



## A finding that a broadcast on Botox should have mentioned animal experiments did not interfere with freedom of expression

In its decision in the case of [Schweizerische Radio- und Fernsehgesellschaft and Others v. Switzerland](#) (application no. 68995/13), the European Court of Human Rights has, by a majority, declared the application **inadmissible**. The decision is final.

The case concerned the outcome of a complaint concerning a television programme on Botox (botulinum toxin): the domestic authorities had found that the programme had not broached the issue of the animal experiments required for manufacturing the product, and had thus failed to honour its obligation as a public service provider to present facts in a reliable manner.

The Swiss Broadcasting Corporation (SSR) complained of an infringement of its right secured under Article 10 (freedom of expression) of the Convention.

The Court failed to discern any interference or chilling effect on the exercise of the SSR's right to freedom of expression. In particular, it noted that the transmission of the programme had not been banned; the SSR had not been ordered to remove the programme from its video portal; and the SSR had been informed that it would have been enough for it to have mentioned the existence of the domestic court decisions on its website, with a free choice of how to display that information.

### Principal facts

The applicants were, on the one hand, the SSR, providing services in the radio and television field on the basis of a State franchise (public service), and on the other, three members of the editorial team of the *Puls* programme dealing with topical issues relating to health and medicine.

In January 2012 the SSR broadcast a TV programme on the subject of Botox, further to which the association Verein gegen Tierfabriken Schweiz (VgT) lodged a complaint with the Independent Broadcasting Complaints Authority (AIEP). The association contended, in particular, that the programme had not mentioned the issue of the animal experiments (DL-50 tests) which were required in order to manufacture Botox, against the provisions of the Federal Law on Radio and Television requiring it to present facts in a reliable manner.

In August 2012 the AIEP admitted the complaint and ruled that in order to ensure the public's freedom to form its own opinion, information ought to have been provided on the animal experiments in question. It asked the SSR to report to it on measures adopted following the finding of a violation. It did not require payment of procedural costs.

In December 2012, on appeal from the SSR, the Federal Court upheld the AIEP's decision, pointing out, in particular, that the failure to mention the manner in which the safety of the dosage of the product was tested for each production batch had amounted to ignoring a matter which was vital for members of the public to make up their own minds, as patients and consumers, on the Botox issue.

In June 2013 the SSR submitted a report to the AIEP on the measures taken, stating in particular that the programme had been withdrawn from the channel's video portal. The AIEP replied that the measures taken had only been partly sufficient. The proceedings were closed.

In October 2015 the SSR broadcast another programme on Botox without mentioning the animal experiments that were needed in order to manufacture the product.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 25 October 2013.

Relying on Article 10 (right to freedom of expression), the applicants complained of the chilling effect of the Federal Court's judgment.

The decision was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,  
Georgios A. **Serghides** (Cyprus),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
María **Elósegui** (Spain),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 10 \(freedom of expression\)](#)

The Court noted that the three members of the editorial team for the *Puls* programme had not been parties to the proceedings before the Federal Court. They had therefore not exhausted the available domestic remedies before applying to the Court.

The SSR, for its part, alleged that the domestic decisions had had a chilling effect, that is, they had had a heavy impact on programme conception and great legal uncertainty. However, it had not demonstrated that those hypothetical repercussions had actually occurred. The Court reiterated in that regard that purely hypothetical risks of a chilling effect were insufficient to constitute interference within the meaning of Article 10 of the Convention.

Furthermore, the Court noted that the Swiss authorities had not banned the broadcasting of the programme, nor had the SSR been ordered to remove it from their video portal. The SSR, as a franchisee and public service provider, had merely been required, by law, to inform the AEIP of the arrangements they had made to prevent similar breaches in future. Although the AEIP had considered those measures only partly sufficient, the proceedings had been closed and had had no factual or legal consequences for the SSR. In fact, the SSR had, in its subsequent programmes on Botox, continued to omit mention of animal experiments, without experiencing any legal consequences. In 2015, in particular, the SSR had produced and broadcast a programme entitled "*Ce botox qui nous veut du bien*" ("Botox is here to help"), which had made no reference to the animal experiments required to manufacture the product.

The SSR also affirmed that it had sustained damage on account of the fact that it could no longer use the ARTE film which it had purchased for the programme, even though the domestic court decisions had not prohibited SSR from using the film.

Nor could the Court discern any "criminalisation" in the fact that the AEIP had informed the SSR that it would have been enough to have mentioned the existence of the domestic decisions on the SSR website. Indeed, that measure had concerned the public interest of the free formation of public opinion, that is to say enabling every individual to form his or her own opinions. Furthermore, the AEIP had not given any further details on how the information had to be provided on the judicial decisions, leaving the SSR free to choose how to display data on the decisions on the video portal.

Consequently, the Court held that the domestic judicial decisions had not had a chilling effect and that the impugned decision in question had not amounted to an “interference” with the SSR’s exercise of its right to freedom of expression. The complaints under Article 10 of the Convention were therefore manifestly ill-founded, and the application was rejected (Article 35 §§ 3 (a) and 4 of the Convention).

*The decision is available only in French.*

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