1017/S073112650000442X

<sup>48</sup> In the Supreme Court's view, Kalda could have written to the Chancellor of Justice or the National Assembly and asked them for written information.

<sup>49</sup> Interestingly, the ECtHR also ruled in another case of Kalda in 2022, not on Article 10 ECHR, but on Article 3 ECHR. See *Kalda v Estonia*, European Court of Human Rights, (Application No. 14581/20, judgment of the Court of 6 December 2022).



of the Internet by prisoners, interference with Kalda's fundamental rights was not necessary in a democratic society. The Court reasoned that although general access to the Internet does not enjoy the protection of Article 10 ECHR and Estonian law inherently allows limited access to the Internet for prisoners, these three websites are unnecessary restrictions as they are the websites of official bodies that also offer legal information and assistance. On the basis of all these factors, the ECtHR found that Estonia had violated the applicant's right to information under Article 10 ECHR.

In the case, Judge Kjølbros issued a dissenting opinion, in which he stated that it would be for the Grand Chamber to hear the case before the ECtHR, given its novelty.

#### 4. JANKOVSKIS V LITHUANIA (2017)<sup>50</sup>

As in the Kalda case, the issue in *Jankovskis v Lithuania* was access to websites offering information on prisoners' use of the Internet. According to the facts of the case, Jankovskis, who was serving his sentence in Pravieniškės Correctional Home in Lithuania, sent an application to the Lithuanian Ministry of Education (Švietimo ir mokslo ministerija) in 2006. In his application, Jankovskis asked whether he could pursue university studies as a prisoner, pointing out that he would not be physically able to attend classes as he was serving his sentence. The Ministry suggested that Mr Jankovskis should consult an official study information website ([www.aikos.smm.lt](http://www.aikos.smm.lt)). Mr Jankovskis submitted a request to the Pravieniškės Correctional Home authorities to visit the website, but the institute refused. According to the justification, the ministry's response was not comprehensive and did not take into account, among other things, the status of the prisoner, and prisoners are not allowed to use the Internet under Lithuanian law. Jankovskis has initiated proceedings against the rejection of his request for access to the Internet. The plaintiff's claim was rejected by both the lower courts and the Lithuanian Supreme Court.<sup>51</sup> To summarise these, the Lithuanian courts made three main findings. First, denying a prisoner access to the Internet is necessary to prevent potential criminal offenses in prison. Second, Jankovskis should not be allowed to use the Internet under the legal provisions, and access to the Internet is not an absolute right, and certain social groups may be restricted in exercising this right. Third, the use of the Internet by prisoners could have a detrimental effect on the functioning of prisons, as it would be more challenging to monitor prisoners' activities. Jankovskis referred the matter to the ECtHR, claiming that his right to information under Article 10 ECHR had been violated.

The ECtHR's assessment focused on whether the applicant, as a detainee, had the right to access publicly available information via the Internet. In examining that question, the Court underlined that, although the Internet is of paramount importance for the dissemination of information and information, it is inherent to the deprivation of liberty that certain rights cannot be exercised by prisoners or can only be exercised to a limited extent, such as the right of access to the Internet, i.e., internet use does not constitute a general protection under Article 10 ECHR. However, as information relating to education was available and publicly accessible under Lithuanian law, the Court recognized that in this situation, the restriction on internet use constituted an interference with the right to information.

<sup>50</sup> *Jankovskis v Lithuania*, European Court of Human Rights (Application No. 21575/08, judgment of the Court of 17 January 2017).

<sup>51</sup> Manuel Lázaro Pulido, "Challenges to the Educational "Digital Divide" in Spanish Prisons," *European Journal on Criminal Policy and Research* 29(2) (2023) // DOI:10.18261/ISSN1891-814X-2012-04-04

The ECtHR, applying the three-pronged test, also carefully examined the purpose of the interference, in line with the question of legality. In this respect, the Court, in agreement with the national courts, found that the Lithuanian Law on Radio and Electronic Communications, although not explicitly providing for the use of the Internet by prisoners, could be inferred from the legislative context to prohibit access to the Internet, i.e., the interference was required by law. As regards the legitimate aim, the Court found that the protection of public order was a legitimate reason for the interference. The question to be decided in the case was, therefore, the necessity and proportionality of the interference. The ECtHR first underlined the contextual importance of the higher education website at issue in the case, both from access to the Internet and from a social point of view. Contrary to the judgments of the national courts, the ECtHR disagreed with the Lithuanian authorities that the prosecuting authorities had focused only and exclusively on the general internet ban and had ignored the specific need to access the applicant's website, specifically to visit a website about education.<sup>52</sup>

The Court underlined the wider importance of Internet access for the exercise of various human rights and stressed that the right of access to the Internet is increasingly recognized, and therefore, highlighted the need to develop policies to ensure universal internet access and to bridge the digital divide. The Court also noted that the intervention could also raise procedural concerns, as the authorities had not taken into account the possibility of the applicant's access to the Internet being controlled or restricted despite the absence of security risks.

On the basis of the above reasoning, the Court held that the national authorities had failed to adequately demonstrate that the interference with the applicant's right of access to information was necessary and that the Lithuanian authorities had, therefore, infringed on the applicant's right under Article 10 ECHR.

## 5. RAMAZAN DEMIR V TURKEY (TÜRKIYE) (2021)<sup>53</sup>

The case of Ramazan Demir v Turkey is very similar to the Kalda case. Demir was serving his sentence in a Turkish prison and requested to visit a website offering legal information. Demir is a lawyer by profession who was sentenced to imprisonment for his involvement in a terrorist organization and for promoting terrorist content. Among others, he wished to visit the websites of the ECtHR, the Turkish Constitutional Court (Anayasa Mahkemesi), and the Turkish Gazette (T.C. Resmî Gazete), in order to carry out legal research for his own defense and that of his clients. The prison authorities rejected Demir's application, which sought a judicial review of the prison's decision, while the original decision to ban him from accessing the Internet was upheld in all national legal forums. Demir appealed to the ECtHR, claiming that Turkey had violated his Article 10 rights.

As in the Estonian and Lithuanian judgments, the ECtHR underlined that the Internet plays a particularly important role in the public dissemination of information and news due to its easy accessibility and wide availability. In this respect, the Court also noted the public service value of the Internet in the dissemination of information<sup>54</sup> and

<sup>52</sup> Lisa Harrison, "Prisoners and Their Access to the Internet in the Pursuit of Education," *Alternative Law Journal* 39(3) (2014) // DOI:10.1177/1037969X1403900304

<sup>53</sup> *Ramazan Demir v Turkey*, European Court of Human Rights (Application No. 68550/17, Judgment of the Court of 9 February 2021).

<sup>54</sup> Dirk Voorhoof, "European Court of Human Rights: Ramazan Demir v. Turkey," *IRIS* 4(1-4) (2021): 1.

the fact that certain information is available exclusively on the Internet.<sup>55</sup> In any case, as in the two cases mentioned above, the Court underlined that the right of access to the Internet is not unlimited and stressed that the restrictions for the purpose of imprisonment also extend to limiting the possibility of interacting with the outside world.

Applying the three-prong test, the Court of Justice examined for the first time the legality of the decision. On this issue, the ECtHR found that under Turkish law, prisoners are entitled to access the Internet in the context of a specific training or rehabilitation program. In that regard, the Court pointed out that Mr. Demir's application, as a lawyer, could also be interpreted as an application for a training or rehabilitation program, in particular in the light of the fact that the applicant wished to access websites providing exclusively legal content for a specific purpose. The ECtHR also expressed doubts as to the legitimate aim, considering that the authorities could not establish a legitimate reason why it was necessary to interfere with the applicant's rights to visit websites that offered legal information and were, in any event, official websites of public authorities and international organizations.<sup>56</sup>

Therefore, in light of the above, the ECtHR held that the interference by the Turkish prison authorities with Demir's right to information was not clearly prescribed by law, did not serve a definable legitimate purpose, and was therefore unnecessary in a democratic society.

## CONCLUSION

As emphasized by the ECtHR in all three cases above, access to the Internet is not an absolute and unlimited right, and the restriction of certain rights is a natural corollary of imprisonment. In this context, it is also important to mention cybersecurity concerns, as prisoners' use of the Internet opens up the possibility of abuse of Internet privileges, which raises legitimate concerns for both the safety of the imprisoned and the security of society.<sup>57</sup> The ECtHR would like to address this delicate balance between these two poles through the cases presented above.

The three cases, although not entirely similar in their facts, conveyed a unified philosophy. Non-general and full access to the Internet, in particular in relation to legal issues and educational interfaces, has more advantages (facilitating integration, adequate legal protection) than potential drawbacks (abuse of Internet access, communication with non-detainees online). Therefore, these specific cases benefit from the protection of Article 10 ECHR. With these three judgments, the Court, adopting a progressive decision-making attitude, has made it clear that digital inclusion is an integral part of reintegration into society through online access to educational and legal material. In view of this, it is vital to quote Sofia Ciufoletti as a valuable contribution to the topic:

Keeping together the notions of digital divide, vulnerability, right to treatment and to social rehabilitation there can be spaces to challenges the practices

<sup>55</sup> This detail should also be highlighted because some of the material requested by Demir was available on Turkish websites only and exclusively in online format.

<sup>56</sup> Emily Braganza (Jurist), "Europe rights court rules Turkish authorities violated detained lawyer's freedom to receive information," (11 February 2021) // <https://www.jurist.org/news/2021/02/europe-rights-court-rules-turkish-authorities-violated-detained-lawyers-freedom-to-receive-information>

<sup>57</sup> Peter Scharff Smith, "Imprisonment and internet-access: Human rights, the principle of normalization and the question of prisoners access to digital communications technology," *Nordic Journal of Human Rights* 30(4) (2012) // <https://doi.org/10.18261/ISSN1891-814X-2012-04-04>

of prohibiting or strictly limiting access to computers and to the Internet for prisoners.<sup>58</sup>

It has become clear in recent years that with the increasing digitalization<sup>59</sup> new issues may arise in the relationship between access to the Internet and the prison system. More and more European countries are allowing virtual connection at various stages of the judicial process, primarily via closed video-conferencing. However, it does not seem easy to strengthen online contact with family members, legal representatives, social workers, or probation officers via a closed network. Though digitalisation is not explicitly addressed in the above cases, one may ponder whether the dynamic change in legal proceedings may affect the right to access the Internet of prisoners.

In other words, the digital divide and prisoner relations are far from being an issue that is resolved. In the near future, the possibility for prisoners to access social media or even to access artificial intelligence programs and software could trigger a number of interesting legal situations. Nevertheless, we leave that to "several futures (not to all)".<sup>60</sup>

## BIBLIOGRAPHY

1. Blanchard, Michele, Atari Metcalf and Jane Burns. "Bridging the Digital Divide: Creating opportunities for marginalised young people marginalised young people to get connected." *Inspire Foundation – University of Melbourne report* (2007): 1–51.
2. Blomberg, Matt, et al. "Digital divide and marginalized women during COVID-19: a study of women recently released from prison." *Information, Communication and Society* 24(14) (2021): 2113–2132 // DOI:10.1080/1369118X.2021.1963462
3. Borges, Jorge Luís. *Collected Fictions*. London: Penguin Books, 1998.
4. Böcskei, Balázs, Marianna Fekete, Ádám Nagy and Andrea Szabó. "Az iskolában ennél jobb átlagom még soha nem volt: egyfolytában ötöst kaptam" – Az online oktatás a magyar fiatalok percepciói alapján." ("I never had a better average than this at school: I got straight A's all the time" - Online education as perceived by young Hungarians) *Új Pedagógiai Szemle* 72(1–2) (2023): 31–48.
5. Dickerson, Hollin K. "Judging the Judges: The State of Judicial Reform in Eastern Europe on the Eve of Accession." *International Journal of Legal Information* 32(3) (2004): 539–581 // DOI:10.1017/S073112650000442X
6. Gaál, Irén and Anikó Müller. *A büntetés-végrehajtási jogszabályok magyarázata* (Explanation of prison legislation). Budapest: Wolters Kluwer, 2019 // DOI:10.55413/9789632958347
7. Gerlitz, Merten. "The Human Right to Free Internet Access." *Journal of Applied Philosophy* 37(2) (2019): 314–331.
8. Gosztonyi, Gergely. *Censorship from Plato to Social Media. The Complexity of Social Media's Content Regulation and Moderation Practices*. Cham: Springer, 2023) // DOI:10.1007/978-3-031-46529-1

<sup>58</sup> Ciufoletti, *supra* note 26.

<sup>59</sup> Dan Tynan (The Guardian), "Online behind bars: if internet access is a human right, should prisoners have it?" (3 October 2016) // <https://www.theguardian.com/us-news/2016/oct/03/prison-internet-access-tablets-edovo-jpay>

<sup>60</sup> Jorge Luís Borges, *Collected Fictions* (London: Penguin Books, 1998), 67.

9. Gosztonyi, Gergely. "Prison Radios: Communication on the Periphery of a Society." *Mediální studia* 1 (2018): 133–139.
10. Harrison, Lisa. "Prisoners and Their Access to the Internet in the Pursuit of Education." *Alternative Law Journal* 39(3) (2014): 159–162 // DOI:10.1177/1037969X1403900304
11. Hussain, Syed Tauseef, et al. "Examining the status of prison libraries around the world: A literature review." *IFLA Journal* 49(1) (2022) // DOI:10.1177/03400352221078032
12. Koch, Arnd. "Die Entwicklung des Strafrechts zwischen 1751 und 1813" (The development of criminal law between 1751 and 1813): 39–67. In: Arnd Koch, Michael Kubiciel, Martin Löhnig and Michael Pawlik, eds., *Feuerbachs Bayerisches Strafgesetzbuch* (Feuerbach's Bavarian Penal Code). Tübingen: Mohr Siebeck, 2014.
13. Lendvai, Gergely. "Hybrid Regimes and the Right to Access the Internet – findings from Turkey and Russia in the context of the judgments of the European Court of Human Rights." *ELTE Law Journal* 12(2) (2024) forthcoming.
14. Lupač, Petr. *Beyond The Digital Divide: Contextualizing The Information Society*. Bingley: Emerald Publishing, 2019 // DOI:10.1108/9781787565470
15. Lythreath, Sophie, Sanjay Kumar Singh, and Abdul-Nasser El-Kassar. "The digital divide: A review and future research agenda." *Technological Forecasting & Social Change* 175(2) (2022): 530–544 // DOI:10.1016/j.techfore.2021.121359
16. Magida, Ayanda and Brian Armstrong. "The Third Level Digital Divide: Millennials and Post-Millennials Online Activities in South Africa." *ICICTID 2022: International Conference on ICT, Innovation and Development, Vancouver, Canada* (2022).
17. McCowan, Tristan. *Education as a Human Right: Principles for a Universal Entitlement to Learning*. New York: Bloomsbury Publishing, 2013.
18. Mezey, Barna. *A börtönügy a 17–19. században. A börtön európai útja (The prison system in the 17th-19th centuries. The European way of the prison)*. Budapest: Gondolat Kiadó, 2018.
19. Mubarak, Farooq and Reima Suomi. "Elderly Forgotten? Digital Exclusion in the Information Age and the Rising Grey Digital Divide." *Inquiry: The Journal of Health Care Organization, Provision, and Financing* 59(1) (2022): 907–921 // DOI:10.1177/00469580221096272
20. Nash, Susan. *The Pandemic Has Accelerated The Need To Close The Digital Divide For Older Adults* // <https://longevity.stanford.edu/the-pandemic-has-accelerated-the-need-to-close-the-digital-divide-for-older-adults/>
21. Orcan, Necdet U. "Legitimate Aims, Illegitimate Aims and the E.Ct.H.R.: Changing Attitudes and Selective Strictness." *University of Bologna Law Review* 7(1) (2022): 7–40 // DOI:10.6092/issn.2531-6133/14860
22. Oster, Jan. *Media Freedom as a Fundamental Right*. Cambridge: Cambridge University Press, 2015 // DOI:10.1017/CBO9781316162736
23. Piazolo, Daniel. "The Digital Divide." *CESifo Forum* 2(3) (2001): 29–34 // DOI:10.2139/ssrn.288963
24. Pulido, Manuel Lázaro: "Challenges to the Educational "Digital Divide" in Spanish Prisons." *European Journal on Criminal Policy and Research* 29(2) (2023): 263–281 // DOI:10.1007/s10610-021-09493-4
25. Pushter, Jacob. *Internet access growing worldwide but remains higher in advanced economies* // <https://www.pewresearch.org/global/2016/02/22/internet-access-growing-worldwide-but-remains-higher-in-advanced-economies/>



26. Reisdorf, Bianca C., Julia R. DeCook. "Locked up and left out: Formerly incarcerated people in the context of digital inclusion." *New Media and Society* 24 (2022) // DOI:10.1177/14614448211063178
27. Reisdorf, Bianca C., Yvonne Jewkes. "(B)Locked sites: cases of Internet use in three British prisons." *Information, Society and Society* 6 (2016): 771–786 // DOI:10.1080/1369118X.2016.1153124
28. Scharff Smith, Peter. "Imprisonment and internet-access: Human rights, the principle of normalization and the question of prisoners access to digital communications technology." *Nordic Journal of Human Rights* 30(4) (2012): 454–482. DOI:10.18261/ISSN1891-814X-2012-04-04
29. van Dijk, Jan. *The Digital Divide*. Cambridge: Polity Press, 2020.
30. Voorhoof, Dirk. European Court of Human Rights: Kalda v. Estonia. *IRIS* 4(2) (2016): 1–2.
31. \_\_\_\_\_. European Court of Human Rights: Ramazan Demir v. Turkey. *IRIS* 9(4) (2021): 1–2.
32. Yu, Peter K. "Bridging the Digital Divide: Equality in the Information Age." *Cardozo Arts & Entertainment Law Journal* 20(1) (2023): 1–52.

#### ONLINE REFERENCES

1. Braganza, Emily (Jurist). *Europe rights court rules Turkish authorities violated detained lawyer's freedom to receive information*. (11 February 2021) // <https://www.jurist.org/news/2021/02/europe-rights-court-rules-turkish-authorities-violated-detained-lawyers-freedom-to-receive-information>
2. Ciufoletti, Sofia (European Prison Litigation Network). *Out of the cage, into the net. Understanding Access to the Internet in Prison as a Human Right*. (2021) // <https://www.prisonlitigation.org/internet-as-a-human-right>
3. HUDOC. *Case database*. // <https://hudoc.echr.coe.int>
4. National Telecommunications and Information Administration. *Falling through the Net: A survey of the "have nots" in rural and urban America*. (July 1995) // [www.ntia.doc.gov/ntiahome/fallingthru.html](http://www.ntia.doc.gov/ntiahome/fallingthru.html)
5. Tynan, Dan (The Guardian). *Online behind bars: if internet access is a human right, should prisoners have it?* (3 October 2016) // <https://www.theguardian.com/us-news/2016/oct/03/prison-internet-access-tablets-edovo-jpay>

#### LEGAL REFERENCES

1. *Cengiz and Others v Turkey*. European Court of Human Rights, Applications No. 48226/10 and 14027/11, judgment of the Court of 1 December 2015.
2. *Chocholáč v. Slovakia*. European Court of Human Rights, Application No. 81292/17, Judgment of the Court of 7 July 2022.
3. *Delfi AS v Estonia*. European Court of Human Rights, Application No. 64569/09, Judgment of the Court of 16 June 2015.
4. *Donaldson v United Kingdom*. European Court of Human Rights, Application No. 56975/09, Decision of the Court of 25 January 2011.
5. *Hirst v United Kingdom (No. 2)*. European Court of Human Rights, Application No. 74025/01, Judgment of the Court of 6 October 2005.

6. *Jankovskis v Lithuania*. European Court of Human Rights, Application No. 21575/08, judgment of the Court of 17 January 2017.
7. *Kalda v Estonia*. European Court of Human Rights, Application No. 14581/20, judgment of the Court of 6 December 2022.
8. *Kalda v Estonia*. European Court of Human Rights, Application No. 17429/10, Judgment of the Court of 19 January 2016.
9. *Khodorkovskiy and Lebedev v Russia*. European Court of Human Rights, Applications No. 11082/06 and 13772/05, Judgment of the Court of 25 July 2013.
10. *Klibisz v Poland*. European Court of Human Rights, Application No. 2235/02, Judgment of the Court of 4 October 2016.
11. *Mehmet Çiftçi and Suat İncedere v Turkey*. European Court of Human Rights, Applications No. 21266/19 and 21774/19, judgment of the Court of 18 January 2022.
12. *Murray v Netherlands*. European Court of Human Rights, Application No. 10511/10, Judgment of the Court of 2 April 2016.
13. *Muršić v Croatia*. European Court of Human Rights, Application No. 7334/13, Judgment of the Court of 20 October 2016.
14. *Nilsen v United Kingdom*. European Court of Human Rights, Application No. 36882/05, judgment of the Court of 9 March 2010.
15. *Ramazan Demir v Turkey*. European Court of Human Rights, Application No. 68550/17, Judgment of the Court of 9 February 2021.
16. *Yankov v Bulgaria*. European Court of Human Rights, Application No. 39084/97, Judgment of the Court of 11 December 2003.