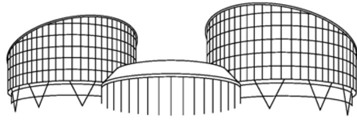

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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02.11.2017

Forthcoming hearings in November 2017

The European Court of Human Rights will be holding the following four hearings in November 2017:

Big Brother Watch and Others v. the United Kingdom (no. 58170/13), **Bureau of Investigative Journalism and Alice Ross v. the United Kingdom** (no. 62322/14), **and 10 Human Rights Organisations and Others v. the United Kingdom** (no. 24960/15): concerning the bulk interception of external communications by the United Kingdom intelligence services, and the sharing of intelligence between the United Kingdom and the United States of America;

Nicolae Virgiliu Tănase v. Romania (no. 41720/13): mainly concerns a criminal investigation into a car accident;

Berlusconi v. Italy (no. 58428/13): concerning Silvio Berlusconi, former Prime Minister of Italy;

Ilnseher v. Germany (nos. 10211/12 and 27505/14): concerning the lawfulness of a convicted murderer's preventive detention.

After these hearings the Court will begin its deliberations, which will be held in private. Its ruling in the cases will, however, be made at a later stage. A limited number of seats are reserved for the press. To be sure of having a place, you need to book in advance by contacting the Press Unit (+33 (0)3 90 21 42 08).

On 7 November 2017 at 9.15 a.m., Chamber hearing in three cases:
Big Brother Watch and Others v. the United Kingdom (no. 58170/13)
Bureau of Investigative Journalism and Alice Ross v. the United Kingdom (no. 62322/14)
10 Human Rights Organisations and Others v. the United Kingdom (no. 24960/15)

The complaints in these three cases have been triggered by the leak of information by Edward Snowden about the electronic surveillance programmes used by the United States of America and the United Kingdom to intercept communications in bulk, and the sharing of intercepted communications and communications data between the two States.

The applicants in all three cases believe that, because of the sensitive nature of their activities, their communications may have been intercepted by either the United Kingdom or the United States' intelligence services.

Big Brother Watch and Others v. the UK is a case brought by three non-governmental organisations based in London and an academic based in Berlin, all of whom work internationally in the fields of privacy and freedom of expression; Big Brother Watch is in particular a vocal critic of excessive surveillance.

The Bureau of Investigative Journalism and Alice Ross v. the UK is a case brought by a media organisation and one of its reporters, Alice Ross. Their investigations often touch upon national security issues, such as drone warfare.

10 Human Rights Organisations and Others v. the UK is a case brought by ten human rights organisations which have regular contact with NGOs, politicians, journalists, lawyers, victims of human rights abuses and whistle-blowers, both nationally and internationally. The information contained in their communications frequently includes material which is sensitive and/or confidential.

In one of the cases, ***10 Human Rights Organisations and Others***, the applicants brought domestic proceedings. They notably lodged complaints – between June and December 2013 – with the Investigatory Powers Tribunal (IPT) in which they complained about both the bulk interception of external communications by the United Kingdom intelligence services, and the intelligence sharing regime. Following a closed hearing the Government disclosed information about "below the waterline" arrangements related to the intelligence sharing regime. The IPT found that, following this disclosure, the internal arrangements were sufficiently signposted and subject to appropriate oversight. Therefore, while the arrangements had contravened Article 8 (right to respect for private and family life and for correspondence) of the European Convention prior to the disclosure, they no longer did so. As regards the bulk interception of external communications by the United Kingdom intelligence services, the IPT found that the regime and safeguards were sufficiently compliant with the requirements the European Court's case-law.

In their applications to the European Court of Human Rights the applicants all complain under Article 8 (right to respect for private life and correspondence). The applicants in *Bureau of Investigative Journalism and Alice Ross v. the UK* and *10 Human Rights Organisations and Others v. the UK* also complain under Article 10 (freedom of expression). Finally, the applicants in the case ***10 Human Rights Organisations and Others v. the UK*** complain under Article 6 (right to a fair trial) about the proceedings before the IPT, and under Article 14 (prohibition of discrimination) in conjunction with Articles 8 and 10 that the legal regime for the interception of external communications grants additional safeguards to people known to be in the British islands.

The applications were lodged with the European Court of Human Rights on 4 September 2013, 11 September 2014 and 20 May 2015, respectively. They were communicated to the British Government on 9 January 2014, 5 January 2015 and 24 November 2015, together with questions from the European Court.

The following organisations were granted leave to intervene in the written proceedings as third parties:

Access Now, Bureau Brandeis, The Center For Democracy & Technology, The European Network of National Human Rights Institutions 'ENNHRI'/ Equality and Human Rights Commission, The Helsinki Foundation For Human Rights, The International Commission of Jurists, The Open Society Justice Initiative, Project Moore, The Law Society of England and Wales, and Human Rights Watch – in ***Big Brother Watch and Others v. the UK***

The Center For Democracy & Technology, The Helsinki Foundation For Human Rights, The International Commission of Jurists, The National Union of Journalists, and The Media Lawyers Association – in ***The Bureau of Investigative Journalism and Alice Ross v. the UK***

Article 19, The Electronic Privacy Information Center, and The European Network of National Human Rights Institutions 'ENNHRI'/ Equality and Human Rights Commission – in ***10 Human Rights Organisations and Others v. the UK.***

On 15 November 2017 at 9.15 a.m.: Grand Chamber hearing in the case Nicolae Virgiliu Tănase v. Romania (no. 41720/13)

The applicant, Nicolae Virgiliu Tănase, is a Romanian national who was born in 1943 and lives in Ploiești (Romania).

On 3 December 2004 Mr Tănase, a judge at the time, had a road traffic accident. He alleges that a third party crashed into the back of his car. As a result of this impact, Mr Tănase's car was shunted into the back of a military lorry. He suffered severe bodily injuries that endangered his life and needed between 200 and 250 days of medical treatment. He maintains that he has been left with a serious physical disability.

No criminal proceedings were instituted against Mr Tănase and another driver involved in the accident and, by final decision of 21 December 2012, the Ploiesti Court of First Instance confirmed the Prosecutor's decision to stop the criminal investigations against the third driver involved for reasons related to the statute of limitations (*prescriptia speciala a raspunderii penale*).

Relying in particular on Article 3 (prohibition of degrading or inhuman treatment) of the European Convention, Mr Tănase complains that the criminal investigation opened by the domestic authorities into his car accident lacked promptness and was ineffective. In particular, he claims that the domestic authorities failed to examine the merits of the case and clarify the circumstances of the accident, allowing the special statute of limitation in respect of the third party's offence to take effect.

The application was lodged with the European Court of Human Rights on 21 June 2013.

On 17 April 2014 the application was communicated to the Romanian Government under Article 3 of the Convention. On 2 June 2015, the President of the Section decided to invite the Government to submit further written observations under Articles 2 (right to life) and 8 (right to respect for private life) of the Convention.

On 18 May 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber[1].

On 22 November 2017 at 9.15 a.m.: Grand Chamber hearing in the case Berlusconi v. Italy (no. 58428/13)

The applicant, Silvio Berlusconi, is an Italian national who was born in 1936 and lives in Rome.

On 28 November 2012 the Anticorruption Act (law no. 190 of 6 November 2012, named the "Severino Law" after the Minister of Justice) entered into force. On 31 December 2012 the executive adopted Legislative Decree no. 235 codifying norms on ineligibility (*incandidabilità*) and disqualification from holding elected and governmental office (*divieto di ricoprire cariche elettive e di Governo*) following final convictions for certain offences. This Decree came into force on 5 January 2013. Under Article 1 it is prohibited, in particular, to stand as a candidate for or hold the office of Senator or member of the lower house of parliament when the person concerned has been sentenced in a final judgment to a term of more than two years' imprisonment for an offence committed with malicious intent. That ban is decided by Parliament (Senate or lower house). The disqualification is equivalent to double the ancillary penalty that can be imposed by courts of law and cannot be for less than six years.

[1] Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

Mr Berlusconi was found guilty (with three other individuals) of tax fraud in favour of Mediaset S.p.A. by the Milan District Court in 2012 and sentenced to four years' imprisonment (reduced to one year in accordance with Law no. 241/2006), with the ancillary penalty of disqualification from public office for five years. The judgment was upheld in May 2013 by the Milan Court of Appeal, then on 1 August 2013 by the Court of Cassation (save in respect of the ancillary penalty, which was reduced to two years by the Court of Appeal after the matter had been referred back to it by the Court of Cassation).

Pursuant to Article 656, paragraph 5, of the Code of Criminal Procedure, on 2 August 2013 the public prosecutor notified Mr Berlusconi of the order to execute the sentence and the stay of execution pending any request on his part for an alternative to imprisonment. Before that, on 24 February 2013, Mr Berlusconi had been elected Senator. The official proclamation had taken place the following month.

On 2 August 2013, under Articles 1 and 3 of Legislative Decree no. 235/2012, the public prosecutor transmitted an extract of the judgment of the Milan District Court to the President of the Senate, which forwarded it on the same day to the Senate's Commission for elections and parliamentary immunities for determination of the matters within its remit. On 8 August 2013 that Commission's President initiated the procedure which could lead to a declaration of removal from office, informing Mr Berlusconi that the case had been referred and that he was entitled to file observations within twenty days and to consult the relevant documents.

In the allotted time, Mr Berlusconi provided the Commission with his observations, appending thereto *pro veritate* opinions seeking to show, in particular, that the Severino Act was unconstitutional. On 7 September 2013 he filed a copy of the application he had just lodged with the European Court of Human Rights.

With a view to the hearing scheduled for 4 October 2013, on 28 September Mr Berlusconi filed a memorial in which he asked the Commission to suspend the procedure pending the European Court's decision.

Following the scheduled public hearing (broadcast live on the Senate's satellite and on-line television channels), the Commission decided, by a majority, to propose that the Senate remove the applicant from his office. In the report it submitted to the Senate on 15 October 2013, the Commission set out the procedure followed and the questions considered: (1) the nature of the Commission and its duties; (2) the question of the retroactive application of the Severino Law and its conformity with the Constitution; (3) the content of the deliberations and the different views; (4) Law no. 190/2012; (5) the source of the ineligibility (*incandidabilità*); (6) the relevant case-law; (7) the application before the European Court; (8) the question of possible referral to the Court of Justice of the European Union.

On 30 October 2013 the Senate's Commission decided that the chamber's vote on the proposal to remove the applicant from office would take place by open ballot. On 27 November 2013, after almost eight hours of debate, the Senate declared the applicant's office terminated.

The application was lodged with the European Court of Human Rights on 10 September 2013.

In his application to the Court, Mr Berlusconi alleges that there has been a violation of:

- Article 7 (no punishment without law) of the European Convention, on account of the application of the Severino Act (leading to his disqualification from elective office), following his conviction for acts committed before the entry into force of that Act, in breach of the principles of legality, foreseeability and proportionality of criminal sanctions;

- Article 3 of Protocol No. 1 (right to free elections) to the Convention, separately and in conjunction with Article 14 (prohibition of discrimination), arguing that the ineligibility provided for by the

Severino Act did not comply with the principles of legality and proportionality in relation to the aim pursued and that it was also discriminatory;

- Article 3 of Protocol No. 1, in that the removal from office would breach, first, the applicant's right to hold office, and secondly, the electorate's legitimate expectation that the applicant would remain in office throughout the parliamentary term;

- Article 13 (right to an effective remedy) of the Convention, as there was no accessible and effective remedy in domestic law by which to challenge (1) the incompatibility of the Severino Act with the Convention and (2) the Senate's decision to remove him from office.

On 5 July 2016 it was communicated to the Italian Government, together with questions from the Court.

On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber[2].

On 29 November 2017 at 9.15 a.m.: Grand Chamber hearing in the case Ilnseher v. Germany (nos. 10211/12 and 27505/14)

The applicant, Daniel Ilnseher, is a German national who was born in 1978 and is currently detained in a centre for persons in preventive detention on the premises of Straubing Prison (Germany).

In 1999, Mr Ilnseher was convicted of murder in the Regensburg Regional Court and sentenced to ten years' imprisonment under the criminal law applicable to young offenders. The court found that in June 1997, Mr Ilnseher, then aged 19, had strangled a woman who had been jogging on a forest path.

From July 2008 onwards, after he had served his full prison sentence, Mr Ilnseher was remanded in provisional preventive detention. In June 2009, the Regensburg Regional Court ordered his retrospective preventive detention. The court, having regard to reports by a criminological expert and a psychiatric expert, found that Mr Ilnseher was still harbouring violent sexual fantasies and that there was a high risk that he would again commit serious violent and sexual offences if released, including murder for sexual gratification.

From March 2010 until December 2013, Mr Ilnseher engaged in proceedings before the German courts challenging the lawfulness of his preventive detention. In May 2011, he successfully appealed to the Federal Constitutional Court, which quashed the order for his preventive detention and remitted his case to the Regional Court. On 6 May 2011, the Regional Court, however, once again ordered Mr Ilnseher's provisional preventive detention. After a series of appeals, the courts ultimately found that his preventive detention had been necessary, as a comprehensive assessment of Mr Ilnseher, his offence, and his development during the enforcement of his sentence revealed that there was a high risk that he could commit serious crimes of a violent and sexual nature, similar to the one he had been found guilty of, if released. It was further noted that he still suffered from a sexual preference disorder (sexual sadism) which had caused and been manifested in his offence and that the therapy he had undergone until 2007 had not been successful. Since 20 June 2013, Mr Ilnseher has been detained in a newly-built preventive detention centre at Straubing Prison. He has refused all offers of therapy at that centre.

In the new main proceedings on his retrospective preventive detention before the Regensburg Regional Court in 2011/2012, Mr Ilnseher also lodged a motion for bias against one of the judges of

[2] Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

that court, Judge P., who had ordered his retrospective preventive detention in June 2009. Judge P. had allegedly made a remark in a private meeting between Mr Ilnseher's counsel and judges of the Regional Court in 2009, warning Mr Ilnseher's lawyer to be careful after his release not to find him standing in front of her door waiting to "thank" her in person. The case was dismissed and was also dismissed on appeal to the Federal Court of Justice and the Federal Constitutional Court.

The proceedings for review of Mr Ilnseher's provisional preventive detention lasted in total 11 months and one day over three levels of jurisdiction; and in particular eight months and 22 days before the Federal Constitutional Court.

Relying on Article 5 § 1 (right to liberty and security) and Article 7 § 1 (no punishment without law) of the European Convention on Human Rights, Mr Ilnseher complains that his retrospective preventive detention has violated his right to liberty, and his right not to have a heavier penalty imposed than the one applicable at the time of his offence. Lastly, he complains under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) about the duration of the proceedings for review of his provisional preventive detention and under Article 6 § 1 (right to a fair trial) about the lack of impartiality of one of the judges who had ordered his retrospective preventive detention.

The applications wer lodged with the European Court of Human Rights on 24 February 2012 and 4 Arpil 2014 respectively.

In its Chamber judgment of 2 February 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 5 § 1 or Article 7 of the European Convention on account of Mr Ilnseher's retrospective preventive detention from the moment when he was placed in a centre for psychiatric treatment, namely 20 June 2013 onwards; no violation of Article 5 § 4 on account of the duration of the proceedings for review of Mr Ilnseher's provisional preventive detention; and no violation of Article 6 on account of the alleged lack of impartiality of one of the judges who had ordered his retrospective preventive detention. Furthermore, the Chamber decided, unanimously, to strike out of its list of cases the part of the application concerning Mr Ilnseher's preventive detention from 6 May 2011 (namely, the date when the preventive detention order in question was issued) until 20 June 2013, in view of the Government's declaration recognising that Mr Ilnseher had not been detained in a suitable institution for the detention of mental health patients during that period and awarding him compensation.

On 29 May 2017 the case was referred to the Grand Chamber at the request of Mr Ilnseher [3].

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[3] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

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