



## FLASH NEWS

7/24

# EUROPEAN COURT OF HUMAN RIGHTS

## OVERVIEW FROM 7/10 TO 15/11

### CY / M.A. and Z.R. v CYPRUS

**Prohibition of inhuman or degrading treatment – Prohibition of collective expulsion of aliens – Summary return, by the Cypriot authorities, of Syrian nationals to Lebanon after they were intercepted at sea without their asylum application being examined**

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

**Infringement** of Article 4 of Protocol No 4 (prohibition of collective expulsion of aliens) to the ECHR.

**Infringement** of Article 13 (right to an effective remedy) in conjunction with Articles 3 and 4 of Protocol No 4 to the ECHR.

The case concerned the interception at sea of Syrian nationals by the Cypriot authorities and their immediate return to Lebanon, where they had already spent 4 years in a refugee camp after fleeing Syria because of the civil war, the targeting of civilians and the destruction of their homes. The applicants had stated that they wanted to seek asylum in Cyprus, but the Cypriot government allegedly treated them as economic migrants.

In particular, the European Court of Human Rights (ECtHR) found that the Cypriot authorities had essentially sent the applicants back to Lebanon without having processed their asylum application and without having taken all the steps required by the Law on refugees. It is clear from the Cypriot Government's observations that the national authorities had failed to assess the risk of the persons concerned not having access to an effective asylum procedure in Lebanon, the living conditions of asylum seekers in that country, the risk of refoulement, i.e. forced return to a country where the persons concerned risked being subjected to persecution, and the particular circumstances of the persons concerned.

Judgment of 8/10/2024 (application No 39090/20) ([EN](#))  
Press release ([FR/EN](#))

### RU / KOBALIYA v RUSSIA

**Freedom of expression – Freedom of association – Right to respect for private and family life – Russian legislation on 'foreign agents'**

**Infringement** of Articles 10 (freedom of expression) and 11 (freedom of association) of the ECHR.

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

The case concerned the evolution of the legal regime in Russia requiring a large number of NGOs, media outlets and individuals to register as 'foreign agents', and the repercussions of this regime on their activities and their private lives.

The European Court of Human Rights (ECtHR) considered the legislation currently in force to be stigmatising, misleading and applied too extensively and unpredictably. It concluded that the purpose of this legislation was to punish and intimidate rather than to respond to an alleged need for transparency or legitimate national security imperatives.

Moreover, the ECtHR considered that the repercussions of this regime on the activities of these NGOs, such as their deprivation of advertising revenue from private advertisers, had a dissuasive effect on public discourse and civic engagement. They created a climate of suspicion and mistrust towards independent voices and undermined the very foundations of a democratic society. The ECtHR concluded that the legal regime had become considerably more restrictive since 2012, affecting a much larger number of NGOs, media and individuals and departing even further from the standards of the ECHR.

Judgment of 22/10/2024 (application No 39446/16 and 106 others) ([EN](#))  
Press release ([FR/EN](#))



## FR / A.L. And E.J. v FRANCE

### **Right to respect for private life – Interception of personal data – Data used as evidence – European Investigation Order – EncroChat**

**Inadmissibility** of applications for failure to exhaust domestic remedies (Article 35(1) of the ECHR).

The two cases concerned the capture of data from users of the EncroChat encrypted communication solution and its sharing with the UK prosecuting authorities. EncroChat was an encrypted mobile phone communication solution that was covertly distributed in more than 66 000 copies between 2016 and 2020 in 122 countries.

The European Court of Human Rights (ECtHR) noted that the data of EncroChat users had been collected on the initiative of the French authorities by means of a recording measure ordered in the context of criminal proceedings initiated by the Lille specialised inter-regional court. Data concerning EncroChat users located in the United Kingdom had been transmitted, as evidence already in the possession of the French authorities, pursuant to a European Investigation Order (EIO) issued by the UK Crown Prosecution Service for inclusion in other criminal files as evidence. Data from the recording were thus produced against the two applicants as part of the criminal proceedings against them in the United Kingdom.

The ECtHR noted that, under the French Code of Criminal Procedure, the applicants could seek the annulment of the EIO issued by the UK authorities under the same conditions and in the same manner as a person under investigation in France would have been able to do, arguing that they were in a comparable procedural situation and that the data transmitted were the result of a measure of capture contrary to the requirements of Article 8 of the ECHR.

The ECtHR concluded that the applicants had a remedy available to them in France that enabled them to challenge effectively the data transmission measure taken in execution of the EIO issued by the UK authorities, as well as the data capture measure that made it possible to collect the data. However, the applicants did not bring any action before the French courts and cannot justify any particular circumstance that would have exempted them from doing so.

Decision communicated on 17/10/2024 (applications Nos 44715/20 and 47930/21) ([FR](#))

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

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

See also: judgment of the Court of 30 April 2024, M.N. (EncroChat), C-670/22, EU:C:2024:372

## ES / T.V v SPAIN

### **Prohibition of slavery and forced labour – Trafficking in human beings – Positive obligations – Blatant failure to investigate serious allegations of trafficking in human beings**

**Infringement** of Article 4 (prohibition of slavery and forced labour) of the ECHR.

The case concerned a victim of human trafficking between Nigeria and Spain, who alleged that the investigation carried out by the Spanish authorities into her complaint of human trafficking and sexual exploitation between 2003 and 2007 had been inadequate. She managed to escape her alleged traffickers and filed a complaint in 2011.

In particular, the European Court of Human Rights (ECtHR) found that no measures were taken during the first 2 years of the investigation, that the investigators did not follow obvious lines of inquiry, and that the decisions to close the case provisionally in 2017 were superficial and insufficiently reasoned. These failings demonstrated a flagrant breach of the obligation to investigate serious allegations of human trafficking, an offence with devastating consequences for the victims.

Judgment of 10/10/2024 (application No 22512/21) ([EN](#))

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

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

## PL / DUDEK and LAZUR v POLAND

### **Right to a fair trial – Right to an independent and impartial tribunal established by law – Reform of the judicial system in Poland**

**Striking** from the list of cases of 22 applications [Article 37(1)(c) of the ECHR].

The cases concerned proceedings, to which the applicants were parties, which had been decided by panels of the Polish Supreme Court considered by the applicants not to be independent and impartial courts established by law. The applications were made in the context of the reorganisation of the judicial system in Poland, which many observers have described as a 'crisis in the rule of law'.

In the Dudek and Lazur case, the European Court of Human Rights (ECtHR) accepted unilateral declarations by the Polish government in which, among other things, it acknowledged that there had been a violation of Article 6 (right to a fair trial) of the ECHR and proposed compensation.

In the other cases, the ECtHR endorsed the amicable settlement reached by the parties.

Decision communicated on 7/11/2024 (application No 41097/20) ([EN](#))