



Judgments and decisions of 25 October 2018

The European Court of Human Rights has today notified in writing three Chamber judgments¹ and 31 decisions²:

two Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *E.S. v. Austria* (no. 38450/12);

the 31 decisions can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments in French below are indicated with an asterisk ().*

Delecolle v. France (application n° 37646/13)

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

The case concerned 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.

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Inadmissibility and strike-out decisions are final.

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) of the European Convention on Human Rights, 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.

No violation of Article 12

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) of the Convention, 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.

No violation of Article 3 – in respect of the conditions of detention

Violation of Article 3 – on account of the renewed application of the special prison regime on 23 March 2016

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Provenzano.

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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.