COURT OF JUSTICE OF THE EUROPEAN UNION

RESEARCH AND DOCUMENTATION DIRECTORATE

EUROPEAN COURT OF HUMAN RIGHTS

FLASH NEWS

3/24

OVERVIEW FROM 25/3 TO 17/5

TR / AYDIN SEFA AKAY v TURKEY

Right to liberty and security - Right to respect for private life and home - Arrest and remand in custody of a United Nations judge despite his right to full diplomatic immunity - Failure to examine arguments based on his diplomatic immunity

Infringement of Article 5 § 1 (right to liberty and security) of the ECHR.
Infringement of Article 8 (right to respect for private life and home) of the ECHR.

The case concerned the arrest and remand in custody of a United Nations judge, as well as the search of his home and the search to which he was subjected in the aftermath of the attempted military coup in Turkey in 2016, despite the diplomatic immunity he enjoyed. At the time of his arrest, he was working remotely for the International Residual Mechanism for Criminal Tribunals ('the UN Mechanism for Criminal Tribunals') from his home in Istanbul.

The European Court of Human Rights was not convinced by the domestic courts' interpretation of international law in rejecting Mr Akay's argument based on diplomatic immunity. It appears that he was entitled to full diplomatic immunity, including the inviolability of his person and his private residence, and that he should have been immune, under international law, from any form of arrest or detention. His arrest, remand in custody, the search of his home and the search to which he was subjected were therefore illegal acts. In addition, the issue of his diplomatic immunity was not examined for the first time by the courts until more than 8 months later, which rendered useless any protection he should have enjoyed as an international judge. Moreover, the question of whether this immunity also applied to the search of his home and the search to which he was subjected was not examined.

Judgment of 23/4/2024 (application No 59/17) (EN)
Press release (FR/EN)
Legal summary (FR)

HR / CHELLERI AND OTHERS v CROATIA

No punishment without law - Arbitral award made by the arbitral tribunal concerning the maritime boundary - Minor offences in connection with commercial fishing without provision of a valid fishing right issued by Croatia - Lack of jurisdiction to rule on the validity and legal effects of the arbitral award

Inadmissibility of the application on the grounds that it is manifestly unfounded [Article 35 §§ 3(a) and 4 of the ECHR].

The case concerns the decisions of the Croatian courts finding the applicants (all fishermen) guilty of minor offences in respect of activities carried out in maritime waters claimed by both Croatia and Slovenia.

The European Court of Human Rights declare that it has no jurisdiction to rule on the validity and legal effects of the 2017 arbitration award establishing the maritime border between Croatia and Slovenia. Given, among other things, that Croatian law clearly defined the maritime boundary, the applicants could not have been unaware that their conduct in the disputed waters would constitute a minor offence under the applicable Croatian legislation. The applications are therefore manifestly ill-founded and inadmissible.

Decision of 16/5/2024 (applications Nos 49358/22, 49562/22 and 54489/22) (EN)
Press release (FR/EN)
Legal summary (FR)

On this subject, see also the judgment of the Court handed down by the Grand Chamber on 31 January 2020, Slovenia v Croatia (C-457/18, EU:C:2020:65).

FR / GERNELLE ET S.A. SOCIÉTÉ D'EXPLOITATION DE L'HEBDOMADAIRE LE POINT v FRANCE

Right to respect for private life - Freedom of expression - Right to an effective remedy - Challenge to telephone interceptions by a third party to the criminal proceedings - Interception of telephone communications with journalists indirectly listened to

Inadmissibility of the application on the grounds of non-exhaustion of domestic remedies [Article 35 §§ 1 and 4 of the ECHR].

The case concerns the possibility for a third party to criminal proceedings in which a telephone interception has been ordered to challenge the interception insofar as it concerns him.

As part of a judicial investigation into the financing of an election campaign, a telephone line used by the former candidate's press attaché was placed under surveillance by order of the investigating judge. Several of his conversations with journalists from Le Point were thus transcribed. However, these journalists were never charged.

Before the European Court of Human Rights, the publication director and the publishing company of the newspaper Le Point complained about the interception of several telephone communications with journalists working for the newspaper. They also maintain that they did not have an effective remedy in this matter.

The Court noted that the applicants had applied to it without first having sought a remedy in the domestic system. It considered that, by refraining from bringing an action based on Article L.141 1 of the Code of Judicial Organisation, which makes it possible to remedy any malfunctioning of the public judicial service by means of compensation, the parties concerned had not done what was necessary to enable the domestic courts to play their fundamental role in the safeguard mechanism established by the ECHR. The Court therefore declared the application inadmissible for failure to exhaust domestic remedies. This decision is final.

Judgment of 16/5/2024 (application No 18536/18) (FR)
Press release (FR/EN)

LU / LUTGEN v LUXEMBOURG

Freedom of expression - Criminal fine imposed on a lawyer for words insulting a judge in an email sent to the competent authorities - Value judgments based on a sufficient factual basis - Sentence not proportionate

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

The case concerns the sentencing of the applicant, a lawyer by profession, to a criminal fine for contempt of court for criticising a judge in an email sent to two ministers and the State Attorney General.

The European Court of Human Rights reiterates that judges may be the subject of personal criticism within admissible limits, which are broader than those applicable to private individuals. Secondly, the Court considers that the statements at issue constitute value judgments based on a sufficient 'factual basis'.

Furthermore, the expressions used by the applicant in his disputed email must be examined having regard to the context in which they were used, which was that of the applicant's defence, in a situation of urgency, of his client's interests, notwithstanding the fact that the latter had the status of neither a civil party nor an accused person in criminal proceedings. Addressed in writing solely to the authorities in charge of maintaining order in the courts at the time, the contents of the disputed email were not publicised in any way.

In the present case, although the applicant's statements had a derogatory connotation and were critical of the judge, they could not be described as insulting within the meaning of Article 10 of the ECHR.

Consequently, the criminal courts failed to strike a fair balance between the need to safeguard the authority of the judiciary and the need to protect the applicant's freedom of expression in his capacity as a lawyer. The applicant's conviction was not proportionate to the legitimate aim pursued and was not 'necessary in a democratic society'.

Judgment of 16/5/2024 (application No 36681/23) (FR)
Press release (FR/EN)
Legal summary (FR/EN)