MAPPING THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE BALTIC REGION

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EXECUTIVE SUMMARY

The societies of the Baltic states placed high hopes in the ability of the European Convention and the ECtHR. The establishment of fundamental freedoms and the restoration of rights were expected as soon as possible. This report was commissioned to map out various aspects of a number of cases brought before the ECtHR, and in doing so, analyse the impact of both the European Convention on Human Rights and the ECtHR on the Baltic states. The study draws attention to details regarding gender divisions, the nationality of applicants, the rights in question, the importance level of the case and the decision-making organ in the ECtHR.

The set of available data indicates that the proportion of female applicants across the Baltic states is largely consistent. Estonia, Latvia and Lithuania contribute to 25, 32, and 34% of the total amount of female applications respectively. However, the percentage of female applicants remains low: 21% compared to 66% of applications made by male applicants, but significantly higher than legal persons (2%) and undisclosed applicants (11%). It can be said that there is an imbalance in the gender division of the applicants. Furthermore, as can be expected, in most of the cases the applicants are citizens of one of the Baltic states. However, it must be noted that there is a significant number of Russian citizens with the status of applicant (11%). This is mainly the result of a collective case brought against Estonia regarding Article 1 of Protocol 1.

The majority of the judgements against Baltic states where a violation was found were related to Art.3 (prohibition of torture and ill-treatment) – 16%; Art.5 (right to liberty and security) 23%; Art.6 (right to a fair trial) 30%; and Art. 8 (right to respect for private and family life) 12%. There is a notable amount of cases against Latvia regarding Articles 3 (53%), 5 (64%) and 8 (49%). Lithuania on the other hand tops the list regarding judgements related to the right to a fair trial (49%). Similarly, the number of cases regarding restoration of the right to property in Lithuania is noteworthy, as the issues have been raised in numerous cases and large numbers of violations were found (22).

Further data reveals that the high importance cases constitute only 4% of the total amount of decisions against Baltic states. Lithuania is both the most frequent client of ECtHR in the Baltics and the country to appear in the largest amount of low importance cases. On the other hand, Latvia is at the top of the list when it comes to the amount of cases of high importance, with 7 decisions against, corresponding to 54% of the total number of high importance cases.

When emphasising the high importance cases, it should be mentioned that their outcomes not only have an impact on the decisions of domestic governments, but also on the practices of the ECtHR as such. In Lithuania for example, as a result of the case **Drakšas v. Lithuania** (related to Article 8 – the Right to Respect for Private and Family Life), the Supreme Court published a set of criteria regarding the secret surveillance of citizens, and demonstrably, the ECtHR directly contributed to the practice of fundamental rights in Lithuania. Conversely, in the case of **Delfi AS v. Estonia,** the ECtHR was in the position to develop a pragmatic and equitable ruling for internet-based claims regarding the balancing of various fundamental rights.

It can be concluded that residents of Baltic states are resorting to ECtHR processes to an increasing extent. The available data reveals that the societies accept the jurisprudence of the ECtHR as an integral part of the practice of fundamental rights. A natural corollary of the developing practice of the ECtHR is the improvement of the state's understanding of its obligations under the convention. The decisions will be further incorporated into the legal knowledge-making of Baltic jurisdictions and it would be safe to say that they will indirectly contribute towards the lasting democratic changes in the Baltic states.

CHAPTER 1

INTRODUCTION AND BACKGROUND

1.1 PURPOSE OF THE STUDY

This mapping study of the jurisprudence of the ECtHR in the Baltic region has been conducted as part of the project 'HURMUR: Human rights – mutually raising excellence', which is a European Commission Project funded under the first TWINNING call of Horizon 2020. The aim of HURMUR is to expand the research area of human rights in Europe and the project is facilitated by a partnership between the Tallinn University Law School, Estonia; the Danish Institute for Human Rights, Denmark; and the Walther Schücking Institute of International Law at Kiel University, Germany.[1] The mapping study covers judgments against the Baltic States, i.e. Estonia, Latvia and Lithuania and was conducted as a background study to a final conference of the HURMUR Project, which is to be held in Tallinn in November 2018.

1.2 THE COUNCIL, THE CONVENTION AND THE COURT

In the wake of the atrocities Europe faced during the Second World War, a number of European states founded the Council of Europe (CoE) in 1949. Shortly afterwards, the drafting of a convention to promote and protect fundamental rights within the CoE's member states was initiated, and was based on ten fundamental rights stipulated in a report by the Committee on Legal and Administrative Questions. On 4 November 1950, after rounds of revisions due to political challenges, the Convention was signed in Rome and entered into force on 3 September 1953.[2] The Court was established in 1959 and on the 21 January 1959 the first members of the Court were elected by the Consultative Assembly of the CoE. The Court delivered its first judgment, **Lawless v. Ireland,** on 14 November 1960.[3] Today the CoE has 47 members, all of which have ratified the European Convention of Human Rights.

After the dissolution of the Soviet Union, the Baltic states, i.e. Estonia, Latvia and Lithuania, attained membership of the CoE during the 1990s together with a large number of Eastern European states.[4] Both Estonia and Lithuania attained membership on 14 May 1993. On 16 April 1996, the European Convention on Human Rights entered into force in Estonia, while the Convention entered into force on 20 June 1995 in Lithuania. Latvia became a member of the CoE on 10 February 1995 and on 27 June 1997, the European Convention on Human Rights entered into force in Latvia. During the early 2000s the European Court of Human Rights (ECtHR) delivered its first judgments on the merits against all three states.[5]

1.3 DEMOGRAPHICS

The Baltic States are located in the north-eastern part of Europe. Estonia is both the most northern and the smallest of the three Baltic countries, with a population of around 1.32 million inhabitants,[6] 68.8% of whom are Estonians, 25.1% Russians, 1.8% Ukrainians, 0.9% Belarusians, 0.9% Finns and 2.9% of other nationalities.[7] Latvia, the second largest of the Baltic states, is bordered by Estonia to the north, Lithuania to the south, Russia to the east, and Belarus to the southeast. Latvia has a population of 1.94 million inhabitants,[8] 62% of whom are Latvians, 26.9% Russians, 3.3% Belarusians, 2.2% Ukrainians, 2.2% Poles, 1.2% Lithuanians and 2% of other nationalities. Lithuania is the southernmost country of the three Baltic States and has the largest population with 2.88 million inhabitants,[9] 84% of whom are Lithuanians, 6.1% Poles, 4.9% Russians and 5% of other nationalities.[10]

CHAPTER 2

SCOPE AND METHODOLOGY

As described above, the Baltic states ratified the Convention at different times, meaning that the states have been subject to the ECtHR jurisdiction for different amounts of time. Despite this difference, the study covers all cases from the first judgment delivered by the Court for the respective states. This is important to keep in mind as the study aims to describe the situation in each country, while simultaneously providing an overall picture of the jurisprudence across the region. Thus, when comparing case law across the region, it should be noted that differences, particularly with regard to the number of judgments, might occur due to the different times of ratification of the Convention.

This mapping study on the jurisprudence of the ECtHR in the Baltic region is outcome-oriented, meaning that it solely covers judgments in which the ECtHR has found a violation or non-violation of the Convention or its protocols. Thus, the Court's decisions on admissibility are not included. In some cases, the application has been brought before the Court by a number of applicants, where the Court has found the application admissible for only some of the applicants while inadmissible for the rest of the applicants. In such cases, the study does not include information on the applicants whose claims were declared inadmissible.

Furthermore, the study only covers judgments on the merits, which leaves out judgments on just satisfaction under Article 41 of the Convention. In some cases, the Court decided on both the merits and just satisfaction in the same judgment[11], and in some cases the Court decided on the merits and just satisfaction in separate judgments. In the latter cases, the Court may have decided to strike out the case if the applicant and the state party had entered a friendly settlement on just satisfaction after the Court delivered a judgment ruling violation of the Convention. In such incidents, the study includes the judgment concerning violation despite the fact that the Court had stricken out the case concerning just satisfaction.

As with regards to judgments by the ECtHR's Grand Chamber, there should be a distinction between cases of referral and cases of relinquishment. In regard to referral cases, a Committee or a Chamber has in the first instance decided on the applicants' claims and delivered a judgment. Afterwards, the case is referred to the Grand Chamber upon request from one of the parties to the case. The Grand Chamber then adopts a final decision on the application, which overrules the judgment by the Committee or the Chamber. The study does not include both

instances' judgments in referral cases, as the Grand Chamber, as stated above, overrules the judgment in first instance, for which reason the study only includes the judgment by the Grand Chamber. With regard to relinquishment cases, the Committee or the Chamber decides to directly assign the Grand Chamber to decide on the application, if the case has raised a serious question affecting the interpretation of the Convention, or if there is a risk of inconsistency with a previous judgment of the Court.

Finally, the study does not include so-called struck-out decisions, which the Court characterises as judgments. However, the Court has not reached a decision in such cases due to various reasons, which results in the lack of an outcome.

The data source of the study is the ECtHR's official online database, HUDOC, which contains all the Court's judgments and a large selection of decisions, information on communicated cases, press releases, legal summaries, etc. In HUDOC, all judgments are categorised under an importance level, which will be mentioned throughout this study. The Court operates using the following importance levels:

Case Reports: 'Judgments, decisions and advisory opinions delivered since the inception of the new Court in 1998, which have been published or selected for publication in the Court's official Reports of Judgments and Decisions. The selection from 2007 onwards has been made by the Bureau of the Court following a proposal by the Jurisconsult. Judgments of the former Court (published either in Series A or subsequently in Reports of Judgments and Decisions) and cases published in the former Commission's series Decisions and Reports have not been included in the Case Reports category and are therefore classified by levels 1, 2 and 3 only'.[12]

High Importance: 'Judgments, decisions and advisory opinions not selected for the Case Reports but which nevertheless make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State'.[13]

Medium Importance: 'Medium importance: Other judgments, decisions and advisory opinions which, while not making a significant contribution to the case-law, nevertheless go beyond merely applying existing case-law'.[14]

Low Importance: 'Low importance: Judgments, decisions and advisory opinions of little legal interest, namely judgments and decisions that simply apply existing case-law, friendly settlements and strike outs (unless raising a particular point of interest)'.[15]

CHAPTER 3

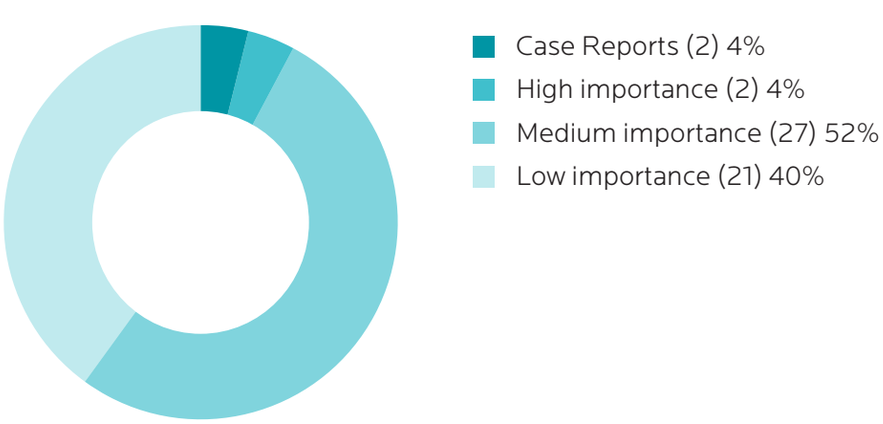
ESTONIA

3.1 JUDGMENTS ON MERITS

Estonia became a member of the Council of Europe on 14 May 1993. On 16 April 1996, the European Convention on Human Rights entered into force in Estonia. The ECtHR delivered its first judgment on the merits of **Tammer v. Estonia** on 6 February 2001 in which the Court ruled that there had been no violation of the right to freedom of expression in Article 10. The case concerned a journalist's conviction for using insulting words in a newspaper article about the wife of the former Prime Minister of Estonia, Edgar Savisaar.[16] Since then, the ECtHR has delivered another 51 judgments on the merits, resulting in a total of 54 violations and 23 non-violations.[17]

About half of the judgments are categorised as medium importance cases while the latter half is divided between low importance cases (40%), high importance cases (4%) and judgments published in Case Reports (4%). The high share of judgments on merits categorised as medium cases resemble the overall picture of judgments against the members of the Council of Europe combined, where the vast majority of judgments are considered medium importance cases. However, as shown in this study, when it comes to the Baltic States there appear to be more cases in the medium importance category than in the low importance category.

IMPORTANCE LEVEL



3.2 ORIGINATING BODY

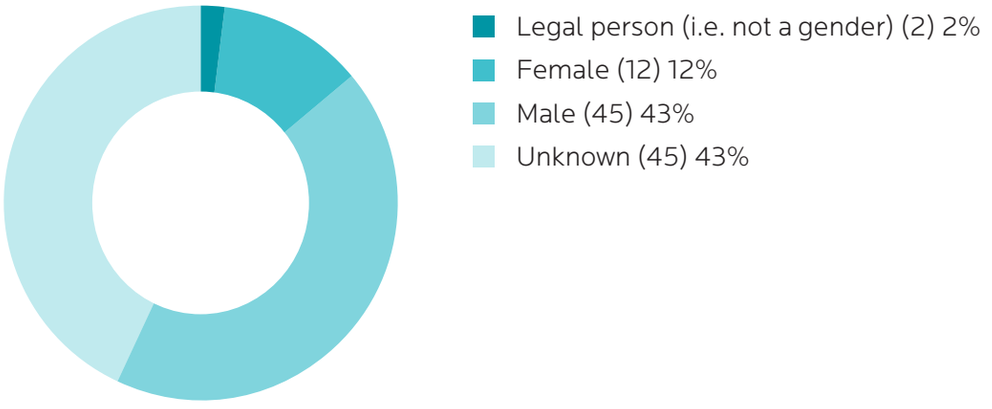
With a total of 49 out of 52 judgments on the merits (corresponding to about 94% of all judgments on the merits), the vast majority of the judgments against Estonia were delivered by a Chamber while a Committee has delivered only two judgments. The Grand Chamber has delivered one out of the 52 judgments in **Delfi AS v. Estonia**.

3.3 NATURE OF APPLICANTS

In regard to the gender of the applicants behind the cases covered in the study, 43% of the applicants (104 in total) were male. Only 12% of the applicants were female. For the part of the study concerning Estonia, a large proportion of the applicants, i.e. 43%, were registered as unknown.

This category can be explained by the group of applicants in **Tarkoev and Others v. Estonia** in which 45 former Russian (Soviet) army servicemen living in Estonia complained that Article 14 in conjunction with Article 1 of Protocol 1 was in breach, because the Estonian authorities would not pay pension to the applicants unless they gave up the pension the Russian Federation paid to them.[18] The Court does not indicate the gender of the applicants directly in the judgment. However, information on the applicants, such as name, nationality, and year of birth, has been provided in an annex to the judgment.[19] This said, it would be too uncertain to identify the gender of the applicants on the basis on this information, although the name could give indications on the matter. For this reason, this group of applicants has been registered as unknown when it comes to gender identification.

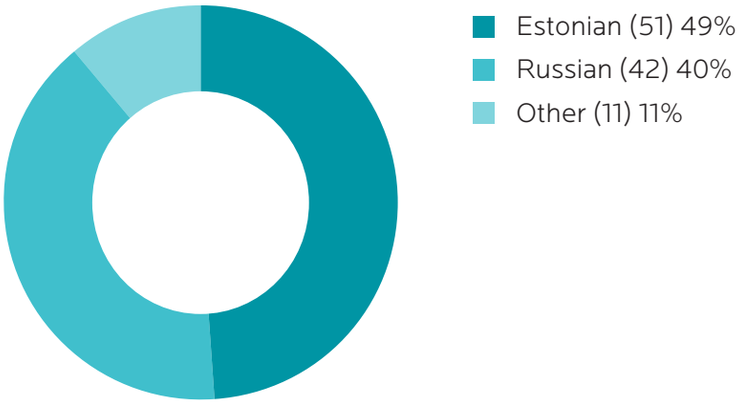
GENDER OF APPLICANTS



In regard to distribution of nationality, the study shows that 49% of the applicants are Estonian nationals while 40% are Russian nationals. The high number of applicants with Russian nationality can be explained by the above-mentioned

case of **Tarkoev and Others v. Estonia** in which 37 of the applicants were Russian nationals.[20]

NATIONALITY OF APPLICANTS

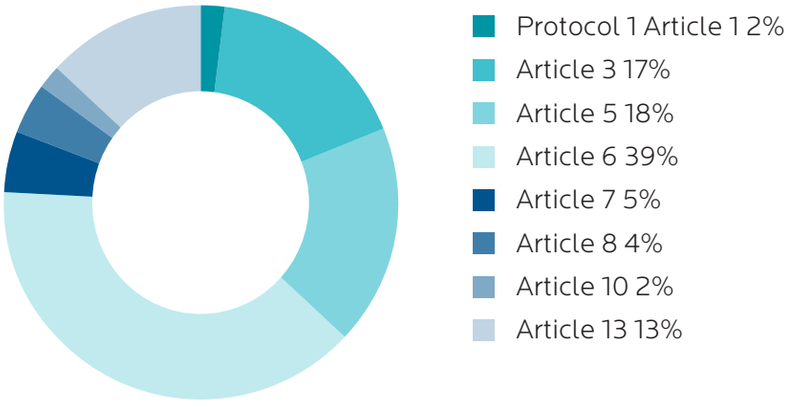


The category 'Other' covers one Finnish national, four stateless persons, three persons of undetermined nationalities, one person of unknown nationality, and two legal persons registered in Estonia, i.e., not a nationality.

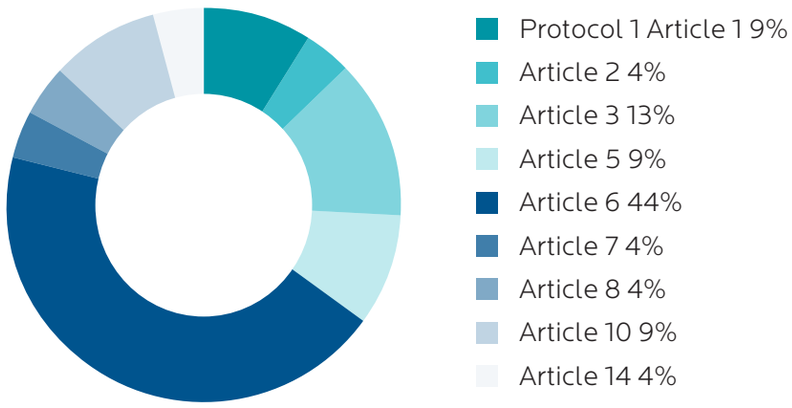
3.4 SUBJECT-MATTERS OF JUDGMENTS ON MERITS

The most apparent rights that have been in play – all regarding violation as well as non-violation judgments – are Articles 3 (prohibition of torture and ill-treatment), 5 (right to liberty and security), and 6 (right to a fair trial). Overall, the ECtHR has reached a total of 54 violations in comparison to 23 non-violations in the 52 judgments on merits against Estonia. The sections below will mostly focus on judgments constituting violations.

VIOLATION



NON-VIOLATION



3.4.1 THE RIGHT TO A FAIR TRIAL

Regarding violations of Article 6, this covers 39% of all violations. The right to a fair trial as enshrined in Article 6 covers a broad spectrum of fundamental rights protection. First of all, there should be a distinction between complaints concerning violations in civil proceedings and those concerning violations in criminal proceedings.

Most of the violations of Article 6 fall under the criminal category. In particular, they concern issues on the right to obtain attendance and examination of witnesses as ensured by Articles 6 (1) and (3) (d). For example, this was the issue at stake in **Taal v. Estonia** in which the Court found a violation as the applicant had not been able to question witnesses whose statements were decisive for the domestic courts' findings at any stage of the proceedings.[21] Similarly, the Court found a violation in **Pello v. Estonia** as the applicants had not had the opportunity to examine two witnesses whose questioning would have led to his acquittal.[22]

In addition, the Court has dealt with several cases concerning the length of proceedings in breach of Article 6 (1) under the criminal limb. It is necessary to be cautious when drawing conclusions on the limits of what constitutes unreasonably lengthy proceedings, as the Court has repeatedly stated that 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; the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute'.[23]

However, the cases may be indicative of what constitutes unreasonably lengthy proceedings in similar cases, which the Court examined on a case-by-case basis. In the context of Estonia, the Court found violations of Article 6 (1) due to lengthy proceedings in four cases, concerning proceedings spanning from about five years and ten months to about eight years and two months.[24]

In addition to these overall tendencies, the Court has dealt with a number of other noteworthy cases concerning Article 6. On the right to a fair trial and to be presumed innocent, the Court found that Articles 6 (1) and (2) had not been violated in **Shuvalov v. Estonia**.[25] In this case, the applicant was a judge accused of taking a bribe, who complained that the prosecution's statements about his case breached his right to be presumed innocent. In response to these allegations, the Court reasoned:

> [...] it must have been clear that the press release issued by the Public Prosecutor's Office commencing with the words "[t]he state prosecutor [V.] has sent a criminal case to court in which [the applicant] ... is charged with having demanded a large bribe" represented the position of the Public Prosecutor's Office in the criminal proceedings, subject to judicial scrutiny. Thus, although the wording used in the press release of the Public Prosecutor's Office could have been more careful, given the importance of the principle of presumption of innocence, the Court is unable to conclude that the press release, read as a whole, gave the impression that the applicant was regarded as guilty before being so proved according to law.[26]

The Court has also dealt with the issue of children's testimonies in certain situations. Thus, the Court has found that domestic courts can refuse a party's request to summon a child to a hearing in cases related to sexual abuse or domestic violence.[27]

3.4.2 RIGHT TO PRIVACY AND FREEDOM OF EXPRESSION: DELFI AS V. ESTONIA

The **Delfi AS v. Estonia** case is noteworthy as it was the first case concerned with the duties and responsibilities of Internet news portals with regard to their users' comments. In October 2013, the ECtHR in **Delfi AS v. Estonia** upheld the decision of the Estonian Supreme Court to impose liability on the owners of an internet news portal for defamatory comments which had been posted on their website by anonymous third parties. The case was one of the rare cases which dealt with the balancing of the two fundamental rights, namely Right to Privacy and Freedom of Expression.

In its analysis, the Court outlined four criteria to be taken into consideration where the right to freedom of expression was balanced against the right to privacy. These were:

- the context of the comments,
- the measures applied by the applicant company to prevent or remove defamatory comments,
- the liability of the actual authors of the comments as an alternative to the applicant company's liability; and
- the consequences of the domestic proceedings for the applicant company.

The case produced a great deal of interest because an online news portal was not considered an intermediary in the traditional sense with the benefit of protection under the hosting exemption in the Electronic Commerce Directive. The court

extended more protection to the right to reputation (right to privacy) and less to freedom of expression, by emphasising that publications with a 'public interest' element, i.e. the publications of Delfi AS, must be subject to 'measures avoiding damage to other parties'.

It was notable that Delfi AS was found liable for user generated content despite having promptly taken the content down following a notice. This, as some have argued, represents a blow to free speech and puts online portals in an ambiguous position with regard to the moderation and monitoring of user generated content in the absence of specific guidelines. Furthermore, Delphi AS was most accurately categorised as a 'professionally-managed', profit-making entity, thereby distinct from other amateur attempts of portals given the smaller size of their involved communities. The hosts of the third parties such as Facebook or Twitter presumably avoided liability in a similar situation, while Delfi AS was held liable for the content.

Delphi AS v. Estonia is very likely the pioneer of many similar cases attempting to strike a functional and realistic balance in the context of internet-based balancing of rights claims.

3.4.3 THE RIGHT TO LIBERTY AND SECURITY

The Court has reached a number of verdicts of violations (18% of all violations) as well as non-violations (9% of all non-violations) of Article 5 in the 52 judgments delivered against Estonia. Article 5 covers a broad spectrum of issues under the right to liberty and security. There does not appear to be a clear trend towards the most violated areas, as the issues at play are lawful arrest or detention (paragraph 1), procedure prescribed by law (paragraph 1), being brought promptly before judge or other officer (paragraph 3), length of pre-trial detention (paragraph 3), procedural guarantees of review (paragraph 4), speediness of review (paragraph 4), and compensation (paragraph 5).

Two of the cases that are considered noteworthy and are mentioned in the 9th Annual Report of the Committee of Ministers as an example of a main achievement in Estonia are the cases of **Harkmann v. Estonia** and **Bergmann v. Estonia**.[28]

Harkmann concerned a defendant who had repeatedly evaded criminal court proceedings against him. Subsequently, he was arrested by the police and taken into custody for 15 days. The applicant complained that he had not been brought before a court immediately after his arrest and that he had been unable to obtain any compensation for his unlawful detention. The Court held that both Articles 5 (3) and (5) had been violated.[29]

Bergmann concerned the Estonian courts' failure to make a fresh examination of the circumstance of a renewed detention of the applicant and to provide the applicant with the opportunity to be brought promptly before a court, as this was not done until 26 days after his arrest. For these reasons, the Court found that Article 5 (3) had been violated.[30]

Following these judgments, the Estonian Government provided persons who have been detained without being brought before a judge within 48 hours with the opportunity to claim compensation under the Unjust Deprivation of Liberty (Compensation) Act.[31]

3.4.4 THE PROHIBITION OF TORTURE AND ILL-TREATMENT

Article 3 prohibits the use of torture or inhuman or degrading treatment or punishment. 17% of the total number of violations and 13% of all non-violations against Estonia concern Article 3. None of the judgments on the merits deal with the prohibition of torture. Thus, the cases concern ill-treatment or issues relating to effective investigation.

In particular, the cases have concerned the conditions of detention. Thus, the Court has found violations of Article 3 in cases concerning ill-treatment by prison officers, including use of pepper spray and confinement to restraint beds,[32] as well as overcrowding of pre-trial detention facilities.[33] The cases of **Julin v. Estonia** as well as **Kochetkov v. Estonia** are often considered important in the improvement of conditions of Estonian detention facilities and for the development of a system of state responsibility and compensation for poor detention conditions.[34]

3.4.5 OTHER NOTEWORTHY CASES AND AREAS

Besides cases concerning the most apparent rights in the Court's rulings regarding Estonia, it is worth mentioning cases such as **Liivik, Sõro** and **Kalda**, which have contributed towards the adoption of new reforms of practice.[35]

Liivik concerned the former acting director of the Estonia Privatisation Agency, who was convicted of abuse of office regarding a privatisation agreement involving Estonian Railways. The Court found this conviction to be a violation of Article 7, as the accused could not have foreseen that his acts had constituted a criminal offence under the criminal law applicable at the time of relevance. As a result of the case, legal certainty has been improved in cases concerning criminal liability.[36]

In **Sõro** the Court found a violation of Article 8 on the right to privacy, as the employment of Mr Sôro, a former driver for the Committee for State Security of the USSR (KGB) during the Soviet era, had been published in the Estonian State Gazette in 2014. The case later led to a change in the practices of the Estonian international security service, Kapo.[37]

Another noteworthy case is the **Kalda case,** which concerned a prisoner's complaint about the ban under Estonian law on his right to receive legal information, which prevented him from carrying out legal research for court proceedings in which he was engaged. The authorities had refused to grant the applicant, Mr. Kalda, access to three internet websites containing legal information and run by the state and by the Council of Europe. The court found that the ban constituted an interference with Mr. Kalda's right to receive information and found a violation of Article 10.[38]

CHAPTER 4

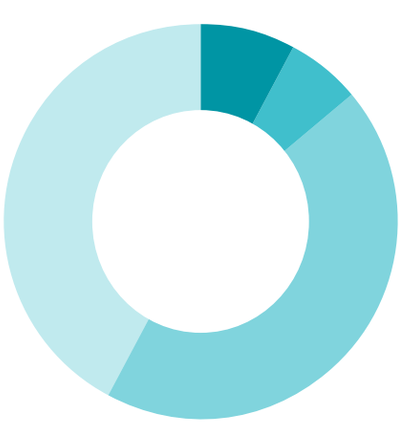
LATVIA

4.1 JUDGMENTS ON MERITS

Latvia became a member of the Council of Europe on 10 February 1995. On 27 June 1997, the European Convention on Human Rights entered into force in Latvia. The ECtHR delivered its first judgment on the merits of **Podkolzina v. Latvia** on 6 April 2002 in which the Court found a violation of the right to free elections in Article 3 of Protocol 1 in a case concerning the right to stand as a candidate in the parliamentary election.[39]

Since then, the ECtHR has delivered another 123 judgments on the merits, resulting in a total of 167 violations and 57 non-violations. While 44% of the judgments are categorised as medium importance cases, 42% are categorised as low importance, and the remaining cases are divided between high importance cases (6%) and judgments published in Case Reports (8%).

IMPORTANCE LEVEL



- Case Reports (10) 8%
- High importance (7) 6%
- Medium importance (54) 44%
- Low importance (52) 42%

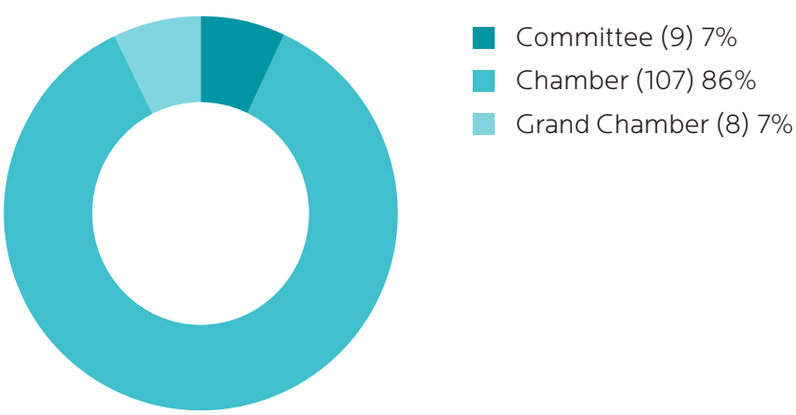
4.2 ORIGINATING BODY

The vast majority of the judgments against Latvia were delivered by a Chamber (107), while 8 judgements were delivered by the Grand Chamber and 9 by the Committee.

Judgements delivered by the Grand Chamber regard questions of violations of Article 3, Article 5, Article 6, Article 8, Article 14 and Article 1 and Article 3 of Protocol 1. A noteworthy case is **Slivenko v. Latvia,**[40] which concerned the deportation of the family of a former Soviet army officer in accordance with the

inter-state treaty between Russia and Latvia in connection with the withdrawal of Russian troops from Latvian territory. The Court found that the Latvian authorities overstepped the margin of appreciation enjoyed by the contracting parties, and that they failed to strike a fair balance between the legitimate aim of the protection of national security and the interest of the protection of the applicants' rights under Article 8. On these grounds, the court held that the applicants' removal from the territory of Latvia could not be regarded as 'necessary in a democratic society' and thereby found a violation of the right to respect for family life (Article 8).

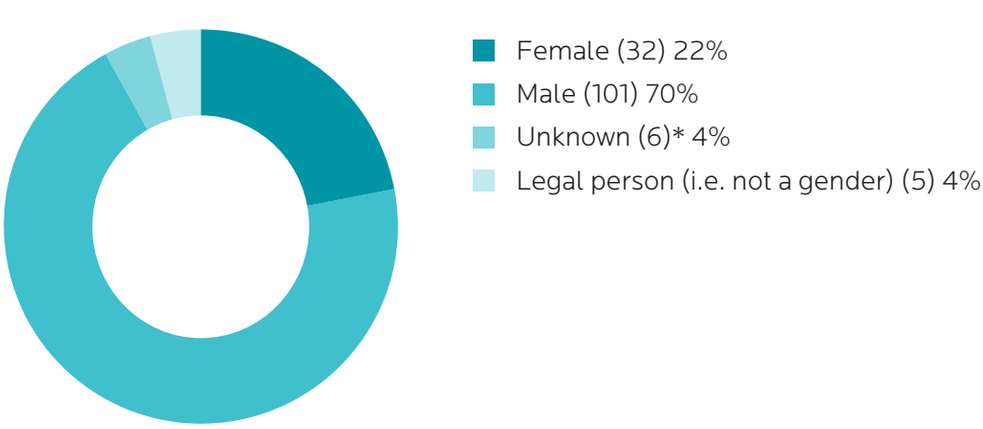
ORIGINATING BODY



4.3 NATURE OF APPLICANTS

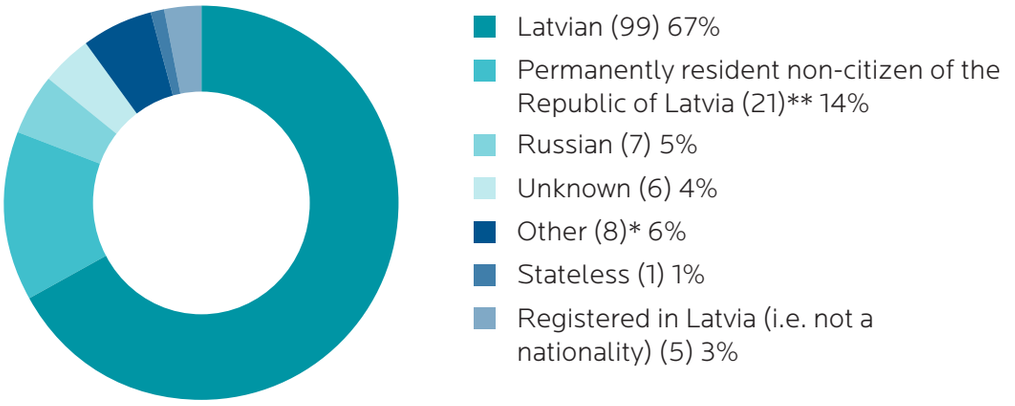
In regard to the gender of the applicants behind the cases covered in the study, the vast majority were male, amounting to 70% of the 148 applicants in total, while only 22% of the applicants were female. The remainder of the applicants, i.e. 8%, are registered as unknown (4%) or legal persons (4%).

GENDER OF APPLICANTS



In regard to the distribution of nationality, the study shows that 67% of the applicants were Latvian nationals while 14% were non-citizens of the Republic of Latvia with permanent residency. The majority of this group consisted of nationals from the former USSR.

NATIONALITY OF APPLICANTS



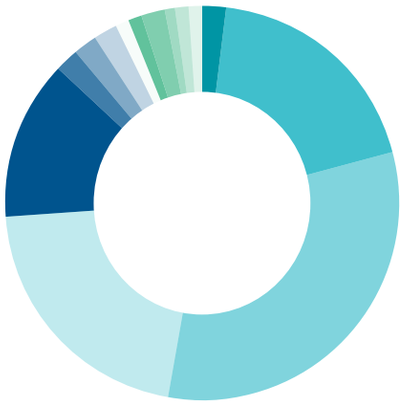
The category 'Other' covers applicants with Syrian (1), Indian (1), Cameroonian (1), British (1), German(2), Lithuanian (2) and American (2) nationalities, one stateless person, six persons of unknown nationality and five legal persons registered in Latvia, i.e., not a nationality.

4.4 SUBJECT-MATTER OF JUDGMENTS ON MERITS

Overall, the ECtHR has reached a total of 167 violations in comparison to 57 non-violations in the 124 judgments on merits against Latvia.

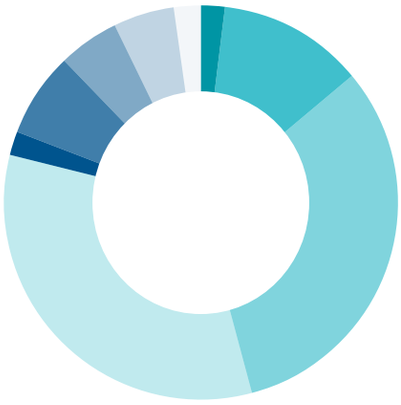
The majority of the cases – both regarding violation as well as non-violation judgments – concern Articles 3 (prohibition of torture and ill-treatment), 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life). The sections below will mostly focus on judgments constituting violations.

SUBJECT-MATTER OF VIOLATION JUDGMENTS



- Art. 2 (3) 2%
- Art. 3 (32) 19%
- Art. 5 (55) 32%
- Art. 6 (36) 21%
- Art. 8 (22) 13%
- Art. 9 (3) 2%
- Art. 10 (4) 2%
- Art. 11 (1) 0%
- Art. 13 (4) 2%
- Art. 14 (1) 1%
- Art. 34 (2) 1%
- P1 Art. 1 (3) 2%
- P1 Art. 3 (1) 1%
- P4 Art. 1 (1) 1%
- P7 Art. 1 (1) 1%

SUBJECT-MATTER OF NON-VIOLATION JUDGMENTS



- Art. 2 (1) 2%
- Art. 3 (7) 12%
- Art. 5 (18) 32%
- Art. 6 (19) 33%
- Art. 7 (1) 2%
- Art. 8 (4) 7%
- Art. 13 (3) 5%
- P1 Art. 1 (3) 5%
- P1 Art. 3 (1) 2%

4.4.1 THE RIGHT TO LIBERTY AND SECURITY

32% and hereby the majority of the violations against Latvia concerned Article 5 (the right to liberty and security). The Court has also reached a number of non-violations of Article 5, which concerns 32% of all cases.

Article 5 covers a broad spectrum of fundamental rights protection and the majority of the cases delivered by the Court against Latvia concerned the lawfulness of the detention (section 1), the reasonableness of pre-trial detention (section 3), and the review of lawfulness of detention (section 4). As an example, in **Svipsta v. Latvia**, in which the applicant alleged that her detention on remand had failed to satisfy the requirements of Article 5,[41] the Court found a violation of the requirement of

lawfulness (section 1) regarding the detention of the applicant between 18 May and 11 October 2001. Furthermore, the Court found a breach of the length of pre-trail detention (section 3) and held that the denial of judicial review was a violation of Article 5 section 4. The Court also found a non-violation of article 6 section 1.

A number of the cases have also resulted in reforms concerning the conditions of detention, the related issues to detention, the detention conditions of mentally-ill persons and the lawfulness of the detention, being adopted by the Department for the Execution of Judgements of the European Court of Human Rights.[42]

A noteworthy example is **L.M. against Latvia,**[43] which led to the introduction of a judicial review procedure of involuntary hospitalisation. In the case the Court found a violation of Article 5 section 1 due to the timeframe of the involuntary hospitalisation process according to Latvian law and as the Latvian authorities in practice failed to provide safeguards against arbitrary confinement in the psychiatric hospital.[44] Following the case, patients who are subjected to involuntary hospitalisation are given the possibility to contest the decision of the panel of psychiatrists before the local courts and to receive legal aid funded by the state.[45]

Another case, which among others led to reforms related to conditions of detention, is **Bannikov v. Latvia**. The Court found a violation of Article 5 section 3 in the case, as no procedural actions were taken during a period of one year, four months and three days. The Court held that only the most compelling reasons could justify detention for such a period and as the national court did not provide any such reasons, the Court found that it was merely a waiting time, which did not justify the period of detention.[46] Following the case, rights in pre-detention were improved. As an example, the position of investigative judges ensuring the observance of human rights during the pre-trial stage of criminal proceedings was strengthened. At the same time, it was underlined that a judicial review of detention should be periodic and carried out every 2 months, and the right to judicial review after the convicting judgement of the first instance court was introduced.[47]

4.4.2 THE RIGHT TO A FAIR TRIAL (21% VIOLATIONS)

21% of all violations and 33% of all non-violations against Latvia concerned the right to a fair trial in Article 6. Article 6 covers a broad spectrum of fundamental rights protection. As mentioned in 3.4.1 there should be a distinction between complaints concerning violations in civil proceedings and violations in criminal proceedings. The majority of the cases relating to Article 6 concerned issues related to criminal proceedings. In particular, the right to legal assistance and the length of proceeding were dealt with in several of the cases concerning criminal proceedings. Cases such as **Cuško**[48] and **Baltins**[49] can be mentioned as noteworthy examples regarding criminal proceedings.

In **Cuško v. Latvia** the Court had to assess whether the proceedings took place within a reasonable time period. As mentioned in section 3.4.1 the Court has repeatedly

specified that the reasonable time requirement must be assessed 'in the light of the circumstances of the case, the complexity of the case, the conduct of the applicant and the relevant authorities; and what was at stake for the applicant in the dispute'.[50] In **Cuško v. Latvia** the court stated that the criminal case was not complex and that it was brought before a court without excessive delay. The Court also held that the conduct of the applicant had not contributed significantly to the length of the proceedings. Paired with the consideration of what was at stake for the applicant, the Court found a violation of Article 6 (1), because the reasonable time requirement had been exceeded.

In **Baltins v. Latvia** the applicant convicted of acquisition of drugs complained that he had been incited by an undercover police agent to commit the offence. The Court found it a violation of Article 6 (1), as the domestic courts had not properly addressed the incitement plea raised by the applicant. In continuation of the Court's decision, it has, since the case, become an obligation for the Court to consider the materials pertaining to the special investigative measures which have not been included in the criminal case file and which concern the body of evidence being used in criminal proceedings.

4.4.3 THE PROHIBITION OF TORTURE AND ILL-TREATMENT

Of all cases against Latvia 19% of the violations concern Article 3, and 12% concern non-violation of Article 3. While Article 3 covers both the prohibition of torture and the prohibition of inhuman or degrading treatment, the majority of the cases are concerned with the prohibition of inhuman or degrading treatment.

Among noteworthy cases is **J. L. v. Latvia** from 2012, in which the Court for the first time underlined that prosecution and detention institutions should prevent possible ill-treatment of detainees who co-operated with the police by reporting criminal offences, as they are particularly vulnerable and exposed to violence in prisons.[51] In consequence the Court found that the applicant's claim of ill-treatment failed to comply with the State's procedural obligations deriving from Article 3 of the Convention.[52]

Another noteworthy case is **Ābele v. Latvia**, in which the Court found that the detention conditions of deaf and mute prisoners amounted to inhuman and degrading treatment. In particular the Court found that the reduced personal space made available to the applicant, which almost corresponded to the minimum standard of $3m^2$ of floor surface per detainee, together with the inevitable feeling of isolation and helplessness in the absence of adequate attempts to overcome the applicant's communication problems flowing from his disability, must have caused the applicant to experience anguish and feelings of inferiority attaining the threshold of inhuman and degrading treatment.[53]

4.4.4 RESPECT FOR PRIVATE LIFE

In regard to violations of Article 8, this covers 13% of all violations and 7% of all non-violations against Latvia. The cases cover the right to respect for family life and the right to privacy.

As an example, the right to respect for family life was the main issue in **X v. Latvia.** The case concerned the applicant's complaint about the Latvian courts' decision, which ordered that her child should return to Australia, the child's country of birth. The Court concluded that the applicant's right to respect for family life had been breached and found a violation of the right to respect for family life as stipulated in Article 8.[54] As mentioned in section 4.2 the right to respect for family life was also at stake in **Slivenko v. Latvia**. In the case the Court found a violation of Article 8 due to the deportation of the family of a former Soviet army officer.

Other cases have concerned different aspects of the right to privacy. As an example, the issue of privacy was at stake in **Petrova v. Latvia.**[55] In the case, the Court found a violation of the right to respect for private life as a public hospital had removed the organs of the applicant's son for transplantation purposes without her consent. Together with **Elberte v. Latvia**,[56] **Petrova v. Latvia** led to a ruling of the court of the lack of adequate legal protection against arbitrariness in proceedings relating to the removal of organs or tissues for transplantation purposes or with the view of bio-implants.[57]

Another case regarding the right to privacy which has led to the adoption of a new reform is **Meimanis v. Latvia.**[58] The case concerned the interception of the applicant's telephone calls when he was working as an official in Riga economic crime. Having found that an ex post facto approval by the judicial authorities was never sought in the case, the Court held that the interception of the applicant's telephone conversations did not fall within the meaning of Article 8 § 2 of the Convention and consequently found a violation of Article 8. Following the case, it has been mandatory in all cases of operational activities to obtain an ex post facto approval from the judicial authorities.

4.4.5 OTHER NOTEWORTHY CASES

Besides cases concerning the most apparent rights in the Court's rulings regarding Latvia, it is relevant to mention **Ādamsons v. Latvia**,[59] which has contributed towards the adoption of new reforms[60]. The case concerned the applicant's disqualification from standing for election because of his previous position in an armed corps under the supervision of the KGB. The Court found that the disqualification constituted a violation of the right to free elections in Article 3 of Protocol 1. Following the judgement, the prohibition to stand for Parliamentary elections has been limited to persons who were formerly directly involved in the KGB's primary functions.[61]

CHAPTER 5

LITHUANIA

5.1 JUDGMENTS ON MERITS

Like Estonia, Lithuania became a member of the Council of Europe on 14 May 1993. However, the Convention entered into force about 10 months earlier than in Estonia, i.e., on 20 June 1995. The ECtHR delivered its first judgment on the merits of **Jėčius v. Lithuania** on 31 July 2000.[62] The judgment is highlighted in the Committee of Ministers' 9th Annual Report as an example of a case that has led to significant achievements in Lithuania, as, following this judgment, an exhaustive list of grounds on which the measure of detention on remand may be imposed was introduced into the Lithuanian Code of Criminal Procedure of 2003.[63]

The case concerned an application by Mr Juozas Jėčius who, referring to Articles 5 (1), (3), and (4) of the Convention, complained about the unlawfulness of his preventive detention and detention on remand, the authorities' failure to bring him promptly before a judge or other officer, the length of his detention and the inability to take proceedings to contest the lawfulness of his detention. The applicant later died, after which his widow pursued the application.

The applicant was suspected of a murder committed in 1994. In 1995, the murder case was repealed due to a lack of evidence. However, the applicant was arrested on 8 February 1996 and placed in preventive detention until 14 March 1996 with reference to Article 50 (1) of the Lithuanian Code of Criminal Procedure then in force, permitting preventive detention in connection with banditry, criminal association and intimidation.[64] The Court found that the preventive detention was incompatible with Article 5 (1) of the Convention as the applicant was not detained in the context of criminal proceedings on suspicion of having committed an offence.[65]

On 8 March 1996, the murder case was reopened, and the applicant was charged, as principal offender, with murder with aggravating circumstances. He was later detained on remand, which he complained was unlawful. The Court found that there had been a violation of Article 5 (1) in regard to the detention on remand from 4 June to 31 July 1996,[66] but that there had been no violation as to the detention on remand from 31 July to 16 October 1996.[67]

Regarding Article 5 (3), the Court held that the Convention had not been violated due to the failure to bring the applicant promptly before a judge or other officer from the moment of his arrest on 8 February until 14 October 1996. The Court noted

that the Lithuanian Government had made a reservation that referred with sufficient clarity to Article 5 (3), which had removed the applicant's right to be brought promptly before an appropriate officer before the reservation's expiration on 21 June 1996. Concerning the latter period of the detention of the applicant, the Court noted that the promptness obligation was limited to the initial stage of the detention, which had passed.[68] In connection to this, the Court stated that a reservation would otherwise have been '[...] devoid of purpose if, upon its expiry, the State were required to enforce the right retroactively for the period covered by the reservation'.[69]

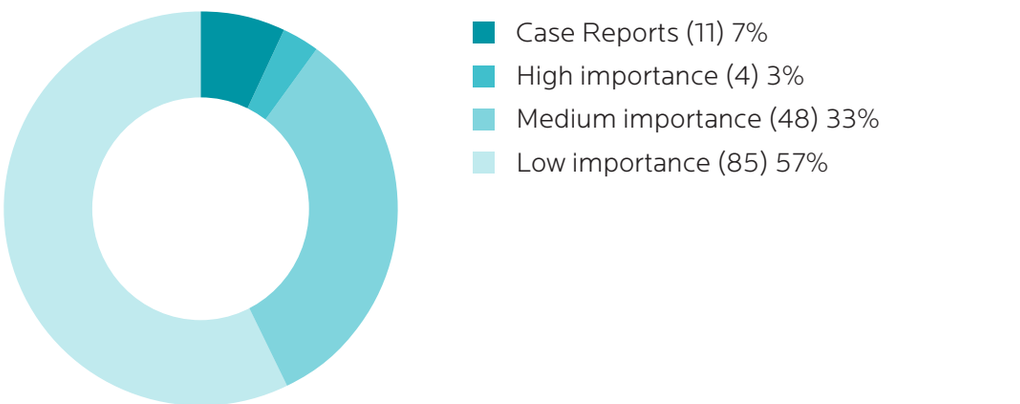
In regard to the length of the detention of the applicant, the Court considered that the required level of suspicion may have been fulfilled in the beginning, but it stated that the suspicion that the applicant had committed murder '[...] could not constitute a "relevant and sufficient" ground for his being held in custody for almost fifteen months, particularly when that suspicion was proved unsubstantiated by the trial court which acquitted the applicant'.[70] For these reasons, the Court found that the length of the detention had been excessive and, thus, violated Article 5 (3).

Finally, the Court found a violation of Article 5 (4), as the applicant had not been properly entitled to take proceedings against his detention, as the domestic courts had failed to examine the lawfulness of the detention.[71]

Since this judgment, which has been included in the Court's Case Reports illustrating the importance of the case, the Court has delivered another 147 judgments on the merits resulting in a total of 156 violations and 72 non-violations.

As opposed to the judgments on the merits against Estonia and Latvia, more than half of the judgments on the merits against Lithuania are categorised as low importance cases while the rest of the judgments are categorised as follow: 33% as medium importance cases, 7% as cases included in Case Reports, and 3% as high importance cases.

SUBJECT-MATTER OF NON-VIOLATION JUDGMENTS



5.2 ORIGINATING BODY

As would appear to be very much in line with the studies on Estonia and Latvia, the vast majority of the judgments on the merits have been delivered by a Chamber (90%). Thus, only 7% of the cases have been decided upon by a Committee, and the Grand Chamber has delivered judgments on the merits of 4% of the total number of judgments. The Grand Chamber has delivered judgments constituting violations in four out of the five cases. Each of the cases is described in the following.

On 5 February 2008, the Grand Chamber delivered its judgment in **Ramanauskas v. Lithuania** in which the former public prosecutor of Lithuania had complained that his conviction of bribery had been unfair, as the bribery had been incited by undercover agents. He further alleged that the principle of equality of arms and his defence rights were violated in that one of the two undercover agents in the case was not examined during the proceedings nor was he provided with an adequate review of his entrapment allegations. The Grand Chamber found that Article 6 (1) had been violated, as it noted that there was no indication that the offence would have been committed without the intervention of the undercover agents.[72]

On 23 March 2010, the Grand Chamber delivered its second judgments against Lithuania in **Cudak v. Lithuania**. In this case, the Grand Chamber found that the Lithuanian authorities had violated Article 6 (1) when declining to hear a sexual harassment complaint by an employee of the Polish Embassy in Vilnius. She was later dismissed for failure to come to work during a period where she was not allowed to enter the building of the embassy. She brought an action for unfair dismissal before the civil courts, which was declined as the Polish Ministry of Foreign Affairs had invoked the doctrine of state immunity.[73]

On 6 January 2011, the Grand Chamber delivered a judgment in **Paksas v. Lithuania**. The case concerned the applicant's disqualification from holding parliamentary office following his removal as President of Lithuania accused and impeached for committing a gross violation of the Constitution and breaching the constitutional oath. The Grand Chamber found that Article 3 of Protocol 1 concerning the right to free elections had been violated.[74]

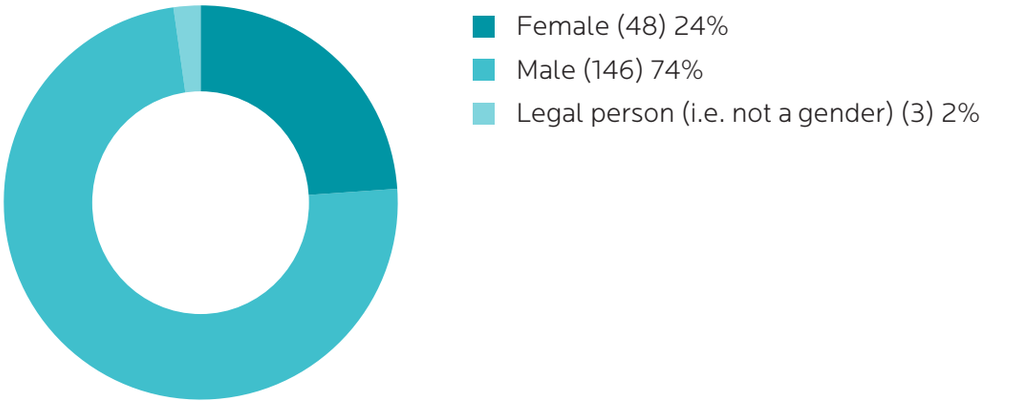
On 15 October 2015, the Grand Chamber delivered a judgment in **Kudrevičius and Others v. Lithuania**. The case concerned the conviction for rioting of five farmers who were given a suspended sentence of sixty days' imprisonment on account of having organised demonstrations which seriously breached public order. The Grand Chamber found that Article 11 had not been violated as claimed by the applicants, as it observed that the domestic courts had struck a fair balance between the legitimate aims of the prevention of disorder and of the protection of rights and freedoms of others on the one hand and the requirements of freedom of assembly on the other.[75] This case had been referred after having been decided upon by a Chamber, which found that the farmers' conviction for rioting was unjustified, leading to a violation of Article 11.[76]

Finally, the Grand Chamber held that there had been a violation of Article 7 in its judgment in **Vasiliauskas v. Lithuania** on 20 October 2015. The case concerned the conviction in 2004 of an officer, who had served in the state security services of the Lithuanian Soviet Socialist Republic from 1952 to his retirement in 1975, for the 1953 genocide of Lithuanian partisans who resisted Soviet rule after the Second World War. The applicant complained that the wide interpretation of the crime of genocide, as adopted by the Lithuanian courts in his case, had no basis in the wording of that offence as laid down in public international law. The Court found that the conviction could not have been foreseen under international law due to the uncertainty related to the notion of genocide.[77]

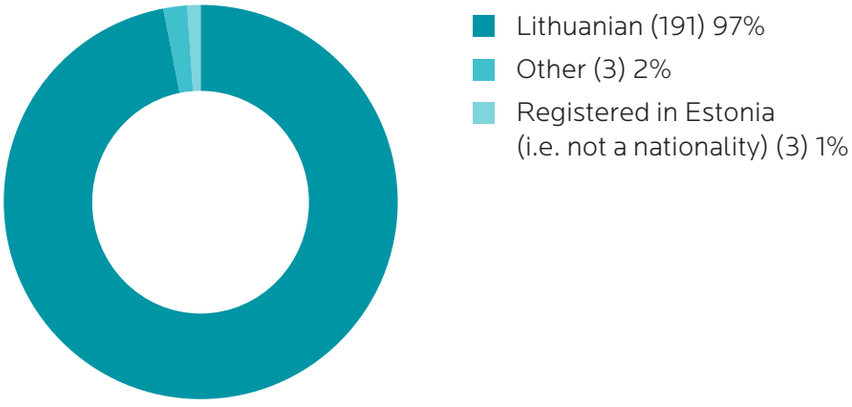
5.3 NATURE OF APPLICANTS

By far, the vast majority of the cases concerned applicants that were male, representing nearly three quarters of the applicants, while female applicants only represented a quarter of the total number of applicants. Regarding the nationality of the applicants, nearly all applicants were Lithuanian nationals.

GENDER OF APPLICANTS



NATIONALITY OF APPLICANTS



The category 'Other' covers one Azerbaijani national and two applicants with dual citizenship

5.4 SUBJECT-MATTER OF JUDGMENTS ON MERITS

The most apparent rights that have been in play regarding violations are Articles 3 (prohibition of torture and ill-treatment), 5 (right to liberty and security), 6 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention and Article 1 of Protocol 1 (protection of property). A minor proportion of the violations concern 2 (right to life), 7 (no punishment without law), 10 (freedom of expression) 13 (right to an effective remedy) and 14 (prohibition of discrimination) and Protocol 1 Article 3 (right to free elections) and Protocol 7 Article 4 (right not to be tried or punished twice).

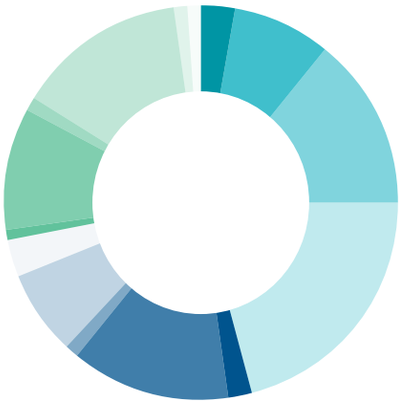
A very similar picture emerges when it comes to non-violations, despite the large number of cases regarding Article 14 (prohibition of discrimination), while the Court only found a non-violation in 8% of cases regarding Article 3.

Overall, the ECtHR has reached a total of 156 violations in comparison to 72 non-violations in the 217 judgments on merits against Lithuania. The sections below will mostly focus on judgments constituting violations.

SUBJECT-MATTER OF VIOLATION JUDGMENTS

- Art. 2 (6) 4%
- Art. 3 (19) 12%
- Art. 5 (21) 13%
- Art. 6 (55) 35%
- Art. 7 (1) 1%
- Art. 8 (21) 13%
- Art. 10 (1) 1%
- Art. 13 (3) 2%
- Art. 14 (5) 3%
- P1 Art. 1 (22) 14%
- P1 Art. 3 (1) 1%
- P7 Art. 4 (1) 1%

SUBJECT-MATTER OF NON-VIOLATION JUDGMENTS



- Art. 2 (2) 3%
- Art. 3 (6) 8%
- Art. 5 (10) 14%
- Art. 6 (15) 21%
- Art. 7 (1) 2%
- Art. 8 (9) 13%
- Art. 9 (1) 1%
- Art. 10 (5) 7%
- Art. 11 (2) 3%
- Art. 13 (1) 1%
- Art. 14 (7) 10%
- Art. 34 (1) 1%
- P1 Art. 1 (10) 14%
- P1 Art. 3 (1) 1%
- P7 Art. 4 (1) 1%

5.4.1 RIGHT TO FAIR TRIAL

The majority of the cases relating to Article 6 concern issues related to criminal proceedings. In particular, the right to a fair trial within a reasonable time has been dealt with in several of the cases concerning criminal proceedings. For example, in **Kuolelis, Bartoševičius and Burokevičius v. Lithuania** the Court found that proceedings that had lasted for six and a half years did not violate the reasonable timeframe requirement, as it noted that the case was very complex and the domestic authorities had shown due diligence. In this regard, the Court highlighted that the case involved thousands of people who had been heard as witnesses or purported victims and that the original case had envisaged 49 defendants.[78] Conversely, in **Girdaukas v. Lithuania**, the Court found that there

had been a violation of Article 6. The Court found that the criminal proceedings against the applicant, which had lasted over 8 years and 5 months, were not within a reasonable timeframe, as the government had failed to show why such a long time was required for the authorities to deal with the case. It hereby followed that the domestic authorities had shown neither diligence nor rigour in their handling of the proceedings.[79]

5.4.2 PROTECTION OF PROPERTY

Compared to the other Baltic countries, the Court has reached a verdict in a large number of cases regarding Article 1 of Protocol 1, as 14% of all violations as well as 14% of all non-violations against Lithuania concern the article. The issue is still significant and has been raised in numerous cases against Lithuania concerning the restoration of the rights to property which was nationalised by the Soviet authorities in the 1960s, and the authorities' failure to restore the property title to the claimant. For example, this issue was the focus in **Jasiūnienė v. Lithuania, Užkurėlienė and Others v. Lithuania, Jurevičius v. Lithuania** and **Kavaliauskas and Others v. Lithuania**.[80] In Estonia and Latvia, the number of cases on Protocol 1 Article 1 remains very low compared to Lithuania, indicating that effective law enforcement is in place for similar claims.

Lithuanian legislation on the restoration of property was enacted in 1999 and the deadlines for submission of claims were postponed a few times after the initial deadline in 2001.[81] The general principle of the applicable law is to restore the rights **in kind** immediately[82] where this is possible. In situations where immediate restoration or restoration of the original plot was not possible, a land plot of equal value and/or financial compensation is issued as an alternative remedy.[83] The claimant also reserves the option to request financial relief in place of the type of property they are entitled to. However, enforcement seems to encounter different problems, causing either delays or further litigation at the European level. The reasons behind the remarkable amount of ECtHR cases on the matter are briefly explained below.

Firstly, the restoration of the ownership rights to land depends on the availability of government approved land plots. In other words, planned territories by means of implemented administrative acts are the only available plots for restoration.[84] The planning documents necessary for these acts are drawn by private entities[85] but the legislation does not set time limits for when the territory planning documents must be drawn. This practice seems to cause delays and ineffective enforcement of rights.[86] Similarly, many complaints were brought against the Administrative Courts of Lithuania for the unjustified delay in the process of the restoration of property rights.[87]

Secondly, for the reasons provided in the law[88], such as future infrastructure plans, or similar public interest, the Lithuanian courts have been prone to interpret the 'public interest' element rather broadly.[89] The preference of the courts in extending

priority[90] on the claims and balancing of interests seems to trigger further litigation. Given that the number of applications for land restorations is between 4 and 5,000,[91] the likely corollary of the court's preference will be more submissions to the ECtHR.

Furthermore, in cases where the claimant seeks financial relief instead, the methods of calculation do not usually reflect the market realities.[92] This is a major concern as it not only paves the way for litigation, but also delays the practice of the right in question.

Ultimately, the annulment of administrative acts whereby property rights were restored unlawfully creates further burden for the ECtHR. Restoration of areas of public interest such as forests of state importance and other protected areas as well as restored plots where third parties claim rights after administrative acts were issued, triggers litigation, often reaching the European level.[93]

5.4.3 RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

Article 8 regards the right to respect for private and family life and states that everyone has the right to respect for his private and family life, his home and his correspondence. 13% of the total numbers of all violations and 13% of all non-violations against Lithuania concern Article 8. The majority of the cases have concerned different aspects of the right to privacy. As an example, privacy was the focus in **Drakšas v. Lithuania**, which concerned the tapping of a Lithuanian politician's telephone, authorised by the authorities. While the Court found a violation of Article 8 of the Convention on account of the leak of the applicant's conversation, the Court held that there had been no violation of Article 8 of the Convention on account of the interception and recording of the applicant's conversations and the disclosure of his conversations during the Constitutional Court proceedings. In the light of the judgement, the Supreme Court published an examination of the legality and an implementation in 2015, which contained criteria for secret surveillance measures.[94]

5.4.4 THE RIGHT TO LIBERTY AND SECURITY

As mentioned in section 3.4.2, Article 5 covers a broad spectrum of issues under the right to security. 13% (21 cases) of all violations as well as 14% (9 cases) of all non-violations against Lithuania concern Article 5.

Even though there does not appear to be a trend, the majority of the cases concerned lawful arrest or detention (paragraph 1), while other cases were related to the issues of being brought promptly before a judge or other officer (paragraph 3), length of pre-trial detention (paragraph 3), procedural guarantees of review (paragraph 4), speediness of review (paragraph 4), and compensation (paragraph 5).

A noteworthy case is **Jėčius v. Lithuania**, which concerned issues as to the right to lawful detention, the length of detention and the right to contest the procedural

and substantive conditions essential for the 'lawfulness' of the detention on remand. In the light of the case an exhaustive list of grounds on which the measure of detention on remand may be imposed was set out. The list came into force in the Executive of Criminal Sentences in 2003, and since then, it has not been possible to monitor correspondence of prisoners without authorisation.[95]

5.4.5 PROHIBITION OF TORTURE AND ILL-TREATMENT

The majority of the cases regarding the prohibition of torture and ill-treatment in Article 3 concern the right not to be subjected to inhuman or degrading treatment or punishment. As an example, the Court found a violation of Article 3 in **Kasperovičius v. Lithuania**,[96] where the applicant complained that the conditions in which he was detained during his prison sentence were appalling. The Court was of the view that the prison conditions amounted to degrading treatment, as the conditions diminished the applicant's human dignity.

5.4.6 CASES CONCERNING FORMER KGB COLLABORATORS

Other noteworthy cases are those regarding former KGB collaborators and employment restrictions. In the cases **Sidabras and Džiautas, Rainys and Gasparavičius** and Žičkus in which the complaints are very similar, the Court found that the extent to which the Lithuanian law precluded employment in the private sector to former KGB collaborators was a violation of Article 14 of the Convention, in conjunction with Article 8.[97]

In **Sidabras and other**, the applicants complained about the continuing violation of their rights on the grounds that since the judgements in **Sidabras and Džiautas**, and **Rainys and Gasparavičius** had become final, the state – despite having paid allowances – did not change the law nor lifted legislative restrictions against former KGB collaborators. The Court found that there had been no violation of Article 14 of the Convention, in conjunction with Article 8 for the first and second applicant, as the Court found the first applicant was unemployed for justified reasons, and the second failed to substantiate the claim that he continued to be discriminated against on account of his status. For the third applicant the Court conversely found that there had been a violation of Article 14 of the Convention, in conjunction with Article 8, as the Court found that the government had not convincingly demonstrated that the applicant was not rejected on the basis of Lithuanian law, which precluded employment in the private sector to former KGB collaborators.[98]

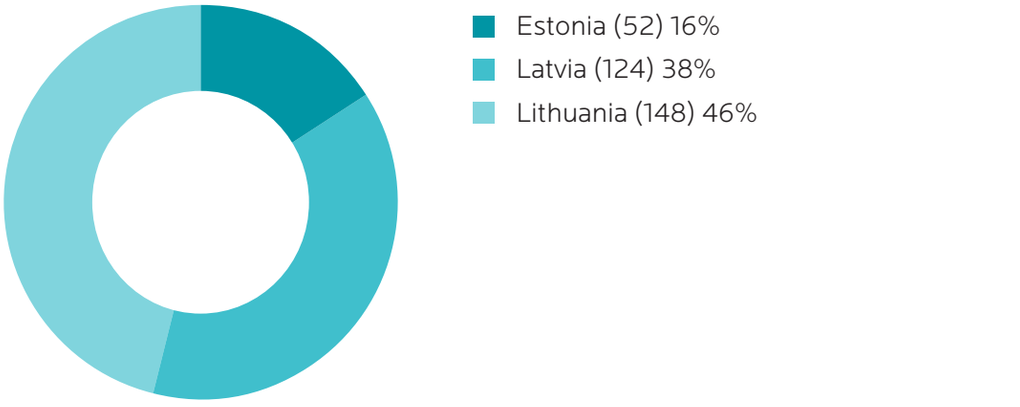
CHAPTER 6

CONCLUDING REGIONAL OVERVIEW

6.1 JUDGMENTS DISTRIBUTION BY COUNTRY

The majority of the judgements delivered by the Court (148 (46%)) were against Lithuania, while 124 judgements (38%) were against Latvia and 52 (16%) were against Estonia.

JUDGMENTS DISTRIBUTION BY COUNTRIES



Concerning the distribution of violations, the majority of the judgements in which the Court found a violation were against Latvia (45%), while 41% were against Lithuania and 14% were against Estonia. At the same time, the Court found a non-violation in 47% of all cases against Lithuania, in 38% of cases against Latvia and in 15% of cases against Estonia.

COUNTRY DISTRIBUTION OF VIOLATIONS

- Estonia (54) 14%
- Latvia (169) 45%
- Lithuania (156) 41%

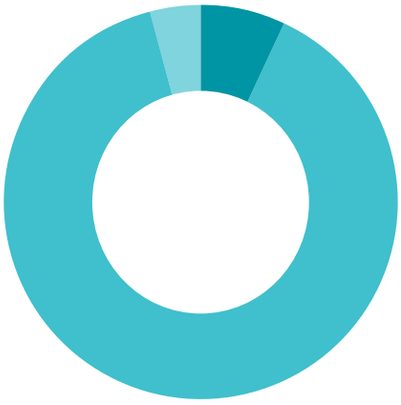
COUNTRY DISTRIBUTION OF NON-VIOLATIONS

- Estonia (23) 15%
- Latvia (57) 38%
- Lithuania (72) 47%

6.2 ORIGINATING BODY

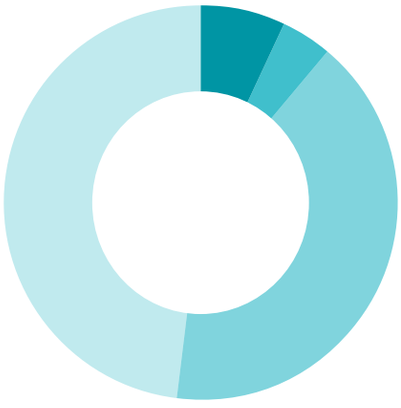
In 289 judgements, most of the cases against Estonia, Latvia and Lithuania were delivered by the Chamber, while 14 judgements were delivered by the Grand Chamber and 21 by the Committee. As mentioned, the Grand Chamber delivered 8 judgements in cases against Latvia, 5 against Lithuania and 1 against Estonia.

ORIGINATING BODY



- Committee (21) 7%
- Chamber (289) 89%
- Grand Chamber (14) 4%

IMPORTANCE LEVEL



- Case Reports (23) 7%
- High importance (13) 4%
- Medium importance (129) 40%
- Low importance (158) 49%

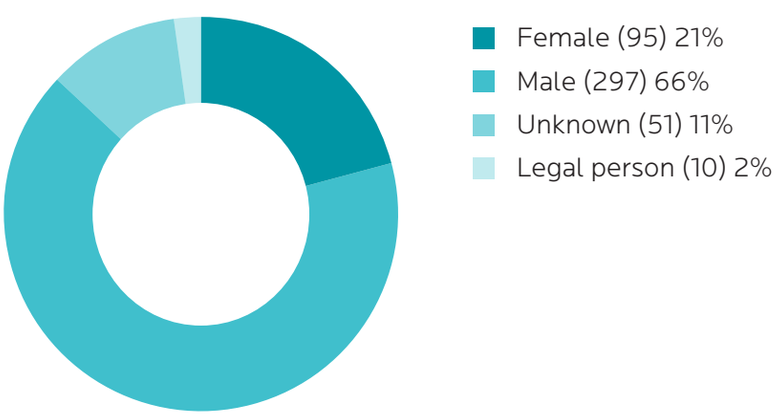
Almost half of the judgments on the merits against Estonia, Latvia and Lithuania were categorised as low importance cases (49%), while 40% were categorised as medium importance cases, 4% as high importance cases and the remaining 7% included Case Reports. In stark comparison with the cases against Latvia and Estonia, in which the majority of the cases were categorised as medium importance cases (in total 81), most of the cases against Lithuania were categorised as low importance cases (in total 158 cases).

6.3 NATURE OF APPLICANTS

In regard to the gender of the applicants behind the cases covered in the study, only 21% of the applicants were female while the majority were male, amounting to 66% of the total 453 applicants. Applications made by legal persons represent only 2%

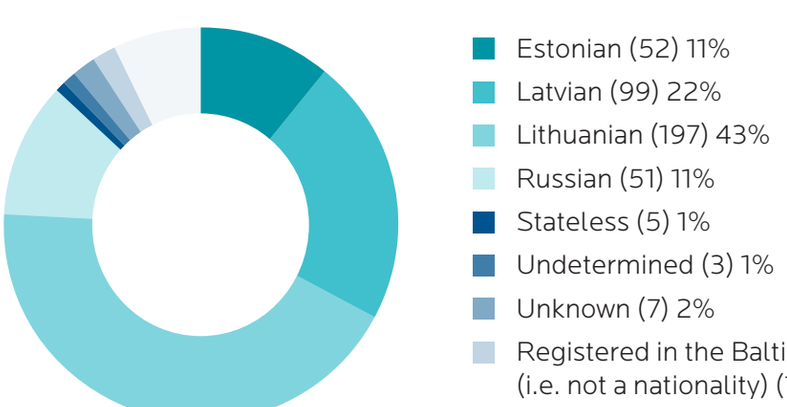
of the cases. The approximate gender distribution in Latvia and Lithuania was 22% and 24% for female applicants, respectively. At the same time, the figure in section 3.3 seems to show that only 12% of the applicants in the cases against Estonia were female, while 70% were male. However, it cannot be dismissed that these numbers differ slightly from the actual distribution, seeing as **Tarkoev and Others v. Lithuania**[99] contains a group of 45 unknown applicants.

GENDER OF APPLICANTS



Regarding the nationality of the applicants, it would appear that the distribution approximately reflects the distribution of cases among the countries, as the majority of the applicants are Lithuanian (43%), while 22% of the applicants are from Latvia and 11% are from Estonia. As mentioned, the high number of applicants with Russian nationality can be explained by the above-mentioned case of **Tarkoev and Others v. Estonia**.[100]

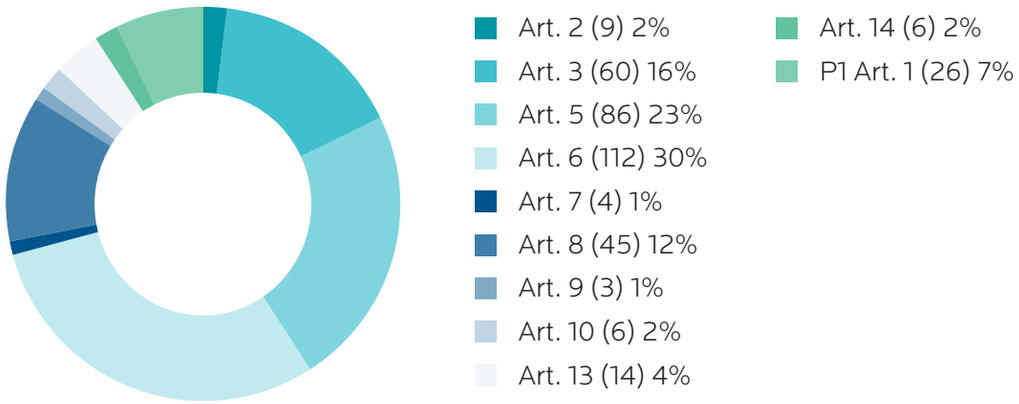
NATIONALITY OF APPLICANTS



6.4 SUBJECT-MATTER OF JUDGMENTS ON MERITS

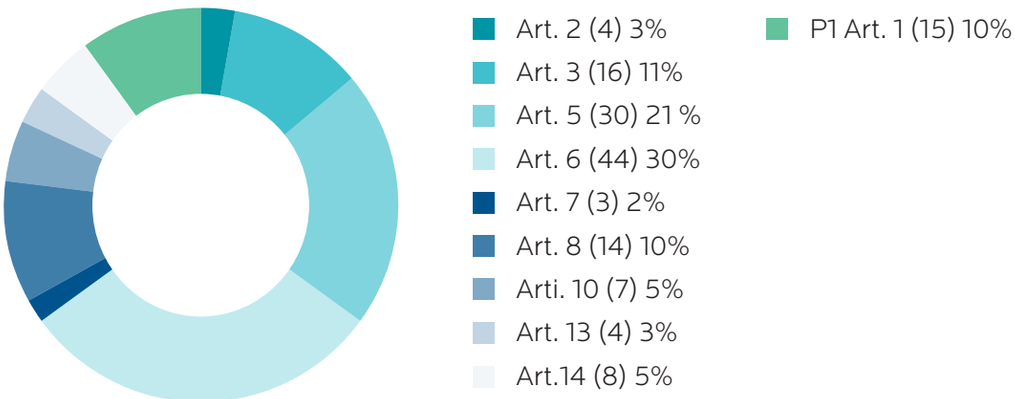
From the study it can be concluded that the majority of the violation judgements against the three countries regard Article 6 (30%) followed by Article 5 (23%). This picture reflects the distribution of violation judgements in Estonia and Lithuania, while for Latvia, Article 5 judgements represent the majority followed by Article 6. In all three countries judgements of violations of the prohibition of inhuman or degrading treatment in Article 3 represent the third largest number of violations. In Latvia 22% of all violations concern Article 8 while 13% of all violations concern Article 8 in Lithuania. In particular the right to privacy is highlighted in a number of cases. As mentioned above it is additionally noteworthy that violations against the protection of property in Article 1 of Protocol 1 represent 14% of the cases against Lithuania, while only representing 2% of all cases against both Latvia and Estonia.

SUBJECT-MATTER OF VIOLATION JUDGMENTS



From the study it can also be concluded that the same picture recurs regarding the overall distribution of non-violations of Article 6, Article 5, Article 3 and Article 6, as 30% of all non-violations concern Article 6, 21% concern Article 5, 11% concern Article 3 and 10% concern Article 8. As with the case above, a number of cases concern Article 1 in Protocol 1 as 10% of all non-violations concern this article, which mainly applies to Lithuanian cases. The remaining non-violations concern Article 2, Article 7, Article 14 and Article 10.

SUBJECT-MATTER OF NON-VIOLATION JUDGMENTS



6.5 TOTAL NUMBER OF ECTHR DECISIONS IN THE BALTICS

From the number of violation and non-violation decisions of the ECtHR against the Baltic states, it can be said that there is a general increasing trend of ECtHR activity in the region. The total number of decisions has increased from 15 in 2000 to 47 in 2017, peaking at 51 decisions in 2016.

ECTHR ACTIVITY IN BALTICS 2000-2018

NOTES

1 For more information on HURMUR, see: http://hur-mur.eu/.
2 Zwaak, L. (2006), 'General Survey of the European Convention' in van Dijk, P., van Hoof, F., van Rijn, A., and Zwaak, L. (eds.), **Theory and Practice of the European Convention on Human Rights**, Antwerp and Oxford, Intersentia, pp. 1-93, taken from pp. 2-4.
3 Overview 1959-2016, ECHR, Council of Europe, https://echr.coe.int/Documents/Court_in_brief_ENG.pdf.
4 Exhibition on 50 years of the Court – The 47 member states, https://www.echr.coe.int/Documents/2010_Expo_50years_02_ENG.pdf.
5 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000.
6 Numbers from 2018, https://news.err.ee/654391/estonia-s-population-increases-for-third-year.
7 Statistics Estonia, 2017 http://www.stat.ee/en.
8 http://worldpopulationreview.com/countries/latvia-population/.
9 http://worldpopulationreview.com/countries/lithuania-population/.
10 Statistics Lithuania, Department of Statistics, 2011, https://web.archive.org/web/20131014172519/http://db1.stat.gov.lt/statbank/default.asp?w=1920.
11 In the merits of the case, the Court establishes whether a violation of the rights granted under the ECHR has occurred, whereas just satisfaction is the basis for damages awarded by the Court with the intent to compensate the applicant for the actual harmful consequences of a violation. Article 41 of the ECHR provides that the Court shall award just satisfaction only if domestic law does not allow complete reparation to be made, and even then only 'if necessary'.

12 Council of Europe, Hudoc Unit (2017), **HUDOC User Manual**, Strasbourg, Council of Europe, 1 September 2017, pp. 35-36.
13 Council of Europe, Hudoc Unit (2017), **HUDOC User Manual**, Strasbourg, Council of Europe, 1 September 2017, p. 36.
14 **Council of Europe, Hudoc Unit (2017), HUDOC User Manual,** Strasbourg, Council of Europe, 1 September 2017, p. 36.
15 **Ibid.**
16 European Court of Human Rights (ECtHR), **Tammer v. Estonia**, No. 41205/98, 6 February 2001.
17 In a judgement, the Court establishes whether the alleged violations of the ECHR occurred. As one case may deal with more than one alleged violation, the Court may find that multiple violations of the ECHR occurred in a single judgment.
18 European Court of Human Rights (ECtHR), **Tarkoev and Others v. Estonia**, Nos. 14480/08 and 47916/08, 4 October 2010.

19 European Court of Human Rights (ECtHR), **Tarkoev and Others v. Estonia**, Nos. 14480/08 and 47916/08, 4 October 2010, Annex.
20 European Court of Human Rights (ECtHR), **Tarkoev and Others v. Estonia**, Nos. 14480/08 and 47916/08, 4 October 2010, Annex.
21 European Court of Human Rights (ECtHR), **Taal v. Estonia**, No. 13249/02, 22 November 2005.
22 European Court of Human Rights (ECtHR), **Pello v. Estonia**, No. 11423/03, 12 April 2007.
23 European Court of Human Rights (ECtHR), **Rummi v. Estonia**, No. 63362/09, 15 January 2015, para. 118.
24 European Court of Human Rights (ECtHR), **Shchiglitsov v. Estonia**, No. 35062/03, 18 January 2007 (five years and 10 months); European Court of Human Rights (ECtHR), **Missenjov v. Estonia**, No. 43276/06, 29 January 2009 (six years, seven months and 20 days); European Court of Human Rights (ECtHR), **Saarekallas OÜ v. Estonia**, No. 11548/04, 8 November 2007 (seven years and eight months); European Court of Human Rights (ECtHR), **Rummi v. Estonia**, No. 63362/09, 15 January 2015 (eight years, two months and 14 days).
25 European Court of Human Rights (ECtHR), **Shuvalov v. Estonia**, Nos. 39820/08 and 14942/09, 29 May 2012.
26 European Court of Human Rights (ECtHR), **Shuvalov v. Estonia**, Nos. 39820/08 and 14942/09, 29 May 2012, para. 80.
27 European Court of Human Rights (ECtHR), **Vronchenko v. Estonia**, No. 59632/09, 18 July 2013.
28 Council of Europe, Committee of Ministers (2015), **Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights**, Strasbourg, Council of Europe, March 2016, pp. 28-29.
29 European Court of Human Rights (ECtHR), **Harkmann v. Estonia**, No. 2192/03, 11 July 2006.
30 European Court of Human Rights (ECtHR), **Bergmann v. Estonia**, No. 38241/04, 29 May 2008.
31 Council of Europe, Committee of Ministers (2015), **Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights**, Strasbourg, Council of Europe, March 2016, p. 29.
32 European Court of Human Rights (ECtHR), **Julin v. Estonia**, Nos. 16563/08, 40841/08, 8192/10 and 18656/10, 29 May 2012; European Court of Human Rights (ECtHR), **Tali v. Estonia**, No. 66393/10, 13 February 2014.
33 European Court of Human Rights (ECtHR), **Kochetkov v. Estonia**, No. 41653/05, 2 July 2009.
34 Lafranque, J. (2016), 'Estonia: Impact of the European Court of Human Rights' (case law) on democracy and rule of law: Some reflections from an Estonian perspective' in: Motoc, I. and Ziemele, I. (eds.), **The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives**, Cambridge, Cambridge University Press, pp. 153-175, taken from p. 162; Department for the Execution of Judgments of the European Court of Human Rights (2017), **Country Factsheet: Estonia**, 1 October 2017, p. 2; Council of Europe, Committee of Ministers (2015), **Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights**, Strasbourg, Council of Europe, March 2016, p. 29.
35 Press country profile, Estonia, July 2017, p, 4.
36 European Court of Human Rights (ECtHR), **Liivik v. Estonia**, no. 12157/05, 06 June 2009.

37 European Court of Human Rights (ECtHR), **Sõro v. Estonia**, no. 22588/08, 3 September 2015.
38 European Court of Human Rights (ECtHR), **Kalda v. Estonia**, no. 17429/10, 19 January 2016.
39 European Court of Human Rights (ECtHR), **Podkolzina v. Latvia,** 46726/99, on 6 April 2002.
40 European Court of Human Rights (ECtHR), **Slivenko v. Latvia, 48321/99** on 9 October 2003.
41 European Court of Human Rights (ECtHR), **Svipsta v. Latvia,** No. 66820/01, on 9 March 2009, para. 3.
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43 European Court of Human Rights (ECtHR), **L.M. v. Latvia v. Latvia,** No. 26000/02, on 19 October 2011.
44 European Court of Human Rights (ECtHR), **L.M. v. Latvia v. Latvia,** No. 26000/02, on 19 October 2011, para 52-55.
45 Department for the Execution of Judgments of the European Court of Human Rights (2017), **Country Factsheet: Latvia**, 31 December 2017, p. 3.
46 European Court of Human Rights (ECtHR), **Bannikov v. Latvia,** No. 19279/03, on 11 June 2013.
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49 European Court of Human Rights (ECtHR), **Baltins v. Latvia,** No. 25282/07, on 8 January 2013.
50 European Court of Human Rights (ECtHR), **Rummi v. Estonia**, No. 63362/09, on 15 January 2015, para. 118.
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52 European Court of Human Rights (ECtHR), **J. L. v. Latvia,** No. 23893/06 17 April 2007, paras 87-89.
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61 Ibid.
62 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000.

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68 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000, paras. 72-87.
69 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000, para. 85.
70 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000, para. 94.
71 European Court of Human Rights (ECtHR), **Jėčius v. Lithuania**, No. 34578/97, 31 July 2000, paras. 96-102.
72 European Court of Human Rights (ECtHR), **Ramanauskas v. Lithuania**, No. 74420/01, 5 February 2008.
73 European Court of Human Rights (ECtHR), **Cudak v. Lithuania**, No. 15869/02, 23 March 2010.
74 European Court of Human Rights (ECtHR), **Paksas v. Lithuania**, No. 34932/04, 6 January 2011.
75 European Court of Human Rights (ECtHR), **Kudrevičius and Others v. Lithuania**, No. 37553/05, 15 October 2015.
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77 European Court of Human Rights (ECtHR), **Vasiliauskas v. Lithuania**, No. 35343/05, 20 October 2015.
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82 **Ibid.** Article 4.

83 **Ibid.** Chapter 1.
84 **Ibid.** Article 15.
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87 **Ibid.**
88 Republic Of Lithuania Law On The Restoration Of The Rights Of Ownership Of Citizens To The Existing Real Property 1 July 1997 No Viii-359 https://e-seimas.lrs.lt/rs/legalact/TAD/81530b506c0f11e48710f0162bf7b9c5/format/ISO_PDF/ 15.05.2018. Art.12.
89 European Court of Human Rights (ECtHR), **Činga v. Lithuania,** no. 69419/13, 31 October 2017.
90 See case: **Tunaitis v. Lithuania**, no: 42927/08.
91 European Court of Human Rights (ECtHR), **Grigolovič v. Lithuania**, no. 54882/10, 10 October 2017, para. 13. The number merely represents application to Vilnius County Administration.
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93 See cases: **Grigolovič v. Lithuania**, no. 54882/10, **Tunaitis v. Lithuania**, no: 42927/08.
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96 European Court of Human Rights (ECtHR), **Kasperovičius v. Lithuania**, no. 54872/08, 20 November 2012.
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