

February 2014

Tali v. Estonia - 66393/10

Judgment 13.2.2014 [Section I]

Article 3

Degrading treatment

Inhuman treatment

Use of pepper spray against an aggressive prisoner and his confinement to restraint bed for 3 hours and 40 minutes: *violation*

Facts – While serving a prison sentence, the applicant refused to comply with the orders of prison officers. Pepper spray, physical force and a telescopic baton were used against him in order to overcome his resistance. He was then handcuffed and later confined in a restraint bed for three hours and forty minutes. As a result he sustained a number of injuries, including haematomas and blood in his urine. Criminal proceedings against the prison guards were discontinued following a finding that the use of force had been lawful as the applicant had not complied with their orders and had behaved aggressively. A claim for compensation filed by the applicant was dismissed.

Law – Article 3: The Court was aware of the difficulties the States might encounter in maintaining order and discipline in penal institutions. This was particularly so in cases of unruly behaviour by dangerous prisoners, a situation in which it was important to find a balance between the rights of different detainees or between the rights of the detainees and the safety of the prison officers. The applicant's character and prior behaviour had given the prison officers reason to be alert in relation to their safety and for taking immediate measures when he had displayed disobedience, threats and aggression towards them. Moreover, the domestic authorities had established that the applicant had behaved aggressively and that it had therefore been justified to take measures to combat his aggression.

However, as regards the legitimacy of the use of pepper spray, according to the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ([CPT](#)), it was a potentially dangerous substance that should not be used in confined spaces. If exceptionally it needed to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who had already been brought under control. Although pepper spray was not considered a chemical weapon and its use was authorised for the purpose of law enforcement, it could produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it might cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging. Having regard to those potentially serious effects on the one hand and the alternative equipment at the disposal of the prison guards on the other, the circumstances had not justified its use in the instant case.

As regards the use of the restraint bed, the period for which the applicant had been strapped had been shorter than in the case *Julin v. Estonia* (9 hours), his situation had been assessed on an hourly basis and he had also been checked on by medical staff. However, those factors had not rendered that measure justified in the circumstances of the instant case. The means of restraint at issue should never be used as a means of punishment, but rather in order to avoid self-harm or serious danger to other individuals or to prison security. It had not been convincingly shown that after the confrontation with the prison officers had ended the applicant – who had been locked in a single-occupancy disciplinary cell – had posed a threat to himself or others. Furthermore, the period for which he had been strapped to the restraint bed was by no means negligible and his prolonged immobilisation must have caused him distress and physical discomfort. Considering the cumulative effect of those measures, the applicant had been subjected to inhuman and degrading treatment.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(See also *Oya Ataman v. Turkey*, 74552/01, 5 December 2006, [Information Note 92](#); *Ali Güneş v. Turkey*, 9829/07, 10 April 2012, [Information Note 151](#); *Julin v. Estonia*, 16563/08 et al., 29 May 2012, [Information Note 152](#); and *İzci v. Turkey*, 42606/05, 23 July 2013, [Information Note 165](#))

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