



## Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing five judgments on Tuesday 8 January 2019 and 21 judgments and / or decisions on Thursday 10 January 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](http://www.echr.coe.int))*

### Tuesday 8 January 2019

#### [Prunea v. Romania \(application no. 47881/11\)](#)

The applicant, Petru Prunea, is a Romanian national who was born in 1945 and lives in Cluj-Napoca (Romania).

The case concerns a finding of defamation against the applicant after he wrote an article about a Parliamentary election candidate.

In November 2008, ahead of a Parliament election, Mr Prunea wrote an article which questioned the honesty of a local candidate and accused him of taking out a loan to fund his electoral campaign, which he had refused to repay. In April 2009 the candidate took Mr Prunea to court, alleging that the article had damaged his reputation and made him lose the election. He also complained about another article, written in January 2009, and leaflets distributed before the election.

In July 2009 the Cluj-Napoca Court of First Instance allowed the former candidate's claim, ordering Mr Prunea to pay 20,000 euros in damages and just under 3,300 Romanian lei in costs. The court found that Mr Prunea had not proved that his statements were true and noted that the loan in question had been extended by Mr Prunea's own brokerage company and was the subject of an Arbitration Tribunal case. Even if they had been true, the statements had been defamatory and should have not been made in public, especially since they concerned matters of a private, commercial nature.

The County Court upheld the judgment on appeal but reduced the damages to EUR 5,000.

Relying in particular on Article 10 (freedom of expression) of the European Convention on Human Rights, Mr Prunea complains about the court orders to pay damages.

[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.

**Dubinkin v. Russia** (no. 9305/08)

**Nikotin v. Russia** (no. 80251/13)

**Stepanova v. Russia** (no. 7506/17)

**Zinoviyeva v. Russia** (no. 69272/13)

Thursday 10 January 2019

[Khadija Ismayilova v. Azerbaijan \(nos. 65286/13 and 57270/14\)](#)

The case concerns an alleged smear campaign against a well-known investigative journalist.

The applicant, Khadija Rovshan qizi Ismayilova, is an Azerbaijani national who was born in 1976 and lives in Baku. She has worked as an investigative journalist since 2005, reporting in particular for Azadliq Radio (Radio Free Europe/Radio Liberty). Her work has often been highly critical of the Government. In particular between 2010 and 2012 she investigated and reported on alleged corruption by the Azerbaijani President's family.

In March 2012 Ms Ismayilova received a threatening letter with still pictures taken from a video of her and her then boyfriend having sexual intercourse. The video had been filmed in the bedroom of her flat with a hidden camera. The letter, posted from Moscow, stated "Whore, refrain from what you are doing, otherwise you will be shamed!".

Soon after, the video was posted on the Internet. Another two intimate videos were disseminated in 2013. Around the same time as the posting of the first video three State-controlled newspapers ran stories accusing her of a lack of professionalism, anti-government bias and immoral behaviour.

Ms Ismayilova discovered many hidden cameras in her flat, a newly installed second telephone line and data wires used to transmit footage from the cameras.

The prosecuting authorities launched criminal proceedings over the threatening letter and the covert filming. Several procedural steps were taken, including questioning Ms Ismayilova and granting her request to take a formal statement from the telephone engineer (an employee of State-owned Baktelekom) who admitted that he had been ordered to install a second telephone line in Ms Ismayilova's flat and to trace wires to it. Between April 2012 and August 2013, the authorities also ordered an expert examination of the threatening letter's postal packaging, the pictures it contained and the wires found in the flat.

In response to Ms Ismayilova's public complaints about the alleged ineffectiveness of the investigation, the prosecuting authorities published a status report in April 2012 noting that they had questioned a number of witnesses, including Ms Ismayilova's boyfriend, friends, colleagues and members of her family.

Ms Ismayilova immediately lodged a civil claim, arguing that the report had disclosed information on her private life, namely the full names and occupations of her friends, colleagues and family, as well as her home address and the identity of the boyfriend who had featured in the video.

Her claim was dismissed, as were all her subsequent appeals. The courts found in particular that the purpose of the report had been to counter the possibility of people forming a negative opinion about the prosecuting authorities on account of Ms Ismayilova's complaints in public about the ineffectiveness of their investigation into her case.

Between 2013 and 2014, Ms Ismayilova lodged a number of unsuccessful complaints with the domestic courts, alleging that the prosecuting authorities were delaying the investigation and, in response to her enquiries, had only vaguely indicated that the investigation was still ongoing.

Ms Ismayilova has another application (no. 30778/15) with the European Court concerning her arrest and detention in 2014 for large-scale misappropriation and tax evasion as well as abuse of power when working for Azadliq Radio. She was partially acquitted in 2016 and released.

Relying on Article 8 (right to respect for private and family life, the home and the correspondence), Ms Ismayilova alleges that the State was either directly responsible for the very serious intrusions into her private life, namely the threatening letter, the hidden cameras in her bedroom and the posting of intimate video recordings online, or, in any event, did not comply with its duty to take

measures to protect her privacy rights by failing to conduct an effective investigation and identify those responsible. She further alleges under the same article that the status report disclosed an excessive amount of sensitive personal information collected during the course of the investigation, which added to her feeling of being in danger. Lastly, relying on Article 10 (freedom of expression), she argues that the State was either directly involved in or failed to take steps to prevent the systematic smear campaign against her. She submits in particular that the harassment in her case is part of a pattern of politically motivated smear campaigns against journalists in Azerbaijan.

#### [Čutura v. Croatia \(no. 55942/15\)](#)

The applicant, Dragan Čutura, is a Croatian national who was born in 1980 and lives in Vrbovec (Croatia).

The case concerns his complaint of a lack of procedural safeguards when he was committed by a court to a psychiatric hospital.

Mr Čutura was found guilty in January 2014 of making serious threats to his neighbours in a state of mental derangement. He was already being held in pre-trial detention in Zagreb Prison hospital and the trial court ordered his committal to a psychiatric institution as a danger to others. Mr Čutura appealed unsuccessfully against the trial court's ruling.

In April 2014 the Zagreb County Court ordered his placement in Vrapče Psychiatric Hospital for six months from May 2014. The hospital later asked to extend his period of involuntary confinement, which the County Court agreed to in August 2014, committing him for a further year.

The applicant's father challenged that decision, alleging in particular that Mr Čutura's court-appointed lawyer had been ineffective and that the family had not been informed about the proceedings to keep him in hospital. The father's appeals, including a complaint to the Constitutional Court, were dismissed. Mr Čutura was given conditional release in August 2015.

Relying on Article 5 § 1 (right to liberty and security / persons of unsound mind), the applicant complains that he did not have proper procedural safeguards in the proceedings on his involuntary confinement in the hospital. He also raises a complaint related to the initial criminal proceedings under Article 6 § 1 (right to a fair trial / independent and impartial tribunal).

#### [Bild GmbH & Co. KG and Axel Springer AG v. Germany \(nos. 62721/13 and 62741/13\)](#)

The applicants, the limited liability companies Bild GmbH & Co. KG and Axel Springer AG, are legal persons established under German law and based in Berlin. The second applicant company publishes the mass-circulation daily newspaper *Bild* and the first manages the newspaper's website. The case concerns a ban on the two applicant companies publishing or distributing a disputed photograph.

On 20 March 2010 X, a well-known Swiss journalist who presented the weather forecast on television, was arrested and remanded in custody on suspicion of the gross rape and assault of his ex-girlfriend. On 21 July 2010 the *Bild* newspaper and website published an article accompanied by two photographs, one of which – the subject of the present dispute – showed X seated bare-chested in the yard of a prison surrounded by other prisoners. X was released on 29 July 2010. The criminal proceedings, which attracted heavy media coverage, ended in an acquittal.

On 15 December 2010 X applied to the Cologne Regional Court for a ban on any further publication of the impugned photograph and for reimbursement of his lawyer's fees. In June 2011 the court banned the applicant companies Bild and Axel Springer AG from publishing or distributing the photograph without X's consent and ordered them to reimburse some of the lawyer's fees. By two judgments of 14 February 2012 the Cologne Court of Appeal dismissed appeals by the applicant companies and reduced the amount of lawyer's fees to be reimbursed.

The Court of Appeal held that the publication and distribution of the photograph had been unlawful because the applicant companies had failed to obtain X's consent and there had been no link between the photograph and any current event. It ruled that the photograph had had no informative value. It added that even if it had had any informative value, regard should have been had to the fact that at the time the photograph had been taken X had been in a place of confinement inaccessible to the public where he had had no reason to expect to be photographed. The fact that X had long been the subject of media reports did not deprive him of protection for his privacy when in places of confinement.

The Court of Appeal dismissed appeals on points of law. On 23 March 2012 Bild and Axel Springer AG lodged two constitutional appeals, which the Federal Constitutional Court declared inadmissible.

Relying on Article 10 (freedom of expression), the applicant companies complain that the German courts infringed their right to freedom of expression and failed to comply with the criteria established by the Court in cases involving balancing Article 8 (right to respect for private life) and Article 10.

### [Wunderlich v. Germany \(no. 18925/15\)](#)

The applicants, Dirk Wunderlich and Petra Wunderlich, are two German nationals who were born in 1966 and 1967 respectively. They are a married couple and are the parents of four children.

The case concerns the withdrawal of some aspects of their parental authority and the removal of their children from their home for three weeks after the applicants refused to send them to school.

By a letter of 13 July 2012 the State Education Authority (*staatliches Schulamt*), supported by the youth office, informed the family court that Mr and Mrs Wunderlich were deliberately and persistently refusing to send their children to school, thereby endangering the children's best interests as they were growing up in a "parallel world". Two months later the Darmstadt Family Court withdrew the applicants' right to determine their children's place of residence and their right to take decisions on school matters and transferred these rights to the youth office. It also ordered them to hand their children over to the youth office for enforcement of the rules on compulsory school attendance. It found in particular that the parents' refusal to send their children to school prevented them from becoming part of the community and learning social skills such as tolerance.

Attempts by the youth office to conduct learning assessments of the children failed on several occasions between 2012 and 2013.

In April 2013 the Frankfurt am Main Court of Appeal rejected an appeal by the parents against the family court's decision. It considered that there was a concrete danger to the children's best interests as the education they were receiving from their parents could not be considered as compensating for not attending school. In October 2014 the Federal Constitutional Court refused to accept a constitutional complaint by Mr and Mrs Wunderlich for adjudication.

The children were removed and placed in a children's home for three weeks between August and September 2013. They attended school between 2013 and 2014. In June 2014 they again withdrew their children from school. Two months later, in parallel proceedings, the Frankfurt am Main Court of Appeal transferred the right to determine the children's place of residence back to the applicants, noting in particular that the learning assessment had shown that the children's level of knowledge was not alarming and that, in contrast to August 2013, a risk from Mr Wunderlich to their physical integrity could now be excluded. The Court of Appeal, however, emphasised that the decision should not be understood as permission to educate the children at home.

Relying on Article 8 (right to respect for private and family life), Mr and Mrs Wunderlich complain about the decision by the German authorities to withdraw parts of their parental authority rights by transferring them to the youth office and by executing that withdrawal in the form of forcibly removing the children from their parents and placing them in a children's home for three weeks.

[Ēcis v. Latvia \(no. 12879/09\)](#)

The applicant, Mārtiņš Ēcis, is a Latvian national who was born in 1981 and lives in the Ventspils district.

The case concerns his complaint that Latvian legislation on the execution of prison sentences discriminates in favour of women and that its application prevented him from obtaining leave to attend his father's funeral.

Mr Ēcis was found guilty of aggravated murder and extortion in 2001 and sentenced to 20 years in prison. In 2008 he became aware that women prisoners convicted of the same serious crimes as men were treated differently as they were initially placed in lower security prisons, while men were automatically detained at the maximum level of security in closed prisons.

The application of such a law meant that when Mr Ēcis applied for leave from prison to attend his father's funeral in October 2008 he was denied permission on the grounds that he was a prisoner in a closed prison. On the other hand, he argues, the authorities would have granted such a request from a woman in a similar situation as female inmates were held in partially closed prisons.

Mr Ēcis lodged three complaints with the Constitutional Court but they were all rejected.

The applicant complains that men and women convicted of the same crimes, that is, serious or particularly serious crimes, are subject to different prison regimes, in particular with regard to the right to prison leave, which meant he was not able to attend his father's funeral in a situation in which a woman prisoner would have been able to. He relies on Article 14 (prevention of discrimination), read in conjunction with Article 8 (right to respect for private and family life), Article 5 (right to liberty and security) and Article 10 (freedom of expression).

[Berardi and Mularoni v. San Marino \(nos. 24705/16 and 24818/16\)](#)

The applicants, Paolo Berardi and Davide Mularoni, are nationals of San Marino. They were born in 1963 and 1965, and live in Dogana and Faetano (both San Marino), respectively.

The case concerns two government officials who accepted bribes in return for not carrying out their professional duties with respect to safety on construction sites, and the legitimacy of their subsequent conviction and imprisonment.

In 2008 San Marino's Criminal Code was adjusted to update the law on bribery.

In 2011 Parliament set up a commission of inquiry to investigate organised crime in San Marino. It instructed the commission to investigate, among other things, the possible existence of collusion between politicians and the F. company, which could be traced back to B.

In December 2012 Mr Berardi and Mr Mularoni were, along with several others, charged with bribery. They were accused of accepting bribes from various construction companies in return for omitting to carry out onsite safety inspections and failing to sanction the companies for various violations and irregularities. They were found guilty in September 2014. The first-instance judge sentenced them both to five-and-a-half years in prison, banned them from public office for four years, and fined them 25,000 euros.

They appealed in early 2015. Specifically, they maintained that there had been no law in San Marino which criminalised the acceptance of money in return for an act of omission. They argued that, in line with the principle of "no crime without law" (*nullem crimen sine lege*), they could not be given a sentence for a crime which did not exist at the time of their impugned actions. Thus, they could not be found guilty in respect of those payments which they were accused of having accepted in return for omitting to perform certain duties prior to the 2008 alterations to the Criminal Code.

The Judge of Criminal Appeals upheld the judgment of the lower court. He ruled that, whether or not the applicants' acts of omission had violated the relevant provision of the old Criminal Code, the

fact that Mr Berardi and Mr Mularoni had accepted money in exchange for refraining from exercising their discretionary powers, or in exchange for using them in an aberrant way, meant that they had indeed engaged in acts contrary to their duties, a crime already provided for at the time of the acts in question.

Relying on Article 7 § 1 (no punishment without law), the applicants complain that they were found guilty of bribery in accordance with the wording of a criminal provision that was not in force at the time of the relevant acts. The law was thus applied retroactively to their disadvantage, in violation of their rights under Article 7.

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**Dimov v. Bulgaria** (no. 60445/15)

**Tosheva v. Bulgaria** (no. 32638/11)

**Valkova v. Bulgaria** (no. 48149/09)

**Chaniotis and Others v. Greece** (no. 78682/14)

**Gilbert v. Greece** (no. 64347/12)

**Ajmone Marsan and Others v. Italy** (n°21925/15)

**Barahona Guachamin and Others v. Italy** (nos. 33295/15, 33315/15, 39982/15, 55748/15, 55749/15, 55753/15, 56008/15, 56766/15, and 56769/15)

**Farmus v. Poland** (no. 8938/04)

**Persjanow v. Poland** (no. 39247/12)

**Raŭ v. Poland** (no. 41178/12)

**Duță v. Romania** (no. 48745/13)

**Lebedenko v. Russia** (no. 60432/13)

**Panov v. Russia** (no. 45340/09)

**Bacciocchi v. San Marino** (no. 23327/16)

**Dostenko v. the United Kingdom** (no. 23178/13)

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