



FLASH NEWS

8/21

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 27/9 TO 12/11/2021

PL / DOLIŃSKA - FICEK AND OZIMEK v POLAND

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

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

The applicants, Polish judges, had applied for positions as ordinary judges. After the National Council of the Judiciary (NCJ) refused to recommend their applications, they lodged appeals with the Supreme Court, which rejected them. They complained that the Chamber of Extraordinary Control and Public Affairs of the Supreme Court, which considered these appeals, was not an 'independent and impartial tribunal established by law' on the grounds that it was composed solely of judges recommended by the NCJ.

Judgment of 8/11/2021 (applications Nos 49868/19 and 57511/19) ([EN](#))

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

See also in this respect, inter alia, the recent judgment of the Court of 6 October 2021, *W.Ż.* (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment) ([C-487/19](#), [EU:C:2021:798](#)).

BG / MIROSLAVA TODOROVA v BULGARIA

Freedom of expression - Disciplinary sanctions in retaliation for criticism of the Supreme Council of the Judiciary (SCJ) and the executive - Independence of the judiciary

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

Infringement of Article 18 (limitation on use of restrictions on rights) of the ECHR in conjunction with Article 10 of the ECHR.

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

Inadmissibility of the complaint alleging a violation of Article 8 of the ECHR for incompatibility *ratione materiae* with the Convention [Article 35(3)(a) and (4) of the ECHR].

The applicant, a Bulgarian judge, complained about disciplinary sanctions imposed on her by the SCJ because of delays in the processing of her cases. She alleged that the disciplinary proceedings against her had pursued a purpose other than that stated and should be seen as a covert sanction for her critical stance on the work of the SCJ and the interventions of the executive in ongoing cases.

Judgment of 19/10/2021 (application No 40072/13) ([FR](#))

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

CH / W.A. V SWITZERLAND

Right to liberty and security - Criminal conviction - Ne bis in idem - Detention after a prison sentence under new provisions of the Criminal Code

Infringement of Article 5(1) (right to liberty and security) of the ECHR.

Infringement of Article 7(1) (no punishment without law) of the ECHR.

Infringement of Article 4 of Protocol No 7 (right not to be tried or punished twice).

In 1990, the applicant, a Swiss national born in 1960, suffering from severe psychiatric disorders, was sentenced to 20 years' imprisonment for two murders. Noting that he posed a threat to society, the Court rejected the confinement of the applicant, considering that such confinement rarely lasts more than 5 years. After completing his sentence in 2010, the applicant was remanded in custody after the public prosecutor requested his confinement under new provisions of the Criminal Code. In 2012, new proceedings were opened in view of certain facts of which the jury would not have been aware during the initial proceedings. In 2013, on the basis of a recent psychiatric report, the judge found that the conditions for confinement had already been met in 1990 and continued to be met, and the confinement of the applicant was ordered. The applicant complained that his confinement constituted a retroactive punishment and that he had been punished twice for the same acts.

Judgment of 2/11/2021 (application No 38958/16) ([EN](#))

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

AZ / DEMOCRACY AND HUMAN RIGHTS RESOURCE CENTRE AND MUSTAFAYEV v AZERBAIJAN

Protection of property - Freedom of movement - Freezing of bank accounts of human rights defenders - Imposition of a travel ban

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

Infringement of Article 13 (right to an effective remedy) of the ECHR in conjunction with Article 1 of Protocol No 1.

Infringement of Article 2 of Protocol No 4 (freedom of movement) to the ECHR.

Infringement of Article 18 (limitation on use of restrictions on rights) of the ECHR, in conjunction with Article 1 of Protocol No 1 in respect of two applicants and Article 2 of Protocol No 4 in respect of Mr Mustafayev.

The applicants, an NGO specialising in the protection of human rights and an Azerbaijani lawyer, the founder and president of the NGO, alleged that the freezing of their bank accounts and the travel ban imposed on the second applicant, ordered in the context of criminal proceedings for alleged financial irregularities, were politically motivated and aimed at paralysing their work. According to them, these restrictions were part of a campaign of repression against human rights defenders and NGO activists in Azerbaijan.

Judgment of 14/10/2021 (applications Nos 74288/14 and 64568/16) ([EN](#))
Press release ([FR](#) / [EN](#))

SK / M.L. v SLOVAKIA

Right to respect for private and family life - Freedom of expression of newspaper publishers - Publication of unverified statements about a priest convicted of sexual offences after his death

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

The applicant, a Slovakian national, complained that her case against newspaper publishers had been dismissed. The action targeted three articles about her son, a former Catholic priest, and his convictions (subsequently overturned) for sexual offences. She felt that these articles, published 2 years after his death, were sensational in nature and based on inaccurate and unverified statements.

Judgment of 14/10/2021 (application No 34159/17) ([EN](#))
Press release ([FR](#) / [EN](#))

HU / BANCSÓK AND LÁSZLÓ MAGYAR (No 2) v HUNGARY

Prohibition of inhuman and degrading treatment - Life imprisonment with possibility of release after 40 years

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

The applicants, Hungarian nationals serving life sentences in Hungary, were eligible for conditional release only after 40 years of imprisonment. They complained that life imprisonment with the possibility of conditional release after 40 years was, in effect, a life sentence with no prospect of release.

Judgment of 28/10/2021 (applications Nos 52374/15 and 53364/15) ([EN](#))
Press release ([FR](#) / [EN](#))

FR / ZAMBRANO v FRANCE

Prohibition of inhuman and degrading treatment - Right to privacy - Health pass - Obligation to be vaccinated

Inadmissibility of the application on the grounds, inter alia, of non-exhaustion of domestic remedies and its abusive nature [Article 35(1) and (3) of the ECHR].

The applicant, a French teacher, had created a movement called 'NO PASS!!!' to fight against the health pass introduced in France. On his website, he proposed completing a form allowing for a kind of collective action before the European Court of Human Rights, leading to the filing of more than 18 000 applications before the Court. The applicant, alleging a serious risk of physical harm, considered that the health pass was intended to force consent to vaccination. Furthermore, according to the applicant, the health pass constituted a discriminatory interference with the right to privacy.

Decision communicated on 7/10/2021 (application No 41994/21) ([FR](#))
Press release ([FR](#) / [EN](#))