



FLASH NEWS

01/22

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 20/12/2021 TO 4/2/2022

BG / EKIMDZHIEV AND OTHERS v. BULGARIA

Right to respect for private life and correspondence - Secret surveillance regime - Guarantees against arbitrary and abusive practices in secret surveillance, retention and access to communication data

Infringement of Article 8 (right to respect for private life and correspondence) of the ECHR on account of secret surveillance.

Infringement of Article 8 of the ECHR on account of retention and access to communication data.

The applicants, two Bulgarian lawyers and two NGOs specialising in the promotion of European integration and human rights, alleged that under Bulgaria's covert surveillance system, the communications of anyone in the country could be intercepted, and that the system of retention and subsequent access to communications data allowed the authorities to access the communications data of anyone in the country. They argued that the relevant national laws, introduced following a judgment of the ECtHR in an almost identical case (judgment of 28 June 2007, [Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria](#), application No 62540/00), did not provide sufficient guarantees against arbitrary or abusive practices. They also complained about a lack of effective remedy for such breaches.

Judgment of 11/1/2022 (application No 70078/12) ([EN](#))
Press release ([FR/EN](#))

See also the pending cases SpaceNet ([C-793/19](#)), Telekom Deutschland ([C-794/19](#)) and Commissioner of the Garda Síochána and Others ([C-140/20](#)).

PL / ADVANCE PHARMA SP. Z O.O v. POLAND

Right to a fair trial - Independent and impartial tribunal established by law - Composition of the Civil Division of the Supreme Court - Appointment of judges recommended by the National Council of the Judiciary

Infringement of Article 6 § 1 (right to a fair trial) of the ECHR.

The applicant company, established in Poland, marketed a food supplement, the sale of which was its sole source of income. In 2010, the product was withdrawn from the market following tests by the National Pharmaceutical Institute. The applicant therefore destroyed its stocks of this product. After the administrative courts had annulled the decision to withdraw the contract, the applicant brought an unsuccessful action for damages against the State. The applicant complained that the panel of the Civil Division of the Supreme Court that considered - and rejected - her appeal was not an independent and impartial tribunal established by law, in particular because it was composed of judges recommended by the National Council of the Judiciary, which did not offer guarantees of independence and impartiality. She referred, inter alia, to the proceedings before the CJEU that subsequently led to the judgment in Joined Cases [C-585/18, C-624/18 and C-625/18, A.K. and Others \(Independence of the Disciplinary Chamber of the Supreme Court\)](#).

Judgment of 3/2/2022 (application No 1469/20) ([EN](#))
Press release ([FR/EN](#))



PT / DE SOUSA v. PORTUGAL

Right to liberty and security - European Arrest Warrant - Detention for the purpose of executing a European Arrest Warrant - Guarantees against arbitrary detention

Inadmissibility of the complaint alleging a violation of Article 5 § 5 (right to liberty and security) of the ECHR on the grounds that it is manifestly ill-founded [Article 35 §§ 3 a) and 4 of the ECHR].

Inadmissibility of the complaint alleging a violation of Article 5 § 5 of the ECHR due to its incompatibility *ratione materiae* with the Convention (Article 35 §§ 3 and 4 of the ECHR).

The applicant, a Portuguese-American national, had been detained between 20 February and 1 March 2017 in Portugal with a view to her surrender to the Italian authorities on the basis of a European Arrest Warrant (EAW), for the purpose of enforcing her prison sentence. In 2009, she had been convicted in Italy in absentia for kidnapping. Subsequently, on 1 March 2017, the Court of Milan ordered the lifting of the EAW and, on the same day, the Portuguese authorities released the applicant, closing the EAW procedure. The applicant complained that she had been arbitrarily deprived of her liberty in Portugal for 9 days and that, despite the irregularity of her detention, she had not been able to claim compensation for the harm it had caused her.

Decision communicated on 6/1/2022 (application No 28/17) ([FR](#))

LT / ADOMAITIS v. LITHUANIA

Right to a fair trial - Right to privacy - Secret surveillance - Conditions of use of the information gathered - Remedies

Non-infringement of Article 6 § 1 (right to a fair trial) and Article 8 (right to privacy) of the ECHR.

The applicant, a Lithuanian national, was the subject of a criminal investigation on the grounds that he was suspected of abuse of power in his capacity as prison governor. After his telephone communications had been monitored and intercepted for a year, the investigations against him were discontinued for lack of sufficient evidence. However, the information collected was used in the context of a disciplinary procedure, which led to his dismissal. The applicant complained, inter alia, about the lack of access to the information collected as well as the lack of specific provisions governing the use of the information and the remedies for challenging its legality.

Judgment of 18/1/2022 (application No 14833/18) ([EN](#))
Press release ([FR/EN](#))

OTHER INFORMATION

The European Court of Human Rights has published a new fact sheet on the protection of personal data

On the occasion of Data Protection Day, celebrated every year on 28 January by the Member States of the Council of Europe and the institutions of the European Union, the European Court of Human Rights published a new fact sheet on its case law regarding the protection of personal data.

Fact sheet ([FR/EN](#))