



## European Court throws out cases concerning GM crop protests for failure to respect duty of confidentiality in friendly settlement negotiations

In its decisions in the cases of [Mandil v. France](#) (application no. 67037/09), [Barreau and Others v. France](#) (no. 24697/09) and [Deceuninck v. France](#) (no. 47447/08) the European Court of Human Rights has unanimously declared the applications inadmissible. The decisions are final.

These cases concerned breach of a duty of confidentiality in negotiations on a friendly settlement between the French State and members of the organisation "Les faucheurs volontaires" who had lodged a complaint against France with the European Court of Human Rights. That stage of negotiations with a view to reaching a friendly settlement between the parties, expressly provided for by the Convention and which may take place at any time, must remain strictly confidential, a point of which the parties had been informed.

### Principal facts

#### ***Mandil v. France, application no. 67037/09***

The applicant, François Mandil, is a French national who was born in 1978 and lives in Pontarlier, France.

On 14 August 2004 several dozen people, including the applicant, responded to a call by an organisation known as "Les faucheurs volontaires" (Volunteer Reapers) to meet up in Dadonville (Loiret). They moved on to a plot of land in Allevran planted with genetically modified maize, in order to trample, uproot and flatten the crop.

Mr Mandil and around 40 other individuals were prosecuted for deliberate damage to the plots of genetically modified maize.

Mr Mandil was acquitted by the Orléans Criminal Court. The public prosecutor lodged an appeal. On 27 June 2006 the Orléans Court of Appeal found Mr Mandil guilty of the offences with which he had been charged and sentenced him to two months' imprisonment, suspended, and a fine of 1,000 euros (EUR). Mr Mandil's appeal on a point of law was dismissed.

At the request of the Besançon prosecution authorities, Mr Mandil was asked to report to Pontarlier police station on 17 December 2007 to provide biological samples, in accordance with Articles 706-54 and 706-55 of the French Code of Criminal Procedure. He attended but refused to provide samples. The Besançon Criminal Court found him guilty of refusing to undergo biological testing for the purposes of identifying his DNA. He was ordered to pay a fine of EUR 7 per day for 60 days. The Besançon Court of Appeal upheld the judgment and the Court of Cassation declared Mr Mandil's appeal inadmissible.

On 14 October 2011 the daily newspaper *L'Est Républicain* published an article on its website entitled "Negotiation – €1,500 offered to a Pontarlier municipal councillor to withdraw his complaint against the French government – A CUT FOR THE GM REAPER".

The article was accompanied by a photograph of Mr Mandil displaying a letter from his lawyer, with the following caption "A Pontarlier municipal councillor has been offered payment to drop proceedings".

On 17 October 2011 a press agency journalist contacted the European Court of Human Rights to ascertain whether a friendly settlement of that kind was in keeping with the spirit of the European Convention on Human Rights.

### ***Alain Barreau and Others v. France, application no. 24697/09***

The applicants, Alain Barreau and 31 others, live in Orléans and belong to the *Faucheurs volontaires*. On 14 August 2006, in response to a call to that group, the applicants assembled in the municipality of Villereau (Loiret), surrounded a Monsanto test site and participated in uprooting all the genetically modified maize plants. They explained that their action had been symbolic and was intended to draw the authorities' attention to the issue of genetically modified crop cultivation in open fields and the health and environmental risks that such crops posed. They also stated that France had not transposed European Parliament Directive 2001/18/EC of 12 March 2001 (on the deliberate release into the environment of genetically modified organisms), which provided for restrictions on any such release and introduced controls on any release onto the market.

The activists were arrested by the gendarmerie, placed in police custody and brought before the Criminal Court on a charge of "concerted deliberate destruction of property". Sixteen of the defendants refused to provide biological samples for identification purposes. Prosecuted in the criminal courts, the applicants pleaded that their action had been born out of necessity. The Orléans Criminal Court handed down prison sentences of three to four months plus fines for destruction of another's property.

By a decision of 26 February 2008 the Court of Appeal upheld the judgment. The applicants lodged an appeal on a point of law but by a judgment of 4 November 2008 the Court of Cassation declared that appeal inadmissible.

On 21 November 2011 the Human Rights League and the *Syndicat de la magistrature* (legal services union) published a press release on their websites: "Rather than wait quietly for the judgment, the Ministry of Foreign Affairs has taken it upon itself to offer them money to drop their action. Naturally, they have refused because they believe that civil liberties are not for sale".

On 22 November 2011 *Libération*, a national newspaper, published an article entitled "The reapers, not on record, not for sale" with the following strap line "DNA: the State is attempting to avoid an adverse judgment from the European Court of Human Rights". The article explained the context of the case and two similar cases (*Mandil v. France* and *Deceuninck v. France*) pending before the Court.

On 6 December 2011 the newspaper *Ouest-France* published an article entitled "GM reapers turn down the State's money" with the following strap line "To settle a matter pending before the European Court of Human Rights, the State is offering each of the 32 GM activists from Villereau (Loiret) a cheque for €1,500. Their complaint relates to their details being stored in the DNA database."

### ***Deceuninck v. France, application no. 47447/08***

The applicant, Benjamin Deceuninck, is a French national who was born in 1980 and lives in Le Martint. On 15 September 2001 Mr Deceuninck, a market gardener and active in the trade union movement, together with around 40 others, uprooted experimental transgenic beetroot crops in a field belonging to Advanta in the *département* of Nord.

Eleven people, including Mr Deceuninck, were arrested and prosecuted for "serious and concerted damage to another's property". By a judgment of 3 November 2005 he was given a one-month suspended prison sentence.

Following that conviction, the public prosecutor applied to the gendarmes for a DNA sample to be taken from Mr Deceuninck. Asked to report to the gendarmerie on 23 June 2006, Mr Deceuninck appeared but refused to provide a sample on the ground that it amounted to an infringement of his dignity and physical integrity, that it constituted a violation of his personal freedom and that it was unnecessary. By a judgment of 29 September 2006 Mr Deceuninck was ordered to pay a fine of EUR 500. That judgment was upheld by the Nîmes Court of Appeal which held that the offence had been constituted by the refusal to provide a biological sample. The Court of Appeal held, moreover, that the legal instrument on which the prosecution had been based should be considered to be a security measure intended to facilitate the identification and detection of the perpetrators of criminal acts. The Court of Cassation rejected the appeal on a point of law.

On 21 November 2011 the Human Rights League and the *Syndicat de la magistrature* published the above-mentioned press release on their websites and on 22 November 2011 *Libération* published the article entitled "The reapers, not on record, not for sale".

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Mandil complained about his conviction for refusing to provide a biological sample to be stored on the national computerised DNA database. Relying on the same Article, the 32 applicants argued that the storage of their DNA on the national computerised database and the conviction of a number of them for refusing to provide a biological sample amounted to a violation of their right to respect for private life. Relying on Article 7 § 1 (no punishment without law), Mr Deceuninck argued that the law authorising DNA sampling had not been in force on the date his offence was committed. Relying on Article 8, he submitted that the order to take cell samples containing his genetic information constituted a disproportionate interference with his integrity and his private life.

The decision was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
 Elisabet **Fura** (Sweden),  
 Karel **Jungwiert** (the Czech Republic),  
 Mark **Villiger** (Liechtenstein),  
 Ann **Power-Forde** (Ireland),  
 Ganna **Yudkivska** (Ukraine),  
 André **Potocki** (France), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### [Article 39 § 2 of the Convention and Rule 62 of the Rules of Court](#)

The Court reiterated that in accordance with Article 39 § 2 of the European Convention on Human Rights and Rule 62 of the Rules of Court, negotiations with a view to reaching a friendly settlement were confidential.

That confidentiality rule was absolute and ruled out any case-by-case assessment of the amount of information disclosed. A breach of that confidentiality obligation could be considered to be a breach of the right of individual petition and result in the application being rejected.

The Court had ruled on many occasions that domestic law rules of procedure are intended to ensure the proper administration of justice and respect for the principle of legal certainty; the same finding was true of the Convention and the Rules of Court.

The rule concerning the confidentiality of negotiations with a view to a friendly settlement was of particular importance in so far as it was intended to protect the parties and the Court itself from any attempt to exert political or any other kind of pressure. Breach of that rule amounted to abuse of process.

Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court concerning friendly settlement prohibited the parties from publicising the information at issue, whether through the media, in correspondence capable of being read by a large number of people or in any other way. The applicants had been informed of the strict confidentiality of the negotiations conducted with a view to reaching a friendly settlement. In the today's cases, the information available to the Court had made it possible to establish that the applicants and their lawyers had knowingly disclosed to the press details of negotiations on a potential friendly settlement of the case. The Court noted that such conduct had demonstrated malicious intent and at the very least unfair exploitation because that information had been accompanied by comments capable of discrediting the Government's actions, which had been taken in accordance with the rules in force.

The Court considered that the applicants had violated the principle of confidentiality enshrined in Article 39 § 2 of the Convention and Rule 62 of the Rules of Court and that their conduct had constituted a violation of the right of individual petition for the purposes of Article 35 § 3 (a) of the Convention. The applications were therefore rejected and declared inadmissible.

*The decision is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.