



FLASH NEWS

1/23

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 19/12 TO 10/2/2023

RU / FEDOTOVA AND OTHERS v RUSSIA [GC]

Right to respect for private and family life - Lack of recognition and legal protection of same-sex couples - Clear trend in the legislation of a majority of States Parties and convergent positions of several international bodies - Reduced margin of discretion in providing a legal framework

Infringement of Article 8 (right to respect for private and family life) of the ECHR.

The applicants, three same-sex couples, complained that it was impossible to register their respective couples officially and alleged that the legal vacuum they faced deprived them of any legal protection and exposed them to consequent difficulties in their daily lives. They considered that the Russian State was under a positive obligation to provide a legal alternative to marriage that would enable them to exercise their rights under Article 8 ECHR.

Judgment of 17/1/2023 (applications No 40792/10, No 30538/14 and No 43439/10) ([FR/EN](#))
Press release ([FR/EN](#))

FR / Y v FRANCE

Right to respect for private life - Refusal to include the word 'neutral' or 'intersex' on the birth certificate of an intersex person - Lack of European consensus - Extended margin of discretion of States Parties

Non-infringement of Article 8 (right to respect for private and family life) of the ECHR.

The applicant, a French national, whose birth certificate states that he is 'male', claimed to be a biologically intersex person. He complained about the rejection by the domestic courts of his request to have the word 'neutral' or 'intersex' entered on his birth certificate instead of the word 'male'.

Judgment of 31/1/2023 (application No 76888/17) ([FR](#))
Press release ([FR/EN](#))

LT / MACATÉ v LITHUANIA [GC]

Freedom of expression - Children's book presenting homosexual relations as essentially equivalent to heterosexual relations - Temporary suspension of its distribution - Incompatibility with the concepts of equality, pluralism and tolerance

Infringement of Article 10 (right to freedom of expression) of the ECHR.

The applicant, a Lithuanian national, complained under Articles 10 (right to freedom of expression) and 14 (prohibition of discrimination) of the ECHR about the temporary suspension of the distribution of her book and the subsequent labelling of the book as harmful to children, measures which, according to her, had been adopted solely because the book contained positive depictions of homosexual relations. She also argued that the law on the protection of minors, although neutral in appearance, was in fact intended to limit the dissemination of any content portraying LGBTI persons in a favourable light under the pretext of protecting children. Furthermore, she alleged that the restrictions placed on her book were motivated by prejudice against sexual minorities.

Judgment of 23/1/2023 (application No 61435/19) ([FR/EN](#))
Press release ([FR/EN](#))



RU / UKRAINE AND NETHERLANDS v RUSSIA [GC]

Russia's jurisdiction over areas of eastern Ukraine controlled by separatists - Administrative practices established by Russia in that region - Repetition of identical or similar acts contrary to the ECHR, officially tolerated by the State authorities - Destruction of Malaysian Airlines flight MH17

Partial **admissibility** of applications concerning infringements of several articles of the ECHR.

The case concerns grievances relating to the conflict, involving pro-Russian separatists, which broke out in eastern Ukraine in the spring of 2014. On the one hand, the Government of Ukraine complained about the commission of a number of acts forming different sets ('administrative practices') of infringements of ECHR articles, allegedly committed by separatists from the 'Donetsk People's Republic' and the 'Lugansk People's Republic', as well as by members of the Russian army. On the other hand, the Government of the Kingdom of the Netherlands complained about the destruction of Malaysian Airlines flight MH17 in eastern Ukraine on 17 July 2014, which cost the lives of 298 people, including 196 Dutch nationals. The applicant governments argued that their complaints fell within the jurisdiction of the Russian Federation.

Decision communicated on 25/1/2023 (applications Nos 8019/16, 43800/14 and 28525/20) ([FR/EN](#))

Press release ([FR](#) / [EN](#))

FR / C8 (CANAL 8) v FRANCE

Freedom of expression - Financial penalties imposed on a television channel - Broadcasting of footage prejudicial to the image of women and likely to stigmatise homosexuals - Proportionate penalty

Non-infringement of Article 10 (freedom of expression) of the ECHR.

The applicant company, C8 (Canal 8), a company incorporated under French law, is a television service. The programme 'Touche pas à mon poste', broadcast by the latter, is a television entertainment programme that has given rise to numerous controversies and complaints from viewers to the Higher Council for the Audiovisual Sector (CSA). The applications concerned two penalties imposed by the CSA on the applicant company because of the content of two sequences broadcast in the programme, which were considered to be harmful to the image of women and to stigmatise homosexuals.

Judgment of 9/2/2023 (applications Nos 58951/18 and 1308/19) ([FR](#))

Press release ([FR/EN](#))

RO / COTORA v ROMANIA

Right to a fair trial - Favouritism in the context of a selection procedure for the vice-presidents of a court - Fair disciplinary sanction - Disciplinary section of the Higher Judicial Council constituting an impartial and independent 'judicial body with full jurisdiction' - Facts predating the Court's case-law

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

The applicant, a judge and president of Craiova Court of Appeal, who had been disciplined by a reduction in salary, alleged that the High Court had not carried out a 'sufficient review' to remedy the defects in the disciplinary proceedings in which the disciplinary section for judges of the Higher Judicial Council (HJC) had been called upon to rule on 31 October 2016. The disciplinary proceedings concerned the applicant's involvement in the selection procedure for two vice-presidents of the Court where she was in office. The HJC had ruled that by having contacted, directly or through two of her fellow judges, certain members of the selection committee set up for the competition in question, with the aim of favouring certain candidates, the applicant had committed a disciplinary breach. She further alleged that the disciplinary section for judges of the HJC had refused to consider some of her offers of evidence.

Judgment of 17/1/2023 (application No 30745/18) ([FR](#))

Press release ([FR/EN](#))

In this respect, it may be noted that the ECtHR stressed that it did not, in its analysis, take into account the conclusions of the judgment of the Court called to rule, inter alia, on the compatibility with EU law of the application of Government Ordinance No 77/2018, amending Act No 317/2004 on the HJC (judgment of the Grand Chamber of 18 May 2021, *Asociația 'Forumul Judecătorilor din România'*, Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, §§ 186-207), the said ordinance having entered into force on 5 September 2018, that is to say, after the facts of this case.