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

Press Release
issued by the Registrar of the Court

ECHR 402 (2019)
28.11.2019

Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 25 judgments on Tuesday 3 December 2019 and 106 judgments and / or decisions on Thursday 5 December 2019.

*Press releases and texts of the judgments and decisions will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 3 December 2019

Petrescu v. Portugal (application no. 23190/17)

The applicant, Daniel Andrei Petrescu, is a Romanian national who was born in 1987. He currently lives in Romania.

The case concerns Mr Petrescu's conditions of detention in two prisons in Portugal, where he was held between 2012 and 2016.

In 2012 Mr Petrescu was arrested and placed in detention in the Lisbon police prison in order to serve a seven-year prison term for theft and criminal conspiracy. He was held there between 9 March 2012 and 17 October 2014, when he was transferred to Pinheiro da Cruz Prison; he was released on 19 December 2016.

In his application Mr Petrescu complains, in particular, about his conditions of detention, especially prison overcrowding, a lack of hygiene and heating, and unsanitary conditions.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Petrescu alleges that he was detained in inhuman and degrading conditions in Portugal.

Jevtović v. Serbia (no. 29896/14)

The applicant, Mališa Jevtović, is a Serbian national who was born in 1974 and lived in Belgrade. He is currently serving a prison sentence.

The case concerns his alleged ill-treatment by prison guards, which he argues amounted to torture.

Mr Jevtović was arrested in 2005 on charges of committing sexual acts against a three-year-old girl which led to her death. He was convicted in 2009 and sentenced to 40 years' imprisonment, which was upheld on appeal in 2011.

During his pre-trial detention in Belgrade District Prison from 2005 to 2011 and in Požarevac-Zabela Correctional Institution between 2011 and 2013 there were four incidents in particular – on 11 June 2007, 18 December 2009, 22 December 2011 and 24 December 2011 – when he alleged he had suffered injuries.

In each case prison guards used force, including rubber truncheons, on the applicant. The prison authorities found in relation to the first three incidents that the guards had used justified and lawful force to subdue the applicant, either after an argument with another prisoner or because he had refused to obey prison regulations.

The fourth incident was not registered in any official records but was recorded by the Ombudsman after visiting the applicant and hearing his complaints. The prison was not able to identify with certainty how the applicant had been injured in that incident.

The applicant lodged a constitutional appeal in September 2011. The Constitutional Court found in July 2013 that the applicant had suffered a violation of his right to his physical and mental integrity, both because of actual harm and the lack of a proper investigation, in all four incidents. It awarded him 1,000 euros (EUR) in respect of non-pecuniary damage and ordered that the official investigation into the incident of 24 December 2011 be expedited.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention, the applicant complains of being ill-treated by prison guards and in particular that he was tortured in the four incidents. He also complains under the same Article of the lack of an effective official investigation.

Paunović v. Serbia (no. 54574/07)

The applicant, Dragoslav Paunović, is a Serbian national who was born in 1956 and lives in Soko Banja (Serbia).

The case concerns his complaint about a former deputy public prosecutor being on the appeal court bench which upheld a conviction against him.

In December 2006 the applicant was sentenced to six months' imprisonment for causing bodily harm and death by dangerous driving after an indictment was issued by the Aleksinac Municipal Public Prosecutor's Office. The conviction was upheld on appeal.

The applicant subsequently lodged an appeal on points of law, alleging that the appeal court had not been impartial as it had included Judge B.K., a former deputy prosecutor who had worked at the Aleksinac Municipal Public Prosecutor's Office immediately before joining the judiciary in August 2006. The Supreme Court of Serbia dismissed the appeal on points of law, finding in particular that Judge B.K. had not taken part in the applicant's prosecution when he was a deputy prosecutor.

Relying on Article 6 § 1 (right to a fair trial / access to court), the applicant complains that his appeal was not examined fairly because of the presence of Judge B.K. on the panel. He also raises a complaint about the judge lacking impartiality as he was the brother of a man whom the applicant, who worked as a tax inspector, had sought to have indicted under misdemeanour proceedings.

I.L. v. Switzerland (no. 72939/16)

The applicant, I.L., is a Swiss national who was born in 1988.

The case concerns a preventive measure imposed on I.L. between 13 June 2016 and 23 September 2016. I.L. argues that there was no legal basis for that preventive measure under Swiss law.

On 24 June 2011 the Supreme Court of the Canton of Berne upheld a judgment by the Regional Court of Jura Bernese-Seeland, which had sentenced I.L. to 14 months' imprisonment and to an institutional treatment measure. Execution of the prison term was suspended pending completion of that measure. This judgment became final.

Under Article 59 of the Swiss Criminal Code, an institutional treatment measure cannot exceed five years; however, if the conditions for release on licence are not met after five years, the judge may, at the request of the executing authority, order an extension of the measure for a maximum period of five years on each renewal.

On 24 May 2016 the division with responsibility for the application of sentences and measures at the Canton of Berne's judicial execution office asked the Regional Court of Jura Bernese-Seeland to order a five-year extension of the institutional treatment measure.

Pending that decision, the regional court with responsibility for coercive measures ordered that I.L. be detained for reasons of security between 13 June 2016 and 23 September 2016. The applicant appealed against that decision, arguing that it had no legal basis, but his appeal was unsuccessful. At last instance, the Federal Supreme Court held that, in accordance with its settled case-law, the

provisions of the Code of Criminal Procedure on pre-trial detention were applicable by analogy to the present case.

On 20 June 2019 I.L. was released on licence with a two-year probationary period.

Relying on Article 5 § 1 (right to liberty and security), I.L. alleges that his detention between 13 June and 23 September 2016 was a deprivation of liberty that was not in accordance with Swiss law.

Kırdök and Others v. Turkey (no. 14704/12)

The applicants, Mehmet Ali Kırdök, Mihriban Kırdök and Meral Hanbayat, are Turkish nationals who were born in 1954, 1958 and 1980 respectively and live in Istanbul (Turkey).

The applicants, all of whom are lawyers, complain about the seizure of their electronic data by the judicial authorities for the purposes of criminal proceedings brought against another lawyer (Ü.S.) who shared their office.

In 2011 the Istanbul prosecutor's office launched an investigation to detect and expose the secret channels of communication put in place between Abdullah Öcalan and his former organisation (the PKK – the Kurdistan Workers' Party, an illegal armed organisation – and the KCK). A judge at the Istanbul Assize Court made an order in respect of the activities of Ü.S., who was arrested the following day at his home. The police conducted searches at the office that he shared with the applicants. It copied all of the data stored on the hard drive of the computer used jointly by the lawyers and on a USB key belonging to Ms Hanbayat.

The applicants subsequently appealed against the assize court judge's order, both on their own behalf and as Ü.S.'s representatives. In particular, they requested the restitution or destruction of their digital data, arguing that it did not belong to Ü.S., was protected by legal professional privilege and had been seized without any order to that effect. The prosecutor's office presented its observations, stating that as the data in question had not yet been transcribed, it was impossible to identity exactly who it belonged to. The assize court dismissed the applicants' claims, considering that the contested order had been made in accordance with the law and procedure.

Relying on Article 8 (right to respect for one's private and family life, home and correspondence) and Article 13 (right to an effective remedy), the applicants allege that legal professional privilege, based on the confidentiality of their relations with their clients, was breached in that digital files concerning those clients' cases was copied by the judicial authorities during a search and that those copies were seized in spite of the fact that they were irrelevant for the investigation being carried out in respect of another lawyer.

Parmak and Bakir v. Turkey (nos. 22429/07 and 25195/07)

The applicants, Şerafettin Parmak and Mehmet Bakır, are Turkish nationals who were born in 1955 and 1963 respectively and live in Denizli (Turkey) and Berlin (Germany).

The case essentially concerns domestic legislation on terrorism and its interpretation by the domestic courts.

The applicants were taken into police custody in 2002 following an investigation into flyers distributed in Izmir by the Bolshevik Party of North Kurdistan/Turkey ("the BPKK/T"), a pro-Kurdish organisation which was subsequently designated as a terrorist organisation in proceedings against the applicants.

During the proceedings the applicants denied any involvement in the BPKK/T, and stated that in any event there was nothing in the case file to suggest that the organisation was involved in violence and was therefore terrorist. They submitted that the flyers had not made any incriminating statements, and had been nothing more than the legitimate exercise of freedom of thought and expression.

The domestic courts ultimately convicted the applicants of membership of an illegal organisation in 2006 and sentenced them to two years and six months' imprisonment. They based their findings on a note by the General Security Directorate which classified the BPKK/T as a terrorist organisation whose ultimate aim was to bring about an armed revolution in Turkey. They also relied on an identification parade, BPKK/T flyers and periodicals seized during a search of Mr Parmak's apartment and the organisation's manifesto discovered in a co-accused's apartment.

In convicting the applicants, the courts relied on the relevant domestic legislation as amended in 2003 to define terrorism as acts that were "committed using violence and coercion". In the applicants' case, the court found that even though the members of the organisation had not resorted to physical violence, they had used "moral coercion" or intimidation in their confiscated documents which constituted a form of violence.

The applicants had in the meantime – in January 2003 – been released and had had a travel ban imposed on them. Mr Bakır made seven applications to the courts for the ban to be lifted, explaining each time that he resided in Germany and that the ban had a profound impact on both his professional and private life. The courts either rejected his requests, referring to the ongoing proceedings, or did not reply at all. The ban was eventually lifted in June 2009 when he had served his sentence.

Relying on Article 7 (no punishment without law), the applicants complain that their conviction was based on too broad an interpretation of the definition of terrorism, notably that violence, which is a component of a terrorist offence, could be taken to include moral coercion. They also both complain under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) that their convictions breached their right to share ideas and impart information.

Mr Bakır also complains that the ban on him travelling while the criminal proceedings were ongoing was not justified, in breach of Article 8 (right to respect for private life).

Thursday 5 December 2019

Hambardzumyan v. Armenia (no. 43478/11)

The applicant, Karine Hambardzumyan, is an Armenian national who was born in 1956 and lived in Yerevan prior to her detention. She was serving a sentence of imprisonment in Abovyan correctional facility when her application was lodged.

The case concerns her complaint that the police did not have a valid court warrant to place her under secret surveillance during a criminal investigation.

While the applicant was working as the deputy head of the women's unit of Abovyan correctional facility, one of the prisoners reported to the head of the Department Against Organised Crime of the Armenian Police that the applicant had demanded a bribe in return for a transfer to an open prison.

The authorities sought and obtained a court order to carry out secret surveillance. They provided the prisoner with recording equipment to be used during a meeting with the applicant, intercepted their telephone conversations and made a video-recording of the handover of the bribe money, which was given in marked banknotes.

When the investigation was completed in May 2010, the applicant was given access to the case file which was when she became aware of the secret surveillance.

During her trial, she argued unsuccessfully that the covert surveillance material should be excluded as the court warrant had not been valid: it had been vague as it had not named her as the person to be subjected to surveillance. The trial court convicted the applicant of taking bribes and of fraud and sentenced her to nine years' imprisonment, upheld on appeal in March 2011.

The applicant complains about the covert surveillance and its subsequent use in the court proceedings against her under Article 8 (right to respect for private and family life, home and correspondence) and Article 6 § 1 (right to a fair trial).

Makeyan and Others v. Armenia (no. 46435/09)

The applicants, Petros Makeyan, Shota Saghatelyan and Ashot Zakaryan, are Armenian nationals who were born in 1954, 1947, and 1966 respectively. The first applicant lives in Yerevan, while the second two applicants live in Gyumri (Armenia).

The case concerns the applicants' conviction for obstructing the work of an electoral commission at a polling station during the 2008 presidential elections.

During those elections the applicants were involved in the campaign for the main opposition candidate, Levon Ter-Petrosyan.

Criminal proceedings were instituted against them after the day of the election on 19 February 2008 for having an argument with members of the electoral commission at the Gyumri polling station, stopping the commission from working for half an hour. They were all arrested and placed in detention.

The applicants denied the allegations, saying that they had each visited the polling station separately, and had voiced concerns over ballot-box stuffing and wrong passports being stamped.

During the ensuing investigation 11 witnesses, including members of the commission and proxies of the presidential candidates, were questioned and stated that the applicants had disrupted voting by arguing with, shouting at and threatening them.

Of the nine witnesses summoned to attend the applicants' trial in May 2008, seven retracted their statements, stating that the investigator had either guided them or dictated what they had to say. One of the witnesses summoned, however, confirmed his pre-trial statements.

The applicants were found guilty as charged in June 2008. Mr Makeyan and Mr Zakaryan were sentenced to several years' imprisonment each, while Mr Saghatelyan was given a suspended sentence and released. The applicants' conviction was essentially based on the statements made at the pre-trial stage by the 11 witnesses, which the trial court found more credible. In particular, it considered that the witnesses had retracted their earlier statements because they had feared repercussions from the applicants' supporters, as evidenced by some of their requests for permission not to attend the trial owing to harassment.

The applicants' ensuing appeals, challenging the admission of the pre-trial statements which they argued were unreliable, were all unsuccessful.

Mr Makeyan and Mr Zakaryan were released in June 2009 under an amnesty.

Relying on Article 6 § 1 (right to a fair trial), the applicants complain that the criminal proceedings against them were unfair because the domestic courts used retracted pre-trial statements to convict them, without regard for crucial witness testimony made on oath at trial that those statements had been made under duress .

Abil v. Azerbaijan (no. 2) (no. 8513/11)

The applicant, Baybala Alibala oglu Abil, is an Azerbaijani national who was born in 1952 and lives in Baku.

The case concerns his being prevented from running in parliamentary elections in November 2010.

The applicant was registered as a candidate in Garadagh constituency No. 11 for the Classic Popular Front Party for parliamentary elections due on 7 November 2010.

In October 2010, before the start of the campaigning period allowed by law, posters for the applicant appeared in two places in his constituency, Qizildash and Alat.

The Garadagh Constituency Electoral Commission and the Central Election Commission found that the applicant had broken campaigning laws, although he denied all knowledge of the posters and said they had been put up in order to discredit him. He also raised complaints about the procedures followed by the commissions, submitting in particular that there had been a lack of reliable evidence against him, that he had not been given decisions in his case and that they had not properly examined his arguments.

Courts upheld the electoral commissions' findings against the applicant. A warning was issued against him for the first incident and he was fined for the second. Later the same month the Baku Court of Appeal granted a request by the Constituency Electoral Commission to cancel the applicant's registration as a candidate for the elections after he had been fined. The Supreme Court rejected an appeal by the applicant against the cancellation of his candidacy in November 2010.

The applicant complains that he was arbitrarily disqualified from standing in the election, relying on Article 3 of Protocol No. 1 (right to free elections), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination). He also complains under Article 34 (right of individual petition) about the authorities seizing his Strasbourg Court case file from his lawyer's office.

Tagiyev and Huseynov v. Azerbaijan (no. 13274/08)

The applicants, Rafig Nazir oglu Tagiyev and Samir Sadagat oglu Huseynov, are Azerbaijani nationals who were born in 1950 and 1975 respectively. Mr Tagiyev, now deceased, lived in Baku and was a well-known writer and columnist. Mr Huseynov lives in Lankaran (Azerbaijan) and used to work as editor-in-chief of *Sanat Gazeti (Art Newspaper)*.

The case concerns the applicants' conviction for the publication of an article in November 2006 in *Sanat Gazeti* as part of a series written by Mr Tagiyev comparing Western and Eastern values. The article, entitled "Europe and us", led to criticism by various Azerbaijani and Iranian religious figures and groups and to a religious fatwa calling for the applicants' death.

Shortly after publication of the article, the applicants were prosecuted for inciting religious hatred and hostility. A district court ordered the applicants' detention pending trial.

The investigator in charge of the case ordered a forensic linguistic and Islamic assessment of the article. The resulting report characterised certain remarks, in particular those concerning morality in Islam, the Prophet Muhammad, Muslims living in Europe and Eastern philosophers, as incitement to religious hatred and hostility.

Endorsing the conclusions of that report, the domestic courts found the applicants guilty as charged in May 2007 and sentenced them to three and four years' imprisonment respectively. All their subsequent appeals were unsuccessful.

The applicants were released in December 2007 following a presidential pardon, having spent more than one year in detention.

Mr Tagiyev's death in a stabbing outside his home in 2011 is part of a separate application which is pending before the European Court of Human Rights.

Relying in particular on Article 10 (freedom of expression), the applicants allege that their criminal conviction was unjustified and excessive.

J.M. v. France (no. 71670/14)

The applicant, J.M., is a French national who was born in 1981 and lives in Lyon. The case concerns the applicant's complaint that he was subjected to inhuman and degrading treatment and a

disproportionate use of force by prison staff while he was imprisoned, and his allegation that the subsequent investigation was insufficiently effective and independent.

On 5 July 2007 J.M., who wished to be transferred to a prison closer to his family, deliberately cut himself on the forearm. He was taken to the medical wing, where the doctor refused to send him to a hospital psychiatric unit as he requested, but recommended that he be transferred to another prison. J.M refused to return to his cell and was placed in a waiting room. In view of the applicant's virulent attitude, the governor decided to transfer him to the punishment wing. After further incidents and fresh discussions, J.M. agreed to be placed in a cell in the segregation unit pending his transfer to another prison, planned for the following day. During the night J.M. set fire to papers in his cell; the wardens intervened with a fire hose. J.M., who was soaked, was again transferred to a cell in the punishment wing.

On 6 July 2007, during his transfer from Salon-de-Provence Prison to Varennes-le-Grand Prison, J.M. was placed in the care of three wardens following fresh incidents. His feet were attached with standard-issue restraints and he was handcuffed. Since he was wearing only a T-shirt, a warden gave him a sheet to cover himself before he entered the police van. On arrival at Varennes-le-Grand Prison, J.M. was practically naked; he was wearing a sports top and the sheet had slipped from his shoulders. He had bruises on his face, neck and chest. He claimed to have been subjected to violence by prison wardens before leaving Salon-de-Provence Prison.

On the same date an *in flagrante* procedure was opened by the public prosecutor and entrusted to the gendarmerie. The preliminary investigation was discontinued on the grounds that the investigation had not enabled the offence to be defined. At the close of an internal administrative investigation conducted on the same day, 6 July 2007, the investigator concluded that warden M.Q., who was responsible for the transfer, had committed a disciplinary fault in allowing the applicant to leave wearing only a T-shirt and a sheet. The warden was temporarily removed from his duties. At the end of 2008 the general inspectorate of prison services held that, so far as the transfer conditions were concerned, warden M.Q. ought to have waited for the prison's clothing store to open and clothes to be issued before leaving for Varennes-le-Grand.

On 8 January 2009 J.M. lodged a complaint together with an application to join the proceedings as a civil party for acts of torture and barbarity by persons exercising public authority involving the use of a weapon. On 15 May 2009 a judicial investigation was opened. On 4 July 2012 the investigating judge made an order finding that there was no case to answer, holding that the investigation had failed to define the offence complained of. J.M. lodged an appeal. The investigation division of the court of appeal upheld the decision finding no case to answer. An appeal on points of law was dismissed by the Court of Cassation.

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant alleges that he was subjected to inhuman and degrading treatment by wardens during the day and night of 5 July 2007 and the morning of 6 July. He also submits that no effective investigation was carried out into those events following his complaint and application to join the proceedings as a civil party.

Petithory Lanzmann v. France (no. 23038/19)

The applicant, Ms Dominique Petithory Lanzmann, is a French national who was born in 1957 and lives in Paris. The case concerns the applicant's request to have the gametes of her deceased son transferred to a medical establishment capable of organising for them to be used in *in vitro* fertilisation (IVF) or gestational surrogacy.

Ms Petithory Lanzmann is the widow of Claude Lanzmann, the journalist, writer and director of the film *Shoah,* who died in 2018. Their son died on 13 January 2017 as a result of a cancerous tumour that was diagnosed in 2014. As soon as he was informed of his illness, her son had expressed his wish to be a father and to have offspring, including in the event of his death. In consequence, he had deposited sperm with the *Centre d'études et de conservation des oeufs et du sperme* (CECOS) at the

Cochin Hospital in Paris, had contacted a centre in Switzerland and was considering other options for banking sperm abroad, but had been unable to proceed with those on account of his illness.

In the spring of 2017 the president of the CECOS refused to transmit to the Biomedicine Agency a request by the applicant for the transfer of her son's sperm to a health institution in Israel. The applicant made an application to the urgent-affairs judge at the Paris Administrative Court, asking that the necessary measures be taken to authorise the export of her son's sperm to a health institution in Israel which was authorised to carry out IVF treatment. She argued that the refusal to grant her request deprived her of the right to exercise the private and family life to which she was entitled to aspire by becoming a grandmother and ensuring that her son's wishes were respected. The urgent-applications judge rejected the application. The applicant appealed against that decision to the *Conseil d'Etat*, which also rejected the application.

Relying on Article 8 (right to respect for private and family life), the applicant complains that it is impossible to have access to her deceased son's sperm with a view to arranging, in line with his last wishes, IVF treatment via a gift to an infertile couple or gestational surrogacy, procedures which would be authorised in Israel or the United States.

Luzi v. Italy (no. 48322/17)

The applicant, Mr Valter Luzi, is an Italian national who was born in 1974 and lives in Mellaredo di Pianga. A daughter, G., was born on 21 April 2009 from his relationship with J.B. The case concerns the fact that he is unable to exercise his right of access to his child on account of the mother's opposition.

After four months of cohabitation, J.B. left the family home with the child to live with her own family. On 8 February 2010 Mr Luzi complained to the family courts about the difficulties he faced in exercising his right of contact and applied for shared residence rights. In February 2011 the court decided to restrict both parents' parental responsibility in favour of the municipality's social services. J.B. lodged an appeal, which was dismissed by the court of appeal.

In December 2011 the social services transmitted a report to the court indicating that meetings were taking place in a very difficult atmosphere on account of the conduct of both parents. In February 2013 the social services reported that the disputes between the parents were getting worse. On 21 September 2013 the court was informed that the meetings between Mr Luzi and his daughter had been suspended. In January 2014 the court decided to grant sole residence rights to the mother, in the child's interests. In December the court of appeal ordered J.B. to comply with the court's decision and to respect the schedules of meetings between the father and daughter.

In the course of 2014 Mr Luzi was able to meet his daughter on only three occasions. In September 2015 the court of appeal revoked the order granting the mother sole residence rights, in favour of shared residence rights, limited the parental responsibility granted to both parents and made a residence order entrusting the child to the social services, requesting that they signal any violations of its decision to the guardianship judge and the prosecutor's office. From October 2016 onwards Mr Luzi was unable to meet his daughter on account of the mother's opposition and the child's refusal. In February 2017 the social services reported that the mother was manipulating the child in order to turn her against her father and prevent any contact with him.

A criminal complaint lodged in May 2015 by Mr Luzi, seeking to have J.B. punished for failure to comply with the decision on contact rights was discontinued for a lack of *mens rea*. A second complaint was discontinued for the same reason.

The applicant submits that there has been a violation of his right to respect for family life, on the grounds that he has been unable to exercise his contact rights for eight years, in spite of several judicial decisions. He relies on Article 8 (right to respect for private and family life).

Zevnik and Others v. Slovenia (no. 54893/18)

The applicants are three Slovenian nationals, Metka Zevnik, born in 1946, Aleš Primc, born in 1973, and Franc Kangler, born in 1965, and two political parties, Lista Franca Kanglerja – Nova ljudska stranka (Kangler's New People's Party) and Glas za otroke in družine (The Voice for Children and Families).

The case concerns the authorities' rejection of two lists of candidates for an early election.

The fourth and fifth applicants formed a coalition in 2018 for early parliament elections due in June of that year. The coalition submitted lists of candidates to all of Slovenia's eight constituencies.

In May 2018 the electoral commissions of the first and sixth constituencies rejected the coalition's lists, which included the first and second applicants, as they had not met the required level of 35% female representation as a share of the total actual number of candidates on each list.

Representatives of the rejected lists appealed to the Supreme Court: they argued that the number of women on both lists was more than 35% of the total number of candidates as the same female candidates would run in more electoral districts in the constituencies in question. Alternatively, the electoral commissions should have given the party time to correct the problem.

The Supreme Court dismissed their appeals. Among other things, it held that the quota requirement in the law was clear and that what mattered was the number of actual candidates rather than the fact that the same person would stand in several districts.

The representatives of the rejected lists appealed further to the Constitutional Court, which voted by seven to two against considering the case. It found that election lists had to be submitted in good time and be in conformity with the law, which was clear on the quota requirements.

The applicants complain that the rejection of the lists of candidates violated Article 3 of Protocol No. 1 (right to free elections) to the European Convention. They complain under the same provision and under Article 10 (freedom of expression) that they were denied free air-time and access to radio and television debates. They complain in addition that they did not have a public hearing in the Supreme Court, relying on Article 6 § 1 (right to a fair hearing).

Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland (no. 68995/13)

The applicants are, firstly, the Swiss Radio and Television Company (SSR), which provides radio and television services on the basis of a State (public service) concession; and, secondly, three members of the editing team from the programme *Puls*, which covers topical health and medical issues.

The case concerns the outcome of a complaint about the broadcasting of a programme on Botox. In particular, the domestic authorities noted that the SSR programme had not mentioned the issue of the animal experiments required in manufacturing the product and had not therefore complied with its obligation, as a public-service provider, to portray the issue objectively.

In January 2012 the SSR broadcast a programme about Botox (Botulinum toxin), following which the association Verein gegen Tierfabriken Schweiz (VgT) filed a complaint with the Independent Radio and Television Appeal Board (AIEP). The association argued, in particular, that the programme had not referred to the issue of the animal experiments (DL-50 tests) which are necessary in manufacturing Botox, in breach of the provisions of the Federal Radio and Television Act obliging the SSR to present events in an objective manner.

In August 2012 the AIEP accepted the complaint and held that in order to ensure the free formation of public opinion it had been necessary to provide information about the animal experiments. It asked the SSR to submit a report on the measures taken following the finding of the violation. It did not receive legal costs.

In December 2012, on an appeal by the SSR, the Federal Supreme Court upheld the AIEP's decision, specifying, among other points, that the fact of failing to refer to the way in which the product dosage safety was tested for each production batch amounted to an omission of an essential element in enabling members of the public to form their own opinions, as patients and consumers, on the Botox theme.

In June 2013 the SSR submitted a report to the AIEP on the measures taken, indicating, among other points, that the contested programme had been withdrawn from the channel's video portal. In response, the AIEP informed it that the measures taken were only partly sufficient. The proceedings were closed.

In October 2015 the SSR broadcast another programme about Botox without referring to the animal experiments required when manufacturing this product.

Relying on Article 10 (freedom of expression) the applicants complain of the chilling effect of the Federal Supreme Court's judgment.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Tuesday 3 December 2019

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Prepeliţa v. the Republic of Moldova	50799/14
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Consocivil S.A. v. the Republic of Moldova	25795/07
Snegur v. the Republic of Moldova	22775/07
Babiuc v. Romania	55958/15
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S.C. Totalgaz Industrie S.R.L. v. Romania	61022/10
Kalashnikov v. Russia	2304/06
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Caratti and Others v. Italy	29827/10
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