



FLASH NEWS

07/21

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 19/07 TO 24/09/2021

AT / POLAT v AUSTRIA

Right to respect for private and family life - Freedom of religion - Post-mortem examination in the interests of science of a newborn child with a rare disease

Infringement of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion) of the ECHR with regard to the post-mortem examination of the applicant's son carried out against her will and against her religious convictions.

Infringement of Article 8 of the ECHR in that the authorities did not provide the applicant with information about the post-mortem examination of her son.

The applicant, an Austrian national, complained that her son's autopsy, carried out in the interests of science, had been performed without her permission. In particular, she argued that the domestic courts had not properly balanced the issues and that the hospital had failed to inform her of the extent of the autopsy and the removal of her deceased son's internal organs.

Judgment of 20/7/2021 (application No 12886/16) ([EN](#))
Press release ([FR](#) / [EN](#))

SI / PINTAR AND OTHERS v SLOVENIA

Protection of property - Control of the use of property - Lack of effective remedy to challenge a decision of a central bank

Infringement of Article 1 of Protocol No 1 (protection of property) to the ECHR.

Following the financial crisis of 2007, the Banka Slovenije (Central Bank of Slovenia) had, in 2013 and 2014, adopted extraordinary measures in respect of several major Slovenian banks that had, inter alia, the effect of cancelling, without any compensation, all shares and bonds held by the claimants. The applicants complained, in particular, that they had no effective remedy to challenge the central bank's decision. They also argued that the measures taken by the bank were not justified.

Judgment of 14/9/2021 (application No 49969/14) ([EN](#))
Press release ([FR](#) / [EN](#))

The judgment follows a judgment of the Court of 19 July 2016 by the Grand Chamber ([Kotnik and others, C-526/14, ECLI:EU:C:2016:570](#)) and also concerns, at least in part, a case pending before the Court ([Banka Slovenije, C-45/21](#)).

PL / RECZKOWICZ v POLAND

Right to a fair trial - Right to a tribunal established by law - Irregularities in the appointment of judges to the disciplinary chamber of the Supreme Court

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

The applicant, a Polish lawyer, complained that her case had not been heard by an 'independent and impartial tribunal established by law'. In particular, she alleged that the judges of the disciplinary chamber of the Supreme Court who examined her case were appointed by the President of Poland, on the recommendation of the National Judicial Council (whose members, since the reorganisation of the Polish judiciary initiated in 2017, are no longer elected by judges but by the Sejm - the lower house of Parliament), in violation, according to her, of domestic law and the principles of the rule of law, separation of powers and independence of the judiciary.

Judgment of 22/7/2021 (application No 43447/19) ([EN](#))
Press release ([FR](#) / [EN](#))

See also, in this respect, the judgments of the Court of 19 November 2019, *A. K. and others* (Independence of the disciplinary chamber of the Supreme Court) ([C-585/18, C-624/18 and C-625/18, EU:C:2019:982](#)), and of 15 July 2021, *Commission v Poland* (Disciplinary system for judges) ([C-791/19, EU:C:2021:596](#)).

FR / M.D. AND A.D. v FRANCE

Prohibition of inhuman or degrading treatment - Right to liberty and security - Administrative detention of an infant and its mother in an inappropriate centre

Infringement of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR.

Infringement of Article 5 §1 (right to liberty and security) and Article 5 §4 (right to a prompt decision on the lawfulness of detention) of the ECHR.

The applicants, Malian nationals (a mother and her daughter aged 4 months at the time of the events), considered that their placement in administrative detention for 11 days, with a view to their transfer to Italy, the country responsible for examining their asylum application, constituted inhuman and degrading treatment. With regard to the daughter, they also alleged that her placement in administrative detention was contrary to the right to liberty and security and that she had not been given an individual remedy to challenge the legality of her placement and retention in detention.

Judgment of 22/7/2021 (application No 57035/18) ([FR](#))

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

PL / X. v POLAND

Prohibition of discrimination on grounds of sexual orientation - Refusal to grant custody of a child to its mother because of her relationship with another woman

Infringement of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the ECHR.

The applicant, a mother of four children from her marriage, complained that the domestic courts had taken away the custody of her youngest child because of her sexual orientation. She alleged that the courts had done so in favour of her former husband mainly because of the applicant's relationship with another woman, an issue that had been constantly at the centre of the deliberations and present at every stage of the legal proceedings. The applicant also alleged that the single judge of the District Court had not been impartial since she knew the applicant's parents well.

Judgment of 16/9/2021 (application No 20741/10) ([EN](#))

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

FR / SANCHEZ v FRANCE

Freedom of expression - Criminal conviction of an elected representative for failing to promptly remove unlawful comments by third parties from the wall of his publicly accessible Facebook account used during his election campaign

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

The applicant, a French politician, at the time a local elected representative and a candidate in the legislative elections, claimed that his criminal conviction, because of comments published by third parties on the wall of his Facebook account used in the context of his election campaign, was contrary to freedom of expression. He had been sentenced, as the holder of this account, to a criminal fine for not having promptly deleted from this account comments calling for hatred or violence against people of the Muslim faith, his responsibility in this respect having been deemed distinct, as the 'producer' of an online communication site open to the public, from that of the third-party authors, who were also convicted.

Judgment of 2/9/2021 (application No 45581/15) ([FR](#) / [EN](#))

OTHER INFORMATION

Rejection of requests for interim measures relating to the management of the COVID-19 pandemic - Laws providing for an obligation to vaccinate - Applications outside the scope of Rule 39 of the ECtHR rules (interim measures)

Abgrall and 671 others v France (application No 41950/21) Press release ([FR](#) / [EN](#))

Kakaletri and others v Greece and Theofanopoulou and others v Greece (applications Nos 43375/21 and 43910/21)

Protocol No 15 to the ECHR enters into force

Protocol No 15, amending the ECHR, entered into force on 1 August 2021. In particular, this protocol introduces into the preamble of the ECHR a reference to the principle of subsidiarity and the margin of appreciation doctrine.

Furthermore, it reduces, from 1 February 2022, to 4 months the period (currently 6 months) during which a case can be brought before the ECtHR after a final national decision.

Candidates for the post of judge on the Court must now be under 65 years of age on the date on which the list of three candidates is expected by the Parliamentary Assembly.

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

Text of Protocol No 15 to the ECHR ([FR](#) / [EN](#))