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

Press Release
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# Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing six judgments on Tuesday 12 March 2019 and 23 judgments and / or decisions on Thursday 14 March 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 12 March 2019

### Guðmundur Andri Ástráðsson v. Iceland (application no. 26374/18)

The applicant, Guðmundur Andr Ástráðsson, is an Icelandic national who was born in 1985 and lives in Kopavogur (Iceland).

The case concerns the applicant's allegation that the new Icelandic Court of Appeal (*Landsréttur*) was not established by law.

The Court of Appeal (*Landsréttur*) was established as a new court on 1 January 2018

In June 2017 two judges who were among the 15 candidates that an Evaluation Committee had considered most qualified to sit on the new Court of Appeal, but who had been removed from the final list of nominees by the Minister of Justice, brought judicial proceedings against the State challenging the legality of the appointment procedure.

By final judgments in December 2017, the Supreme Court rejected their claims for compensation for pecuniary damage but granted them 700,000 Icelandic kronur (approximately 5,700 euros) as compensation for personal injury. The Supreme Court found that the Minister had violated administrative law by failing to substantiate her proposal to Parliament with an independent investigation to assess the merits of the new candidates she had proposed and who were further down the recommended list. The procedure in Parliament had also been flawed as Parliament had approved the amended list en bloc without voting on each candidate separately, as required by law.

In the meantime, Mr Ástráðsson had been convicted in March 2017 of driving without holding a valid driver's licence and while under the influence of narcotics. He appealed to the Supreme Court. As the case was not heard before the end of 2017, in accordance with Icelandic law it was transferred to the Court of Appeal. In January 2018 the Court of Appeal notified Mr Ástráðsson and the prosecution of the names of the three judges who would sit in the panel for the case, including A.E, who had not been one of the 15 judges considered best qualified judges by the Evaluation Committee. Mr Ástráðsson requested that A.E. withdraw from the case due to irregularities in the procedure to appoint her as a judge to the Court of Appeal, but his motion was rejected.

In March 2018 the Court of Appeal upheld the District Court's judgment on the merits. In April 2018 Mr Ástráðsson appealed to the Supreme Court. He mainly argued that A.E.'s appointment had not been made in accordance with the law and that he had not enjoyed a fair trial before an independent and impartial tribunal. In May 2018, the Supreme Court rejected his claims. It found that there were insufficient reasons to doubt that Mr Ástráðsson had enjoyed a fair trial before independent and impartial judges, in spite of the flaws in the procedure.

Relying on Article 6 § 1 (right to an independent and impartial tribunal established by law) of the European Convention on Human Rights, the applicant complains that the appointment of A.E. was

not in accordance with domestic law. The criminal charge against him had therefore not been determined by a tribunal established by law.

He also complains that the Supreme Court's judgment of May 2018 violated his right to be heard by an independent and impartial tribunal, as provided for in Article 6 § 1.

### Drėlingas v. Lithuania (no. 28859/16)

The applicant, Stanislovas Drėlingas, is a Lithuanian national who was born in 1931 and lives in Utena (Lithuania).

The case concerns the applicant's trial and conviction for genocide.

Mr Drėlingas, who served in the MGB and KGB Soviet security forces, took part in an operation in 1956 to detain two partisans, Adolfas Ramanauskas (whose code name was Vanagas) and his wife Birutė Mažeikaitė (code name Vanda), who were opposed to Soviet rule in Lithuania.

The two were arrested, which led to Mr Ramanauskas being severely ill-treated while in detention and then executed in 1957 while Ms Mažeikaitė had to serve eight years in a prison camp in Siberia.

In 2014, after Lithuania had regained its independence, Mr Drėlingas was charged with genocide for his role in the operation against Mr Ramanauskas and Ms Mažeikaitė. He was found guilty, with the appeal court and the Supreme Court, in April 2016, upholding his conviction.

In particular, the Supreme Court took account of the Strasbourg Court's 2015 Grand Chamber judgment in Vasiliauskas v. Lithuania, which had found a violation of Article 7 (no punishment without law). The courts in that case, which was similar to Mr Drėlingas's, had defined partisans as a separate "political group". However, a group of that kind was not protected by international law under the 1948 Genocide Convention and Mr Vasiliauskas's conviction had not been foreseeable.

Mr Drėlingas complains that his conviction for genocide breached Article 7 of the European Convention because the national courts' broad interpretation of that crime had no basis in international law.

### Ali Gürbüz v. Turkey (nos. 52497/08, 6741/12, 7110/12, 15056/12, 15057/12, 15058/12, and 15059/12)

The applicant, Ali Gürbüz, was born in 1971 and lives in Cologne (Germany). At the time he was the proprietor of the daily newspaper *Ülkede Özgür Gündem*.

The case concerns seven sets of criminal proceedings brought against Mr Gürbüz on the basis of counter-terrorism legislation making it a criminal offence to publish tracts and statements emanating from terrorist organisations.

Between 2004 and 2006 seven charges were brought against Mr Gürbüz for breaches of Law no. 3713 for publishing 11 articles about the PKK (Kurdistan Workers' Party, an illegal armed organisation) in his newspaper. Among other subjects the articles concerned the Christmas wishes of the PKK/Kongra-Gel, the toll of recent armed conflicts and statements by prisoners alleging that the solution to the Kurdish problem required dialogue with Abdullah Öcalan.

In 2007 the Assize Court found Mr Gürbüz guilty on the charge of publishing statements by a terrorist organisation and sentenced him to pay fines in each of the sets of proceedings. Those judgments were subsequently quashed by the Court of Cassation because the Constitutional Court had decided, in the meantime, to delete the word "proprietors" from section 6(4) of Law no. 3713. Consequently Mr Gürbüz was acquitted, in 2011, in all of the proceedings against him.

Relying on Article 10 (freedom of expression), Mr Gürbüz complains about the criminal proceedings against him for the publication of the articles in question in his newspaper, taking the view that

those proceedings had put pressure on him as a media professional on account of their duration and in spite of his acquittal.

### Petukhov v. Ukraine (no. 2) (no. 41216/13)

The applicant, Volodymyr Petukhov, is a Ukrainian national who was born in 1973. He is currently serving a sentence of life imprisonment following his conviction in 2004 of a number of serious offences involving organised crime.

The case principally concerns his complaint that there was no possibility of release on parole for life prisoners in Ukraine. He also alleges inadequate medical care for tuberculosis in prison, poor conditions of detention, and restrictions on family visits for prisoners given a life sentence.

He made several unsuccessful complaints between 2010 and 2015 to the prison and prosecuting authorities, as well as the Parliamentary Commissioner for Human Rights, about the allegedly appalling conditions of his detention in two prison facilities in Kherson.

Between 2010 and 2014, suffering from TB, he was regularly examined by doctors and given various screening and laboratory tests. He complained to the prison authorities of inadequate medical care during that time, in particular about shortages in the required drugs.

Before the European Court of Human Rights, Mr Petukhov complains that his life sentence is not compatible with Article 3 (prohibition of inhuman or degrading treatment) because the only possibility for him to be released is through a procedure of presidential clemency. He alleges that, under this procedure, it is not clear what life prisoners have to do to be considered for release and under what conditions.

He further alleges under Article 3 that the conditions of his detention in the two Kherson prison facilities were poor and that inadequate medical care in prison has resulted in an irreversible deterioration in his health.

Lastly, under Article 8 (right to respect for private and family life), he complains about restrictions on his wife visiting him in prison.

## 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.

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

**Dagalayeva v. Russia** (no. 19650/11)
**Makhmudova and Others v. Russia** (nos. 22983/10, 52064/11, 52173/11, 69462/11, 73948/11, 7214/12, 46621/12, 66877/12, 71672/12, and 23115/13)

## Thursday 14 March 2019

### Campion v. France (no. 35255/17)

The applicant, Marcel Adrien Campion, is a French national, a fairground attraction owner by profession, who was born in 1940 and lives in Ormesson-sur-Marne. The case concerns comments made by Mr Campion to the weekly magazine *VSD* on account of which he was found guilty of defaming Dominique Strauss-Kahn.

In the 1990s Mr Campion met Mr Strauss-Kahn, who was then Mayor of Sarcelles, MP for Val d'Oise, and Chairman of the National Assembly's Finance Committee, to discuss the take-over of an amusement park in the Val d'Oise area.

Some time later, following a high-profile court case concerning Mr Strauss-Kahn in 2011 in New York, Mr Campion was interviewed by a journalist from the magazine *VSD*. In issue no. 19 dated 25 January 2012, *VSD* published an article, with a full-cover splash headlined "DSK and money: dangerous liaisons", and the sub-heading "since his fall, people have begun to talk. Like Marcel Campion, some are spilling the beans about DSK's craving for money".

On 9 February 2012 Mr Strauss-Kahn filed a criminal complaint for defamation, seeking to join the proceedings as a civil party, against the director of the magazine, the journalist and Mr Campion. In a judgment of 21 March 2014 the court declared the three of them guilty of defamation, the first as the perpetrator and the others as accomplices. They were each fined 2,000 euros, the sentence being suspended for Mr Campion, and ordered to pay damages.

The court found that Mr Campion was unable to provide any evidence to support the comments he had made public. No direct or indirect witness had been able to confirm comments attributed to Mr Strauss-Kahn. As regards the journalist, the court found that she had endorsed the defamatory allegations made by Mr Campion, in breach of her duty to carry out a serious investigation into them. The Court of Appeal upheld the judgment, indicating that the defamatory nature of the comments had not been disputed by the applicant, who had not offered any evidence of his allegations. It added that the witnesses who had testified had merely confirmed comments made by Mr Campion, without authenticating them.

Relying on Article 10 (freedom of expression), the applicant complains of a disproportionate interference with his right to freedom of expression and in particular about the refusal of the national courts to admit his defence of good faith.

## Quilichini v. France (no. 38299/15)

The applicant, Séverine Quilichini, is a French national who was born in 1964 and lives in Paris. Born out of wedlock, her paternity was acknowledged by G.Q. in 1972. The case concerns the division of property between the two legitimate children of G.Q. and Ms Quilichini, who submits that she is the victim of discrimination on grounds of birth in respect of the succession.

Following the death of G.Q. the division of the estate was given effect by a notary in a record of 1992. The entitlements of the legitimate children were fixed at 5/12ths each and those of Ms Quilichini at 2/12ths pursuant to the former Article 760 of the Civil Code. The notarial record stipulated that the entitlements were final, regardless of any future changes to the legislation. In spite of the additional bequest of a flat in Marseilles, the share of the estate inherited by Ms Quilichini remained less than that received by her siblings. France changed its legislation in 2001, abolishing discrimination against children born out of wedlock in matters of succession.

A notarial record of 2005 provided for the division of a plot of land in Corsica which had belonged to Ms Quilichini's paternal grandfather. The heirs included Ms Quilichini, her half-brother and her half-sister, representing their deceased father. The entitlements of the heirs were again established in accordance with the former Article 760 of the Civil Code, such that the applicant was to receive one half of the share that she would have received as a legitimate child. The *tribunal de grande instance* upheld Ms Quilichini's claim in 2011 for the amendment of the record. That judgment was, however, overturned by the Court of Appeal, which ruled that the record of 1992 had settled the succession with final effect, including in respect of the property covered by the 2005 record. An appeal on points of law was dismissed in 2015.

Relying on Article 14 (prohibition of discrimination), in conjunction with Article 1 of Protocol No. 1 (protection of property), the applicant argues that she was treated differently from the other heirs in a disproportionate manner, as regards the division of property in 2005, after the change in the French law enshrining the principle of equality between all children for inheritance purposes.

## Kobiashvili v. Georgia (no. 36416/06)

The applicant, Archil Kobiashvili, is a Georgian national who was born in 1973 and lives in Tbilisi.

The case concerns his complaint about his conviction for drugs offences.

Mr Kobiashvili was convicted in 2005 of buying and possessing heroin and sentenced to six years' imprisonment.

A police report on a search of his person, statements by the two police officers who conducted the search and by two attesting witnesses who allegedly attended it laid the basis for his conviction. However, he stated throughout the proceedings against him that he had not been searched, either before or after his arrest, and that the substance allegedly found on him had to have been planted by the police.

An appeal on points of law was rejected as inadmissible in 2006.

Relying in particular on Article 6 § 1 (right to a fair trial), Mr Kobiashvili complains that his conviction was unfair because it was based on planted evidence. He also alleges that he was not given an effective opportunity to challenge the search or the use of the evidence thus obtained in the proceedings against him.

## Arnaboldi v. Italy (no. 43422/07)

The applicant, Franco Arnaboldi, is an Italian national who was born in 1941 and lives in Cecina (Italy). He was the owner of a plot of land on which he had built his primary residence and a warehouse.

The case concerns the expropriation of Mr Arnaboldi's land for the construction of a road, and in particular his failure to obtain the compensation awarded to him by the Florence Court of Appeal.

In 2007 that court found that Mr Arnaboldi's land had been unlawfully expropriated and ordered the real estate company Padana Appalti S.p.A. – which had been asked to act on behalf of the national bridges and highways corporation (ANAS) – to pay him a total of 653,821.54 euros (EUR).

In 2008 Mr Arnaboldi filed his claim for payment with the liquidators of Padana Appalti S.p.A, which had gone into "extraordinary administration" in 2004. The liquidators explained that the company's assets were made up of a building worth about EUR 169,000 and that the preferential claims already registered amounted in total to EUR 278,000.

In 2010 and 2011 Mr Arnaboldi lodged applications with the Livorno Civil Court and the Tuscany Regional Administrative Court, stating that he was unable to obtain payment and seeking the return of his land and/or compensation from the authorities. Those claims were dismissed and he had to pay costs.

In 2015 the extraordinary administration procedure concerning Padana Appalti S.p.A was concluded by the distribution of its remaining assets (EUR 54,341.82) between some of the preferential creditors. In the meantime, an expert commissioned by the Livorno District Court, having failed to obtain the payment of his fees (EUR 11,928.44) from the company, brought enforcement proceedings against Mr Arnaboldi, who was liable for the costs. In the context of those enforcement proceedings his primary residence was sold by auction in 2018.

Relying in particular on Article 6 § 1 (right to a fair hearing), 13 (right to an effective remedy) and Article 1 of Protocol No. 1 (protection of property), Mr Arnaboldi complains that he has been unable to obtain payment of the compensation awarded to him by the Court of Appeal of Florence and that he has been deprived of his property.

## Kangers v. Latvia (no. 35726/10)

The applicant, Jānis Kangers, is a Latvian national who was born in 1983 and lives in Jūrmala (Latvia).

The case concerns proceedings for offences of drink-driving and driving while disqualified.

In 2008 Mr Kangers was stopped by the police and given a ticket for drink-driving. He appealed and Jūrmala City Court found in his favour and returned his licence. In February 2009 Riga Regional Court quashed that decision, fined him and banned him from driving for two years.

He was subsequently stopped by the police in July 2009 and found to be driving while disqualified. He appealed, arguing that the decision to quash the original Jūrmala City Court ruling had been invalid and so legally speaking he had not been disqualified. The courts eventually rejected his appeals, with the final decision being handed down in April 2012.

In the meantime, in September 2009 the applicant had again been stopped by the police and charged with a repeat breach of the driving ban. He appealed, citing the fact that the first case on his driving while disqualified was still ongoing. His appeal was dismissed in February 2010.

Relying on Article 6 § 2 (presumption of innocence), Mr Kangers complains that he was found guilty of a repeat offence while his appeal against the original violation of driving while disqualified had not yet finished.

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**Alikhanyan and Meliksetyan v. Armenia** (no. 4168/10)
**Galstyan v. Armenia** (no. 25465/15)
**Abdullayeva v. Azerbaijan** (no. 29674/07)
**Bratulić v. Croatia** (no. 38704/15)
**Mesić and Others v. Croatia** (nos. 792/16, 5677/16, 21599/16, 27292/16, and 38450/16)
**Melikidis v. Cyprus** (no. 67748/13)
**Frantzeskaki and Others v. Greece** (nos. 57275/17, 58549/17, 58631/17, 58713/17, 58922/17, 58953/17, 58988/17, 59708/17, 59838/17, 60195/17, 60668/17, 34622/18, 34914/18, 40233/18, and 43751/18)
**Minervino and Trausi v. Italy** (no. 63289/17)
**Spirovski v. North Macedonia** (no. 60266/14)
**Łuczaj v. Poland** (no. 46605/13)
**Marzecki v. Poland** (no. 62321/13)
**Pietyra and Szubryt v. Poland** (no. 34169/05)
**Piotrowski v. Poland** (no. 56553/15)
**Sadło v. Poland** (no. 6612/11)
**Sochaczewski v. Poland** (no. 46091/13)
**Sigunovy v. Russia** (no. 18836/11)
**Vlasenko and Sitdikov v. Russia** (nos. 65428/11 and 26437/15)
**Bakulin v. Ukraine** (no. 5687/07)



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