



## FLASH NEWS

4/25

# EUROPEAN COURT OF HUMAN RIGHTS

## OVERVIEW FROM 14/4 TO 6/6

### IT / MANSOURI v. ITALY [GC]

**Right to liberty and security - Refusal of entry by border police - Redirection of a Tunisian citizen to Tunis (Tunisia) for seven days on board an Italian cruise ship - Failure to exhaust domestic remedies**

**Inadmissibility** of complaints based on several provisions of the ECHR on the grounds that they are manifestly ill-founded [Article 35 §§ 3(a) and 4 of the ECHR].

The case concerns the legality and conditions of the detention of a Tunisian national on board the vessel *Splendid*, which was tasked with returning him to his country of origin pursuant to a refusal of entry issued by the border police on the grounds that he did not have a visa to enter Italian territory.

The European Court of Human Rights (ECtHR) considers in particular that the applicant has not exhausted the available and effective remedies under domestic law. He has therefore failed to take the necessary steps to enable the national courts to play their fundamental role in the safeguard mechanism established by the ECHR, with the ECtHR having a subsidiary role. It observes that if the applicant had complied with the obligation to exhaust domestic remedies in accordance with the rules and procedures available under domestic law, not only would he have given the domestic courts the opportunity to decide whether or not the restrictions at issue amounted to a 'deprivation of liberty' and, if so, were compatible with the ECHR, but he would also have enabled the ECtHR, if he had decided to bring his complaints before it, to rule taking into account the factual and legal findings of those courts, as well as their assessment. Finally, it considers that, in the absence of proceedings pending before them, the Italian courts have not had the opportunity to assess any issue relating to the provisions of the Schengen Code and its Annex V, if necessary by way of a preliminary ruling from the Court of Justice.

It also recalls that, in accordance with a well-established principle of international law and without prejudice to their obligations under treaties, including the ECHR, Contracting States have the right to control the entry, residence and removal of non-nationals.

Decision communicated on 29/4/2025 (application No 63386/16) ([FR/EN](#))  
Press release ([FR/EN](#))  
Legal summary ([ER/EN](#))

### RO / BĂDESCU AND OTHERS v. ROMANIA

**No punishment without law - Conviction of judges specialising in criminal law for abuse of office - Alteration of facts and misapplication of the law in a court decision causing harm - Criminal liability - Independence of the judiciary**

**Non-infringement** of Article 7 (no punishment without law) of the ECHR.

The case concerns the alleged lack of foreseeability of criminal law by the applicants, who are judges by profession and were convicted of abuse of office.

Like the national courts, the ECtHR notes that the conduct for which the applicants were criticised was not the delivery of a court decision, but the fact that they had adopted a certain course of conduct prior to the decision and had then deliberately constructed a legal argument contrary to the law in order to reach a predetermined outcome, thereby causing harm. The national authorities therefore found that the applicants had altered the facts in order to enable the *ne bis in idem* principle to be applied in a case before them.

In this regard, the ECtHR attaches importance to the analysis of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), according to which the purpose of the criminal investigation was not to examine the legality and validity of the judicial decision handed down at the end of a trial – that role being the exclusive responsibility of the competent supervisory bodies provided for by law – but to identify, beyond the decision, conduct contrary to the duties of the office and corresponding to the material element of the offence, such conduct being capable, in some cases, of influencing the solution to be adopted. Thus, the domestic courts distinguished between the act that gave rise to the applicants' criminal liability and the pronouncement of a decision in good faith.

Judgment of 15/4/2025 (applications Nos 22198/18, 48856/18, 57849/19) ([ER](#))



## FR / L. AND OTHERS v. FRANCE

**Prohibition of inhuman or degrading treatment - Effective protection against rape - No express reference to the concept of consent in domestic law - Failure of courts to properly analyse the effect of all the surrounding circumstances**

**Infringement** of Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life) of the ECHR.

**infringement** of Article 14 (prohibition of discrimination) of the ECHR for application No 46949/21.

In each of the three cases, the applicants complained that French law and practice did not provide effective protection against rape and that their status as minors and their vulnerable situation at the time of the events they reported had not been adequately taken into account.

The European Court of Human Rights (ECtHR) is of the opinion that the domestic courts did not properly analyse the effect of all the surrounding circumstances and did not take sufficient account, in their assessment of the applicants' discernment and consent, of the particularly vulnerable situation in which they found themselves, especially given their status as minors.

Recalling that consent must reflect the free will to engage in a specific sexual act at the time it is given, the ECtHR considers that, taking into account both the legal framework applicable at the time and the way in which it was applied, the respondent State failed to fulfil its positive obligations to effectively apply a system of criminal law capable of punishing non-consensual sexual acts. It reiterates that it is not called upon to rule on the criminal liability of the perpetrators of the acts in question and that its findings cannot therefore be interpreted as an opinion on the guilt of the persons implicated.

Judgment of 24/4/2025 (applications Nos 46949/21, 24989/22 and 39759/22) ([ER](#))

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

Legal summary ([ER/EN](#))

## RO / MANOLACHE v. ROMANIA

**Right to a fair trial - Change in the composition of the trial panel in the final instance - Necessity of hearing relevant witnesses directly - Respect for the principle of immediacy**

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

The case concerns the fairness of criminal proceedings brought against the applicant, a police officer, for influence peddling, who was convicted by the Curtea de Apel (Court of Appeal, Romania) at last instance after his acquittal, even though one of the two judges of the court of last instance did not hear the witnesses directly.

The European Court of Human Rights (ECtHR) finds in particular that, in its judgment of 2 November 2016, the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) had, in the present case, indeed reinterpreted the testimony that constituted decisive evidence, without either of the two judges of the trial panel having heard the witnesses in question directly, which is contrary to the requirements of a fair trial.

The ECtHR notes the specific features of the case, which concerned, on the one hand, an appeal procedure following the acquittal of the applicant at first instance and, consequently, the obligation of the Curtea de Apel Pitești (Court of Appeal of Pitești) to take ex officio measures to hear the relevant witnesses directly (see *Miron v. Romania*, No 37324/16, §§ 31-34, 5 November 2024), and, on the other hand, a panel of two judges whose decision could only be adopted unanimously.

Judgment of 3/6/2025 (application No 7908/17) ([ER](#))

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