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

Press Release
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ECHR 339 (2018)
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# Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 32 judgments and / or decisions on Monday 22 October 2018 and Tuesday 23 October 2018 and 34 judgments and / or decisions on Thursday 25 October 2018.

*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)*

## Monday 22 October 2018

**Al-Hawsawi v. Poland** (application no. 15925/16)

## Tuesday 23 October 2018

### Guerni v. Belgium (no. 19291/07)

The applicant, Abdalwahab Guerni, is a Belgian national who was born in 1967. He was living in Meise (Belgium) at the time the application was lodged.

The case concerns criminal proceedings which led to Mr Guerni's conviction for drug trafficking. The police were authorised, in the framework of their investigations, to have recourse to an informer and an undercover agent acting as a purchaser.

In 1998 Mr Guerni organised the transport of a large volume of drugs from Morocco to Belgium. The transport was to have involved a lorry fetching a consignment of lawful goods, to which the drugs would be added. For the transport, Mr Guerni called on the services of Ron and Dominique. The latter individuals, who were in fact a police informer and an undercover agent, had claimed that they ran a transport firm which could supply Mr Guerni with a lorry and a driver. The transport took place in February 1998, monitored by the Moroccan and Belgian authorities; the lorry, which was driven by another undercover agent, picked up the goods and the drugs in Morocco and took them to Belgium. In March 1998, when Dominique was paid for his assistance and the drugs were delivered to Mr Guerni, he and two other persons involved were arrested.

In 2003 a court convicted each of the defendants to four years' imprisonment. In 2006 a court of appeal upheld the convictions, although it reduced the sentences on the grounds that the length of the proceedings had become unreasonable. The two accomplices were sentenced to three years' imprisonment each. Mr Guerni was sentenced to four years' imprisonment, although the court of appeal had held that his sentence should have been longer.

Relying on Article 6 §§ 1 and 3 (d) (rights of the defence / right to question witnesses) of the European Convention of Human Rights, Mr Guerni complains about the special investigative methods used by the domestic authorities and the trial courts' refusal to question the informer and the undercover agent involved in implementing those methods. Mr Guerni also alleges a violation of Article 8 (right to respect for private and family life) on the grounds that the undercover operation had no lawful basis.

### Assem Hassan Ali v. Denmark (no. 25593/14)

The applicant, Ahmad Assem Hassan Ali, is a Jordanian national who was born in 1977.

The case concerns his expulsion from Denmark in 2014 following convictions for drugs offences.

He entered Denmark in 1997 when he was 20 years old and was granted residence after marrying a stateless Palestinian woman with Danish nationality. They had three children together between 1997 and 2001. After divorcing in 2001, he married an Iraqi woman of Kurdish origin. They divorced in 2013 after having three children between 2003 and 2009. All six children have Danish nationality.

After a first conviction in 2006 for assault and drugs offences, he was found guilty in 2009 of trafficking cocaine into Denmark and was jailed. Given the seriousness of the crime, the District Court ordered his expulsion and a permanent ban on his return. The decision was upheld on appeal.

In proceedings against the deportation order, he asserted his strong links to his children, wife and ex-wife, stated that they visited him in prison, and that he would lose contact if he were deported. In June 2013 the District Court refused to revoke the expulsion order, finding that his crime constituted "a major problem for Danish society". The High Court upheld that decision in January 2014.

Mr Assem Hassan Ali complains that his expulsion from Denmark has separated him from his six children, in breach of his right to respect for private and family life under Article 8.

### Levakovic v. Denmark (no. 7841/14)

The applicant, Jura Levakovic, is a Croatian national who was born in 1987 and lives in Croatia.

The case concerns his being expelled from Denmark to Croatia after criminal convictions.

Mr Levakovic was taken from the Netherlands to Denmark when he was nine months old, living there with his parents and three brothers. As a youth he was convicted four times for crimes including robbery and drugs offences. He was also convicted several times after he reached the age of 18 and received two expulsion orders, which were both suspended. In November 2011, while on probation during the period of the second suspended expulsion order, he was arrested on charges including robbery and the possession of arms.

The case came before the City Court, where he pleaded not guilty. He stated that he had lived all his life in Denmark, where all his family lived, and that he had never been to Croatia or the former Yugoslavia. He had no family there and did not speak the language. He had been diagnosed with ADHD and was on medication. He also wanted to marry his girlfriend. In December 2012 the City Court sentenced him to five years in jail and ordered his expulsion, with a permanent ban on his return. The judgment was upheld on appeal by five votes to one.

It appears that Mr Levakovic was expelled in December 2017 after serving his sentence and re-entered shortly afterwards, in breach of the ban.

The applicant complains that his expulsion was in breach of Article 8 (right to respect for private life).

### M.T. v. Estonia (no. 75378/13)

The applicant, M.T., is a stateless person who was born in 1962 and lives in Tallinn. She has lodged the application on behalf of her son, O.T., who spent more than five years in a psychiatric institution. The case concerns her complaint about the proceedings for review of her son's internment.

The courts ordered O.T.'s placement in a psychiatric hospital in May 2011. They based the order on a psychiatric report of November 2010 which found that he was suffering from paranoid schizophrenia and, following a sexual offence involving a 10-year old girl, posed a danger to society.

The applicant, who had been appointed his legal guardian, brought proceedings before the courts to discontinue his treatment.

All her requests were however dismissed.

The courts essentially relied on an opinion drawn up in December 2012 by O.T.'s doctor and the head of the department at the hospital where he was being treated finding that his mental condition had not changed. They also heard the head of the department, the applicant and her son at a hearing in 2013, and found that it was not necessary to order a fresh external expert opinion, as requested by the applicant.

In those proceedings, the applicant also unsuccessfully complained that her son could not himself challenge in court the necessity of his further treatment.

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), the applicant complains in particular that the domestic courts' review of her son's psychiatric internment was based on an opinion by the hospital where her son was being detained, without any independent or impartial examination. She also complains that her son did not have access to judicial review to challenge his detention.

### Bradshaw and Others v. Malta (no. 37121/15)

The applicants in this case are 24 Maltese nationals and a company based in Malta. The case concerns a multi-storey property owned by the applicants in Valletta which is rented out as a band club.

The applicants inherited the property and, under rent-control legislation in Malta, are obliged to renew each year the lease their ancestors entered into in 1946 and are not allowed to demand an increase in rent.

In 2011 they brought constitutional redress proceedings to complain that they were being denied the use of their property without adequate compensation. The first-instance court found in their favour, but this judgment was overturned on appeal in 2014. The Constitutional Court found in particular that there had been no violation of the applicants' rights because their ancestors had entered into the rental agreement voluntarily and in full knowledge of the consequences. In 2016, it also rejected the applicants' request for a re-trial.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants argue that the State has failed to strike the right balance between their right to enjoy their property and the community's interest in protecting band clubs, in particular because the amount of rent they receive is significantly lower than the market value of the premises. Further relying on Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1, they also allege that they are being discriminated against because they have to renew their rent agreement on a yearly basis, while, under amendments to the law made in 2009, others who lease out property for commercial use will be freed from this obligation in 2028.

### Lady S.R.L. v. the Republic of Moldova (no. 39804/06)

The applicant company, Lady S.R.L., is a limited liability company founded under Moldavan law and based in Chişinău.

The case concerns the annulment of a sales contract for the privatisation of premises which the applicant company had purchased from Chişinău municipality.

On 15 January 2004, through the Privatisation Department, the State sold the applicant company premises with a floor area of 244.50 sq. m at 55 A, P.R. Street in Chişinău. In November 2004, the land registry office registered the title deeds purchased by the applicant company.

On 18 January 2005 the company S. brought an action against the applicant company and the Privatisation Department seeking the annulment of the sales contract of 15 January 2004 and the expulsion of the applicant company from the premises. The Economic Court of Appeal allowed that action, declaring the sales contract null and void. It held that according to a final judgment of the

Supreme Court of 27 May 2004 – delivered in the framework of another legal dispute between Chişinău municipality and a different company – the land on which the premises were located had been transmitted to the company S. for demolition and rebuilding works.

On 1 March 2006 the applicant company appealed, unsuccessfully, to the Supreme Court. It ordered the State to refund the purchase price of the premises (approximately 9,000 euros) to the applicant company. The applicant company's title deeds were struck out of the property register.

Relying on Article 6 § 1 (right to a fair trial), the applicant company complains of the unfairness of the proceedings on the grounds that the outcome of its case had been anticipated in the framework of another set of proceedings in which it had not been asked to participate. Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, it complains that it was deprived of its property.

## Petrov and X v. Russia (no. 23608/16)

The applicants, Daniil Petrov and X, father and son, are Russian nationals who were born in 1975 and 2012. Mr Petrov lives in St Petersburg, while his son lives in in the Moscow Region.

The case concerns Mr Petrov's legal efforts to have his son live with him.

Mr Petrov's wife left him in April 2013, taking their son with her to live in Nizhniy Novgorod, 1,000 km away. She then instituted divorce proceedings in court and applied for a residence order for their son. The courts granted the divorce and her application for the residence order in April 2014. They relied on a report by the Nizhniy Novgorod childcare authorities finding that it was better for X, given his young age, to live with his mother. The childcare authorities also assessed the mother's living conditions and financial situation, which they considered good, and took into account that she was on parental leave and still breastfeeding.

Mr Petrov appealed, arguing that St Petersburg had better living conditions and opportunities for child development. He also submitted that there were documents to prove that his former wife was no longer breastfeeding and that she was no longer on parental leave, but had resumed work. However, the courts upheld the April 2014 judgment.

In those proceedings the domestic courts refused to examine Mr Petrov's application for a residence order in respect of his son, finding that his claim had been submitted too late.

In separate proceedings, Mr Petrov was subsequently granted contact rights and awarded compensation for the excessive length of the residence and contact proceedings.

Relying on Article 8 (right to respect for family life), the applicants complain that the courts did not provide relevant and sufficient reasons for their decision to grant the residence order in respect of X to the mother. Further relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 8, they also complain that the decision amounted to discrimination on grounds of sex, alleging that residence orders for children under 10 often went in the favour of mothers.

Lastly, the applicants submit under Article 34 (right of individual petition) and Article 38 (obligation to provide necessary facilities for the examination of the case) that the Representative of the Government to the European Court of Human Rights in their case was biased and concealed certain documents because he was a close acquaintance of the father of Mr Petrov's ex-wife.

## Produkcija Plus storitveno podjetje d.o.o. v. Slovenia (no. 47072/15)

The applicant company, Produkcija Plus storitveno podjetje d.o.o., is a private media company whose registered office is in Ljubljana.

The case concerns two sets of court proceedings conducted under the Prevention of the Restriction of Competition Act, namely proceedings concerning the imposition of a fine obstructing an inspection and proceedings concerning a violation of competition rules.

In August 2011 the Competition Protection Office opened a case against the applicant company after a complaint from two television stations that it had abused its dominant position.

The Competition Office (later called the Competition Agency) decided to inspect the applicant company's premises. In September 2011 it issued an inspection report, noting that the company had in various ways refused to cooperate with the officials and had asked them to leave the premises. The officials had called the police to assist them in carrying out the inspection, which had then continued with the company's cooperation.

In February 2012 the Competition Office fined the company 105,000 euros (EUR) for obstructing the inspection. The company appealed and requested an oral hearing but in November 2013 the Supreme Court dismissed the action.

In the proceedings concerning a violation of competition rules, the Competition Agency found that the company had been abusing a dominant position in the television advertising market. The Supreme Court dismissed an action by the company and upheld the Agency's decision refusing to have a public hearing. In subsequent minor offence proceedings, the Agency in July 2014 fined the company EUR 4.99 million for breaching competition rules and imposed fines on three individuals. The minor-offence decision was later set aside by the domestic courts and the minor offence proceedings were discontinued.

The applicant company complains under Article 6 (right to a fair trial) and Article 13 (right to an effective remedy) that the proceedings on a violation of competition rules and the proceedings imposing a fine for obstructing the inspection were unfair because of the lack of oral hearings.

## Arrozpide Sarasola and Others v. Spain (nos. 65101/16, 73789/16, and 73902/16)

The applicants, Mr Santiago Arrozpide Sarasola, Mr Alberto Plazaola Anduaga and Mr Francisco Múgica Garmendia, are three Spanish nationals who were born in 1948, 1956 and 1953 respectively.

The case concerns the combination of sentences already served in France by members of the ETA terrorist organisation in order to calculate the maximum length of sentences in Spain.

Mr Arrozpide Sarasola was arrested and placed in detention in France for membership of the ETA terrorist organisation. He was sentenced to ten years' imprisonment for offences committed in France in 1987. On 21 December 2000 he was surrendered to the Spanish judicial authorities pursuant to an extradition request. In Spain, he was sentenced to over three thousand years' imprisonment after eleven different sets of criminal proceedings for several terrorist attacks and murders committed in Spain between 1980 and 1987, including a booby-trapped car attack on the *Hipercor* shopping centre in Barcelona on 19 June 1987.

The *Audiencia Nacional* set the maximum total of prison sentences to be served by Mr Arrozpide Sarasola in respect of all the custodial sentences passed on him in Spain at thirty years. Following the Court's judgment in the case of *Del Rio Prada*, the applicant requested and obtained the recalculation of the sentence to be served. The sentence remissions to which the applicant was entitled were deducted from the thirty-year maximum prison term. Subsequently, the applicant requested that the prison sentence passed by the French courts, which he had served in France, be deducted from the thirty-year maximum term set in Spain. On 2 December 2014 the *Audiencia Nacional* acceded to that request.

The State Prosecutor lodged an appeal on points of law against that decision with the Supreme Court, for the protection of legality. On 10 March 2015 the Supreme Court allowed the appeal on points of law, considering, in a judgment delivered on 24 March 2015, that there was no need to include the prison sentence served in France in the calculation, with reference to the reasoning set out in its leading judgment (plenary Criminal Chamber) no. 874/2014 of 27 January 2015.

The applicant brought an action to set aside the Supreme Court's judgment and requested that the proceedings be dealt with under urgent procedure so that he could lodge an *amparo* appeal with the Constitutional Court within the thirty-day time-limit. He then withdrew his action on the grounds that the Supreme Court had already had an opportunity to respond to his allegations of a violation of his fundamental rights. On 26 May 2015 the applicant lodged an *amparo* appeal with the Constitutional Court, which declared it inadmissible on grounds of failure to exhaust available legal remedies.

The second and third applicants had also been arrested and convicted in France for terrorist offences linked to ETA. They had served their sentences in France and then been extradited to Spain, where they were convicted of a terrorist attack carried out in Spain in 1987 (the second applicant) and several terrorist attacks and murders committed in Spain between 1987 and 1993 (the third applicant). They requested the inclusion of the prison sentence passed and served in France in calculating the thirty-year maximum prison terms set by law.

The *Audiencia Nacional* first of all allowed their request, and then the State Prosecutor lodged an appeal on points of law with the Supreme Court, which upheld that appeal, using the same reasoning as in the judgment delivered in Mr Arrozpide Sarasola's case. The second applicant brought an action to set aside the judgment before the Supreme Court, and then withdrew it on the grounds that the Supreme Court, which had delivered the judgment on points of law, had already responded to his allegations of a violation of his fundamental rights. On the same grounds as for the first applicant, the Constitutional Court declared the two applicants' *amparo* appeals inadmissible.

Relying on Article 6 § 1 (right of access to a tribunal), the applicants complain that the decisions given by the Constitutional Court declaring their *amparo* appeals inadmissible had deprived them of their right of access to a tribunal. Relying on Article 7 (no punishment without law), they complain of what they consider as the retrospective application of new case-law on the part of the Supreme Court and a new law which came into force after their conviction, which they claim had extended the actual length of the sentences passed on them. Relying on Article 5 § 1 (right to liberty and security) they complain that their imprisonment was extended by twelve, seven and ten years respectively owing to retrospective application of the law to their detriment.

## Bilinmiş v. Turkey (no. 28009/10)

The applicants, Mehmet Emin Bilinmiş and Perihan Bilinmiş, are Turkish nationals who were born in 1983 and 1982 respectively and live in İzmir (Turkey).

The case concerns the death of the applicants' newborn children in a public hospital. According to expert reports, one of the babies died from a hospital-acquired infection.

On 4 September 2008 Mrs Bilinmiş gave birth to twins (Aleyna and Tuana), who were placed in an incubator. Aleyna died on 13 September 2008.

On 20 September 2008 13 babies, including Tuana, died after being treated with a contaminated solution of "total parenteral nutrition". Tuana's parents lodged a criminal complaint and an inspector was appointed by the Health Ministry to conduct a preliminary investigation. However, the expert reports submitted were unable to identify the exact source of the contamination. The inspector therefore concluded that there was no evidence of professional negligence or incompetence on the part of the medical staff. The District Governor of Konak (İzmir) subsequently refused to institute criminal proceedings. In November 2009 the public prosecutor's office issued a decision not to prosecute.

In April 2010 Mr and Mrs Bilinmiş brought a civil action for compensation which is still pending before the İzmir Administrative Court.

Relying on Articles 2 (right to life), 6 (right to a fair hearing within a reasonable time) and 13 (right to an effective remedy), Mr and Mrs Bilinmiş allege that their newborn children died as a result of

negligence on the part of the medical staff. They also complain about the length of the proceedings and of the lack of an effective investigation.

### Elvan Alkan and Others v. Turkey (no. 43185/11)

The three applicants are Turkish nationals who live in Ağrı (Turkey). Nusret Alkan and his wife Besrayi Alkan were born in 1965. Their daughter, Elvan Alkan, was born in 1993.

The case concerns an allegation of medical negligence: since a medical procedure carried out in a local dispensary, Elvan Alkan has suffered from a disorder known as “drop foot”.

In October 2000, suffering from an obstruction of the lower airways, Elvan Alkan, who was aged seven at the time, was examined by a doctor at the local dispensary in Doğubeyazıt (Ağrı). The doctor prescribed, among other medicines, 75 mg of Voltaren in the form of an injectable solution.

After the nurse had injected the medication, Elvan Alkan developed an intense pain in her left foot and fell to the ground. The doctor and nurse told the parents that this reaction was simply due to a burning sensation caused by the injection. The child was taken home. The following day, as she was no longer able to walk, she was taken to Iğdır public hospital, where the doctors diagnosed a case of “drop foot” caused by an injury to the sciatic nerve. On an unspecified date the applicants brought criminal proceedings, which ended in the acquittal of the doctor and nurse. In February 2002 they brought a civil action for compensation, which was rejected by the Administrative Court. That decision was upheld in January 2010 by the Supreme Administrative Court. In March 2011, despite an opinion to the contrary from Principal State Counsel at the Supreme Administrative Court, an application by the applicants for rectification of that judgment was likewise rejected.

Relying on Article 8 (right to respect for private and family life), the applicants allege that Elvan Alkan’s permanent disability, assessed at 28%, was the result of medical negligence. They also complain that the domestic remedies were ineffective.

### Erkan Birol Kaya v. Turkey (no. 38331/06)

The applicant, Erkan Birol Kaya, is a Turkish national.

The case concerns an alleged instance of medical negligence which, in Mr Kaya’s view, resulted in his leg being amputated.

Following a traffic accident in Turkey on 19 July 1998, Mr Kaya underwent several knee operations in Turkish hospitals. A month after the accident he travelled to London, where his left leg was amputated. In April 1999, claiming to be the victim of medical negligence, he brought a civil action for compensation in the Antalya Administrative Court. His claims were dismissed. The Supreme Administrative Court upheld that judgment in February 2003.

Relying on Article 1 (obligation to respect human rights), Article 6 (right to a fair hearing) and Article 13 (right to an effective remedy) of the Convention, Mr Kaya alleges interference with his physical integrity and complains about the rejection of his compensation claim. He also argues that the expert report on which the Turkish courts based their decisions failed to shed light on the causes of his amputation. In addition, Mr Kaya complains that the domestic courts did not take into account his criticisms concerning the report in question and did not hear evidence from witnesses before ruling on the merits of the case.

### Mehmet Duman v. Turkey (no. 38740/09)

The applicant, Mehmet Duman, was born in 1975. He is currently serving a sentence of life imprisonment in Diyarbakır Prison.

The case concerns Mr Duman's complaint about being found guilty of attempting to undermine the constitutional order of the State on the basis of statements made under duress in the absence of a lawyer, which he later retracted.

Mr Duman was arrested in September 1994 on suspicion of membership of an illegal organisation, Hizbullah.

He alleges that he was tortured while in police detention, which lasted 22 days. Subsequently, the Diyarbakır Public Prosecutor took statements from him in the absence of a lawyer, when he admitted being involved in certain Hizbullah activities. He later retracted the statements, saying they had been made under duress. He maintained that stance throughout the proceedings, which lasted from 1994 until February 2007, when the Diyarbakır Assize Court convicted him of taking part in the killing of 19 people and of injuring eight others on behalf of Hizbullah. He was sentenced to life imprisonment.

The court relied, among other things, on his testimony to the police and public prosecutor, reports of the reconstruction of events and the on-site inspection, and statements by some of the other defendants and a witness. It rejected the applicant's contention that he had been tortured while in police custody as a medical report of October 1994 had found no traces of ill-treatment on him. The court's judgment shows that 30 other defendants either fully or partially retracted confessions during the trial. In April 2009 the Court of Cassation rejected an appeal by the applicant.

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Duman complains that he was denied the assistance of a lawyer while in police custody and that the trial court convicted him on the basis of police statements which he alleged had been obtained by torture.

He furthers complains that he did not have a fair trial by an independent and impartial tribunal on account of the presence of a military judge on the bench of the Diyarbakır State Security Court. He also complains under this provision that he was not able to benefit from provisions concerning the reduction of sentences due to the age of the accused.

In addition, he raises complaints under Article 3 (prohibition of torture), about police torture, and Article 5 (right to liberty and security), relating to being held in detention on remand for such a long time.

## Musa Tarhan v. Turkey (no. 12055/17)

The applicant, Musa Tarhan, is a Turkish national who was born in 1955 and lives in Konya (Turkey).

The case concerns expropriation proceedings in which both parties to the dispute (the administrative authorities and the individual whose property was expropriated) were ordered to pay the opposing party a fixed amount to cover the cost of legal representation.

In December 2008 the water authority decided to expropriate a plot of land belonging to Mr Tarhan in Hadim (Turkey), the value of which it assessed at 843.58 Turkish lira (TRY). As the parties failed to reach agreement on the amount of compensation for the expropriation, the administrative authorities applied to the District Court.

In September 2014 the District Court ordered the transfer of the property, determining the amount of compensation at TRY 2,515.38. The court also ordered both parties to pay TRY 1,500 to the opposing party to cover the cost of legal representation. Mr Tarhan lodged an appeal on points of law against that decision, without success. In July 2016 he lodged an appeal with the Constitutional Court, which was likewise rejected.

Relying on Article 6 of the Convention (right to a fair hearing) and on Article 1 of Protocol No. 1 to the Convention (protection of property), Mr Tarhan complains that he did not receive compensation

reflecting the value of his property as he was required to pay the cost of the administrative authorities' legal representation.

### Sagan v. Ukraine (no. 60010/08)

The applicant, Valentyna Vasylivna Sagan, is a Ukrainian national who was born in 1956 and lives in Lluxent (Spain).

The case concerns the eviction of Mrs Sagan and her husband from the flat that had been provided by the secondary school which employed them, an intrusion into the premises in their absence and the destruction of some of their possessions.

In 1979 the secondary school where Mrs Sagan and her husband were working provided them with a one-room flat. In 1992 the Khorostkiv local authority provided them with a different three-room flat for an indefinite period. As they considered the second flat to be too small, Mrs Sagan and her husband decided that their two children should live there, while they remained in the first flat. In 2002 and 2005 they resigned from their posts at the school but continued to live in the first flat. They subsequently moved abroad and handed over the flat to a neighbour.

In 2006 the school trade-union committee allocated the flat to one of its employees and decided to draw up an inventory of the items belonging to Mrs Sagan's family so that they could be moved. These decisions were transcribed in report no. 7. In the absence of Mrs Sagan and her husband, several people, including the head teacher of the school, entered the flat by forcing the locks. They moved the items that were in there to a locked room. The new occupant then moved into the flat.

In 2007 Mrs Sagan and her husband returned to Ukraine and lodged a criminal complaint, alleging that some of their possessions that had been left in the flat had been burnt or thrown away by the new occupant. The police carried out an investigation but the authorities ultimately decided not to bring a prosecution on the grounds that the constituent elements of an offence had not been made out. In the meantime, Mrs Sagan and her husband brought a civil action against the school, the new occupant and the new occupant's wife, but their claims were dismissed. The courts took the view that the items that had been left in the flat were of little value and that the family had lost the right to use the first flat in 1992, when they had acquired the right to use another flat.

Relying on Articles 6 § 1 (right to a fair hearing) and 8 (right to respect for private and family life), Mrs Sagan argues that she was improperly evicted from her first flat. She also complains of an intrusion into the flat when she was absent and of the destruction of some of her possessions.

## 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.

**Bobeico and Others v. the Republic of Moldova and Russia** (no. 30003/04)
**Coteț v. the Republic of Moldova** (no. 72238/14)
**Secrieru v. the Republic of Moldova** (no. 20546/16)
**A.N. and Others v. Russia** (nos. 61689/16, 20421/17, 23188/17, and 37702/17)
**Atroshenko v. Russia** (no. 4031/16)
**Bitsayeva and Others v. Russia** (nos. 14196/08, 62409/10, 12868/11, 34290/11, 41877/11, 44311/11, 62172/11, 13843/12, 13909/12, and 32554/12)
**Manannikov v. Russia** (no. 74253/17)
**Mezhidova and Others v. Russia** (no. 50606/08, 27066/09, 58253/10, 52167/11, 62560/11, 77744/11, 2679/12, 27987/12, 39694/12, and 79940/12)
**Grbić v. Serbia** (no. 5409/12)
**Ilić v. Serbia** (no. 26739/16)

**Ljajić v. Serbia** (no. 41820/16)
**Mijatović and Others v. Serbia** (nos. 50117/13, 50776/13, 60349/13, 62038/13, 63099/13, 64201/13, and 68381/13)
**Schram v. Slovakia** (no. 8555/17)
**Alacatay and Others v. Turkey** (no. 14299/05)
**Avcı and Dereli v. Turkey** (no. 2553/09)
**Güngör v. Turkey** (no. 24451/12)

## Thursday 25 October 2018

### E.S. v. Austria (no. 38450/12)

The applicant, E.S., is an Austrian national who was born in 1971 and lives in Vienna.

The case concerns the applicant's conviction for disparaging religious doctrines. In October and November 2009, Mrs S. held two seminars entitled "Basic Information on Islam", in which she referred to the marriage between the Prophet Muhammad and the six-year-old Aisha, which allegedly was consummated when she was nine. The applicant, *inter alia*, stated that Muhammad "liked to do it with children" and "...'A 56-year-old and a six-year-old? ... What do we call it, if it is not paedophilia?'".

On 15 February 2011 the Vienna Regional Criminal Court found that these statements conveyed the message that Muhammad had had paedophiliac tendencies, and convicted Mrs S. for disparaging religious doctrines. She was ordered to pay a fine of 480 euros and the costs of the proceedings. Mrs S. appealed but the Vienna Court of Appeal upheld the decision in December 2011, confirming in essence the lower court's findings. A request for the renewal of the proceedings was dismissed by the Supreme Court on 11 December 2013.

Relying on Article 10 (freedom of expression), Mrs S. complains that the domestic courts failed to address the substance of the impugned statements in the light of her right to freedom of expression. If they had done so, they would not have classified them as mere value judgments but as value judgments based on facts. Furthermore, her criticism of Islam occurred in the framework of an objective and lively discussion which contributed to a public debate, and had not been aimed at defaming the Prophet of Islam. Lastly, Mrs S. submitted that religious groups ought to be regarded as public institutions and therefore had to tolerate even severe criticism.

### Delecolle v. France (no. 37646/13)

The applicant, the late Mr Roger Delecolle, was a French national who was born in 1937 and lived in Paris.

The case concerns the right of a person placed under enhanced curatorship to marry without the authorisation of his or her curator or of the guardianship judge.

In June 2009 the guardianship judge of the District Court placed Mr Delecolle, who was aged 72 at the time, under enhanced curatorship. Mr Delecolle applied to the Paris *tribunal de grande instance* to have the measure lifted. The *tribunal de grande instance* rejected the application, finding that the applicant no longer had the physical or intellectual capacity to manage his immovable property. Mr Delecolle requested authorisation from his curator to marry M.S., a friend whom he had known since 1996 and with whom he had been in a relationship since 2008. The curator refused the request on the grounds that she did not know the applicant sufficiently well to authorise the marriage. Mr Delecolle then sought authorisation from the guardianship judge.

The guardianship judge refused the applicant's request following a medical expert opinion and a social welfare report, finding that the proposed marriage ran counter to the applicant's interests at that stage. The applicant appealed and the Paris Court of Appeal upheld the decision of the

guardianship judge. The Court of Appeal noted that although Mr Delecolle had, on several occasions, expressed the wish to marry M.S., the serious disorders from which he suffered severely impaired his judgment. It also observed that, since living with M.S., Mr Delecolle had made a number of irrational management decisions. The Court of Appeal further noted that his relationship with his daughter, M.D., had deteriorated considerably. Mr Delecolle appealed on points of law and requested the court to refer a question concerning Article 460 § 1 of the Civil Code for a preliminary ruling on constitutionality. In June 2012 the Constitutional Council found that the provision in question was compatible with the Constitution, as it did not prohibit marriage but made it subject to authorisation by the curator. In December 2012 the Court of Cassation dismissed an appeal on points of law by the applicant.

Following the applicant's death on 4 February 2016 M.S. informed the Court of her intention to pursue the application.

Relying on Article 12 (right to marry), the applicant complained that he was unable to marry, criticising the fact that he could only marry with the authorisation of the curator or the guardianship judge.

### Provenzano v. Italy (no. 55080/13)

The applicant, Bernardo Provenzano, now deceased, was an Italian national, born in 1933.

Mr Provenzano was arrested in 2006. He was subsequently convicted of numerous extremely serious offences, and sentenced to several life sentences.

After his arrest, he was imprisoned under the section 41 *bis* regime, a restrictive regime in Italy to prevent those convicted of mafia-related crimes from maintaining contact with members of the criminal organisation within or outside prison. It includes restrictions on visits by family, a ban on using the telephone and the monitoring of correspondence. The regime was extended every year until 2010, then every two years until 2016.

He was detained in prisons in Parma and Milan. He became progressively seriously ill in prison and, notably, his cognitive functioning declined. At the end of 2013 he became permanently bedridden and had artificial nutrition via a feeding tube. He was eventually hospitalised in 2014 in the correctional wing of the San Paolo civil hospital in Milan, where he remained until his death in 2016.

Between 2013 and 2016 he brought court proceedings requesting that his sentence be suspended for health reasons and applying to lift the special prison regime, all without success. The courts, relying on medical evidence and a report by court-appointed experts, found that he was receiving appropriate medical treatment, both as concerned his detention in Parma and in the Milan hospital. They also found that the special regime was still justified in the interests of public order and safety.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Provenzano complained of inadequate medical care in prison and about the continuation of the special prison regime until his death, despite his ill health.

## 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.

**Aydarov and Others v. Bulgaria** (no. 33586/15)
**Merisalu v. Estonia** (no. 61913/15)
**Khutsishvili and Others v. Georgia** (nos. 64623/12 and 64819/12)
**Meladze v. Georgia** (no. 30635/09)
**Metreveli and Others v. Georgia** (no. 64540/12)

**Aigaion Oil A.E. v. Greece** (no. 3714/16)
**Galea and Others v. Malta** (no. 40435/16)
**Business-Investiții pentru Toți S.A. and Yampolskiy v. the Republic of Moldova** (no. 45682/07)
**Orbulescu v. the Netherlands** (no. 1704/17) - **Rectification**
**K.G. v. Russia** (no. 31084/18)
**Khodykina and Others v. Russia** (nos. 3137/03, 30369/04, 7537/05, 16584/06, 17862/06, 36529/06, 39888/07, 9020/09, 11589/09, and 18550/09)
**Miran v. Russia** (no. 12030/16)
**Moskalenko v. Russia** (no. 71647/10)
**Nurmatov (Ali Feruz) v. Russia** (no. 56368/17)
**Sklyarenko v. Russia** (no. 8664/11)
**Bogićević-Ristić v. Serbia** (no. 50586/07)
**Samardžić v. Serbia** (no. 49627/15)
**Vidojević v. Serbia** (no. 2996/16)
**Žilková v. Slovakia** (no. 38092/13)
**Can v. Turkey** (no. 23939/11)
**Çelebi v. Turkey** (no. 32706/18)
**Duman and Others v. Turkey** (no. 30126/11)
**Erkem v. Turkey** (no. 38193/08)
**İnaç v. Turkey** (no. 9864/12)
**Karasakal and Others v. Turkey** (no. 67461/11)
**Nurettin Aydın v. Turkey** (no. 293/10)
**Urlu v. Turkey** (no. 8023/12)
**Uslucuk v. Turkey** (no. 47169/09)
**Taşer and Others v. Turkey** (no. 2880/13)
**Yazıcıoğlu v. Turkey** (no. 68385/17)
**Yilmaz v. Turkey** (no. 62354/12)

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