



FLASH NEWS

10/18

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 28/05 TO 08/06/2018

IE / O'SULLIVAN McCARTHY MUSSEL DEVELOPMENT LTD v. IRELAND

Protection of property - Judgment given for failure to perform obligations of the CJEU - Implementing measures - Bosphorus case-law - Presumption of equivalent protection

Non-violation of article 1 of Protocol no. 1 (protection of property) of the ECHR.

Non-violation of article 6 (right to a fair hearing) of the ECHR.

The applicant, an Irish company that fishes for mussel larvae (spat), breeds them and sells them, criticised the Irish government of having caused it financial losses owing to how it conformed to the legislation of the European Union as regards the environment. In fact, in 2008, after the Court of Justice of the European Union had declared that Ireland had failed to perform its obligations resulting from the two European directives, the government had temporarily banned the harvesting of spat at the port where the company carried out its activity.

Ruling of 07.06.2018 (application no. 44460/16) ([EN](#))

CZ / NOVOTNÝ v. CZECH REPUBLIC

Right to respect for private and family life - Determination of paternity - Principle of *res judicata*

Violation of article 8 (right to respect for private and family life) of the ECHR.

The applicant, a Czech national, complained of not having been able to contest a decision dating from 1970 establishing his paternity with regard to a child. The DNA tests conducted in 2012 had confirmed that the applicant was not the father; however, the national courts had based their judgment on the principle of *res judicata* to refuse the applicant the right to initiate proceedings seeking to annul this decision.

Ruling of 07.06.2018 (application no. 16314/13) ([EN](#))

RO / AL NASHIRI v. ROMANIA

Prohibition of torture - Right to life - Secret detentions and renditions programme of the CIA

Violation of article 3 (prohibition of torture) of the ECHR.

Violation of articles 5 (right to liberty and security), 8 (right to privacy) and 13 (right to an effective remedy) combined with articles 3, 5 and 8 of the ECHR.

Violation of article 6 § 1 (right to a fair hearing within a reasonable time) and articles 2 (right to life) and 3 combined with article 1 of Protocol no. 6 (abolition of the death penalty) of the ECHR.

The applicant, a Saudi Arabian national of Yemeni origin, accused in the United States of acts that qualify for the death penalty, presently detained in Guantanamo, stated that Romania had allowed the CIA to detain him from April 2004 to October/November 2005 on its territory in a secret prison whose code name was "Black Site", subject him to torture and to various forms of physical and psychological abuse, to keep him in secrecy and deprive him of any contact with his family and the outside world. In addition, he alleged that Romania had allowed for him to then be transferred to another secret detention site of the CIA situated either in Afghanistan ("Brown Site"), or in Lithuania ("Violet Site"), thus exposing him to other ill treatment.

Ruling of 31.05.2018 (application no. 33234/12) ([EN](#))
Press release ([FR](#) / [EN](#))

Also see **ABU ZUBAYDAH v. LITHUANIA**, ruling of 31.05.2018 (application no. 46454/11) ([EN](#))
Press release ([FR](#) / [EN](#))



IS / CONFÉDÉRATION DES UNIVERSITAIRES v. ICELAND

Freedom of assembly and of association - Unions of universities - Ban on strikes

Inadmissibility of the application owing to its clearly unfounded nature [article 11 (freedom of assembly and of association) of the ECHR].

The applicant, an association, bringing together the unions of universities in Iceland, claimed that by adopting a law prohibiting any action of strike or stopping work and providing that the matters relating to the working conditions of the union members should be the subject of a binding decision delivered by a court specially designated for the occasion by the Supreme court, the Icelandic State had rendered the right of the unions to protect the interests of their members illusory and had limited, in an unjustified and disproportionate manner, the rights and liberties recognised by article 11 of the ECHR with respect to all the affiliated unions.

Decision communicated on 07.06.2018 (application no. 2451/16) ([EN](#))
Press release ([EN](#))

GE / KARTVELISHVILI v. GEORGIA

Right to a fair hearing - Right to summon and examine witnesses - Possibility of comparing the inculpatory evidence with the exculpatory evidence

Violation of article 6 §§ 1 and 3d (right to a fair hearing and right to summon and examine witnesses) of the ECHR.

The applicant, a Georgian national, claimed that the criminal proceedings directed against him for the violation of the prison rules had been unfair in that the courts had refused to hear his fellow prisoners, as witnesses for the defence, under the same conditions as the prison officers, heard as witness for the prosecution.

Ruling of 07.06.2018 (application no. 17716/08) ([EN](#))
Press release ([EN](#))

BG / DIMITROV AND MOMIN v. BULGARIA

Right to a fair hearing - Right of the defendants to question the victim - Conviction without confrontation

Non-violation of article 6 §§ 1 and 3d) (right to a fair hearing and right to examine witnesses) of the ECHR.

The applicants, Bulgarian nationals sentenced to six and five and a half years of prison respectively for rape, complained about having been sentenced based on the deposition of the victim with whom they had never been brought face to face and who they could not question. The applicants had requested to be put face to face with her separately but this request had been dismissed as the woman in question had, in the meantime, died of cancer.

Ruling of 07.06.2018 (application no. 35132/08) ([FR](#))
Press release ([FR](#) / [EN](#))

AZ / RASHAD HASANOV AND OTHERS v. AZERBAIJAN

Right to liberty and security - Limitation on use of restrictions on rights - Detention without plausible reasons

Violation of article 5 § 1 (right to liberty and security) of the ECHR.

Violation of article 18 (limitation on use of restrictions on rights) combined with article 5 of the ECHR.

The applicants, Azerbaijani nationals, members of a non-governmental organisation of civil society, claimed to have been placed in detention without plausible reasons to suspect that they had committed a criminal offence and argued that the courts had not duly justified their being held in detention. They also stated that their arrest and detention were intended to punish them for their political and social activism.

Ruling of 07.06.2018 (application nos. 48653/13, 52464/13, 65597/13 and 70019/13) ([EN](#))
Press release ([EN](#))