



FLASH NEWS

6/24

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 15/7 TO 4/10

FR / M.A. and OTHERS v FRANCE

Right to respect for private life – Trafficking in human beings – General and absolute criminalisation of the purchase of sexual acts – Wide margin of appreciation

Non-infringement of Article 8 (right for respect to private life) of the ECHR.

The case concerned the criminalisation in French law of the purchase of sexual relations, which would place the physical and mental integrity and the health of persons engaged in prostitution in a state of serious peril and would radically infringe the right to respect for their private life insofar as it includes the right to personal autonomy and sexual freedom.

The European Court of Human Rights (ECtHR) noted that the problems associated with prostitution raised highly sensitive moral and ethical issues, which gave rise to divergent opinions, and that there was still no common view, either between the Member States of the Council of Europe or even within the various international organisations dealing with the issue, as to the best way of dealing with prostitution.

It then observed that the use of general and absolute criminalisation of the purchase of sexual acts as a means of combating trafficking in human beings was currently the subject of lively debate, giving rise to profound differences of opinion at both European and international level, with no clear trend emerging.

The ECtHR concluded that the French authorities had not exceeded their margin of appreciation in adopting the impugned criminalisation insofar as it was the result of an arbitration carried out in accordance with democratic procedures within the society in question and formed part of an overall scheme provided for by law that took account of the various concerns raised by the applicants in the present case.

Judgment of 25/7/2024 (applications Nos 63664/19, 64450/19, 24387/20, 24391/20 and 24393/20) ([FR](#))

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

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

SM / FABBRI and OTHERS v SAINT-MARIN [GC]

Right to a fair trial – Right of access to a court – Civil claims of victims of alleged offences in criminal proceedings

Non-infringement of Article 6 § 1 (right to a fair trial) of the ECHR in respect of application No 9227/21.

Inadmissibility of applications Nos 6319/21 and 6321/21 on grounds of incompatibility *ratione materiae* with the ECHR (Article 35(3) of the ECHR).

The case concerned three people who were involved in criminal proceedings as victims of alleged offences. The interested parties argued that their civil claims had not been decided in these proceedings because delays in the investigation procedures had led to the alleged offences becoming statute-barred in 2020.

With regard to one of the applicants, the European Court of Human Rights (ECtHR) held that he had not asserted his interests diligently: he had not brought civil claims in the context of the criminal proceedings until three and a half years after the alleged offence, only a few days before the expiry of the limitation period applicable to that offence. In those circumstances, account had to be taken of the fact that he had other remedies available to him for pursuing his civil claims, in particular the bringing of a separate action before the civil courts, either immediately after the alleged offence or after he had been notified of the decision to terminate the criminal proceedings.

In addition, the ECtHR noted that the other two applicants had not formally requested, by means of a signed statement, that they be granted the status of 'civil party', contrary to the requirements of national law. It therefore found that they had not clearly demonstrated that they had an interest in their right to claim compensation for any damage suffered.

Judgment of 24/9/2024 (applications Nos 6319/21, 6321/21 and 9227/21) ([FR/EN](#))

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

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

GE / TSULUKIDZE and RUSULASHVILI v GEORGIA

Right to a fair trial – Impartial tribunal – Inadequate procedural guarantees – Duties of judicial assistants not merely administrative in nature

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

The case concerned the alleged lack of impartiality of a Supreme Court judge, a member of the three-judge panels that had dismissed the appeals lodged by the applicants, whose judicial assistant was the daughter of the lawyer representing the opposing party in the proceedings in question, namely the electricity distribution company Telasi.

In particular, the European Court of Human Rights (ECtHR) held that the fact that the judge's judicial assistant was the daughter of Telasi's lawyer, combined with the very wide-ranging functions of judicial assistants within the Georgian judicial system, created a situation that could legitimately have given rise to doubts as to the impartiality of the judge concerned. The applicants did not know to what extent the judicial assistant had actually been involved in the handling of their cases, and the Supreme Court did not shed any light on the role played by the judicial assistant and therefore failed to dispel any doubts the applicants had regarding the impartiality of the judge in question.

The ECtHR therefore considered that the applicants' doubts were objectively justified and that they had not been afforded sufficient procedural safeguards in this respect.

Judgment of 20/6/2024 (applications Nos 44681/21 and 17256/22) ([EN](#))

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

Legal summary ([EN](#))

ES / PINDO MULLA v SPAIN [GC]

Right to respect for private life – Freedom of thought, conscience and religion – Blood transfusions against the will of a female Jehovah's Witness

Infringement of Article 8 (right to respect for private life) of the ECHR read in the light of Article 9 (freedom of thought, conscience and religion).

The case concerned blood transfusions administered to the applicant, a Jehovah's Witness, during emergency surgery, even though she refused any type of blood transfusion.

In particular, the European Court of Human Rights (ECtHR) held that the authorisation to carry out this treatment was given following a decision-making process that suffered from the omission of essential information concerning the recording of the applicant's wishes, which had been set down in writing in different forms and at different times. Since neither the applicant nor anyone connected with her had been aware of the decision to authorise all the treatment, which had been made by the duty judge, it had not been possible for this omission to be remedied. However, neither this point nor the question of the applicant's capacity to take a decision was adequately addressed in the subsequent proceedings. The national system had therefore failed to provide an adequate response to the claimant's complaint that her wishes had been wrongly disregarded.

Judgment of 17/9/2024 (application No 15541/20) ([FR/EN](#))

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

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