COURT OF JUSTICE OF THE EUROPEAN UNION
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EUROPEAN COURT OF HUMAN RIGHTS

FLASH NEWS

1/24

OVERVIEW FROM 2/1 TO 9/2

UA / BOGDAN v UKRAINE

Rights of the defence - Right to legal assistance of one's own choosing - Invalidity of a declaration of waiver of the right to legal assistance by reason of lack of funds - Obligation to establish the will and validity of the waiver in each case

Infringement of Article 6 §§ 1 and 3(c) (right to a fair trial/right to legal assistance of one's own choosing) of the ECHR.

The case concerned the validity of a declaration of waiver of his right to the assistance of a lawyer, signed by the applicant during an unacknowledged period of detention when he was in a state of incapacity.

The European Court of Human Rights (ECtHR) considered that the absence of a lawyer when the declaration was signed did not in itself render the waiver null and void within the meaning of Article 6 of the ECHR. However, as there was no evidence that the applicant had had access to medication or substitution therapy while under police control, his allegation that he had already suffered from withdrawal at the time of signing could be considered plausible. Moreover, the applicant had also made incriminating statements in the absence of a lawyer during the reconstruction of the crime on the spot. Consequently, the ECtHR found that the national courts had not sufficiently addressed the applicant's mental state at the time of the reconstruction, the validity of his waiver of the right to a lawyer and the impact of that waiver on the fairness of the trial as a whole. In that regard, it emphasised that it was first of all for those courts to determine convincingly whether the waiver of legal aid was voluntary and whether or not it was valid.

The ECtHR therefore held that the waiver, while the applicant was in a state of withdrawal, was not valid and that his right of access to a lawyer had therefore been violated.

Judgment of 8/2/2024 (application No 3016/16) (EN)
Press release (FR/EN)
Legal summary (EN)

FR / ALLÉE v FRANCE

Freedom of expression - Criminal conviction for public defamation - Allegations of harassment and sexual assault - Need to provide appropriate protection for persons reporting acts of psychological or sexual harassment of which they consider themselves to be victims

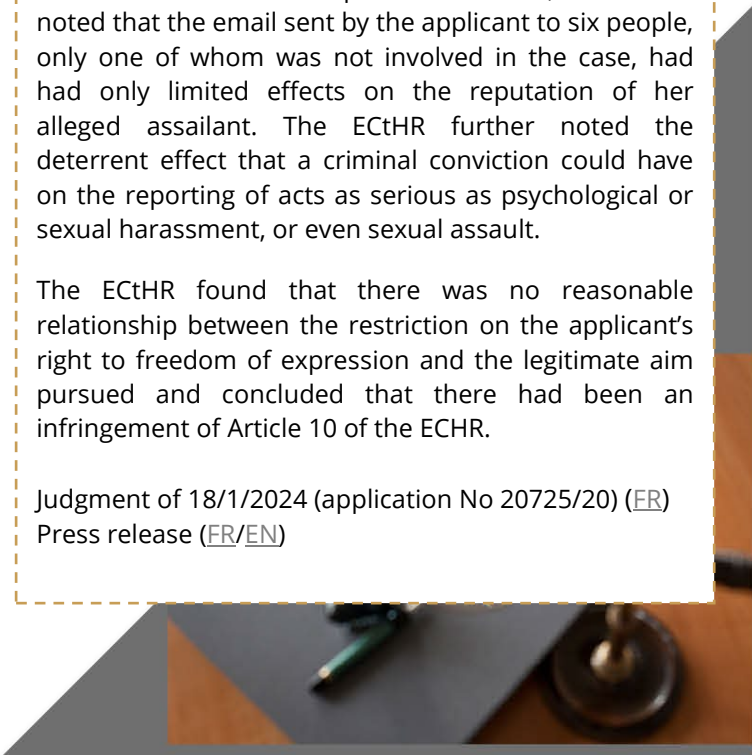
Infringement of Article 10 (freedom of expression) of the ECHR.

The case concerned the applicant's criminal conviction for public defamation, following allegations of harassment and sexual assault made against a director of the association that employed her and sent by email to six people inside and outside the association.

The European Court of Human Rights (ECtHR) stressed the need, in the light of Article 10 of the ECHR, to provide appropriate protection for people who report acts of psychological or sexual harassment of which they consider themselves to be victims. It considered that the national courts, by refusing to adapt the concept of a sufficient factual basis and the criteria relating to good faith to the circumstances of the case, had placed an excessive burden of proof on the applicant by requiring her to provide evidence of the facts she intended to report. In addition, the ECtHR noted that the email sent by the applicant to six people, only one of whom was not involved in the case, had had only limited effects on the reputation of her alleged assailant. The ECtHR further noted the deterrent effect that a criminal conviction could have on the reporting of acts as serious as psychological or sexual harassment, or even sexual assault.

The ECtHR found that there was no reasonable relationship between the restriction on the applicant's right to freedom of expression and the legitimate aim pursued and concluded that there had been an infringement of Article 10 of the ECHR.

Judgment of 18/1/2024 (application No 20725/20) (FR)
Press release (FR/EN)



EL / O. G. AND OTHERS v GREECE

Right to privacy - Blood samples taken from sex workers in a police station without their prior consent - Publication of highly sensitive medical data of HIV-positive women together with their identities and photos

Infringement of Article 8 (right to respect for private life) of the ECHR in relation to the blood test imposed on the applicants.
Infringement of Article 8 (right to respect for private life) of the ECHR with regard to the publication of their data.

The case concerned, on the one hand, the publication, by decision of the internal authorities, of the medical data of HIV-positive sex workers and the media coverage thereof and, on the other hand, the circumstances in which a blood test was imposed on them.

Firstly, the European Court of Human Rights (ECtHR) considered that the blood test imposed on two of the applicants amounted to an interference with their private lives and noted that such a test was not provided for by law within the meaning of Article 8 of the ECHR, since the domestic provisions at issue must have been foreseeable in terms of their effects on the applicants. In particular, the ECtHR found that none of the provisions cited by the Government was capable of justifying a medical procedure carried out by police officers or doctors such as that performed on the applicants concerned.

Secondly, the ECtHR found that the publication of the four applicants' data constituted a disproportionate interference with their right to respect for private life. The applicants' identities and photographs, together with the information that they were HIV-positive, had been uploaded onto the police website and disseminated by the media, and the public prosecutor had not considered whether other measures could have been taken in the present case to ensure that the applicants were less exposed.

Consequently, the ECtHR held that the interference with the four applicants' right to respect for their private lives was not sufficiently justified and was disproportionate to the legitimate aims pursued. There had therefore been an infringement of Article 8 of the ECHR.

Judgment of 23/1/2024 (applications No 71555/12 and No 48256/13) (FR)
Press release (FR/EN)

OTHER INFORMATION

The European Court of Human Rights amends the rules on the recusal of judges

On 22 January 2024, a number of amendments to Rule 28 of the Rules of the Court of Human Rights on the recusal of judges came into force.

Rule 28 of the Rules of the Court of Human Rights ensures the rigorous implementation of the principle of judicial impartiality, which is crucial to the defence of the rule of law, the safeguarding of human rights and the proper administration of justice. The new version reiterates the grounds on which a judge may not sit in a given case and reinforces the hard core of the procedural framework governing the recusal of judges by expressly codifying the existing practice whereby the parties to the proceedings may request the recusal of a judge.

The amended article is accompanied by a practical direction on the recusal of judges. The purpose of this direction is to further clarify the procedures laid down in Rule 28, which guarantees to the parties the practical and effective possibility of raising any issue relating to the impartiality of a judge and the procedure to be followed in such cases.

Press release (FR/EN)
Rules of the European Court of Human Rights (FR/EN)
Practical Direction issued by the President of the European Court of Human Rights (FR/EN)