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

FLASH NEWS

8/23

OVERVIEW FROM 13/11 TO 22/12

PL / WALESA v POLAND

Right to a fair trial - Right to an independent and impartial tribunal established by law - Principle of legal certainty - Right to respect for private and family life

Infringement of Article 6 § 1 (right to a fair trial) of the ECHR on the grounds of a breach of the right to an independent and impartial tribunal established by law and a breach of the principle of legal certainty.

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

The applicant, a Polish national and former President of Poland, when he was a candidate in the 2000 presidential election, made a 'declaration of lustration' in which he stated that he had not collaborated with the State Security services during the period between 1944 and 1990. Accused of having been a collaborator of these services by a former friend and fellow fighter, the applicant sued him, claiming that the comments in question were false. In 2011, he won his case. However, in 2017, the new Supreme Court Act came into force. Under this act, in January 2020, the Attorney General lodged an extraordinary appeal with the Extraordinary Control and Public Affairs Chamber of that court against the final decision in the applicant's case. The latter argued that the aforementioned chamber was not an 'independent and impartial tribunal established by law', that one of the judges had shown partiality and that the disputed extraordinary appeal had breached the principle of legal certainty.

Judgment of 23/11/2023 (application No 50849/21) (EN)
Press release (FR/EN)

On this subject, see also the judgment of the Court handed down by the Grand Chamber on 21 December 2023, Krajowa Rada Sądownictwa (Maintien en fonctions d'un juge) (C-718/21, ECLI:EU:C:2023:1015).

PL / PRZYBYSZEWSKA AND OTHERS v POLAND

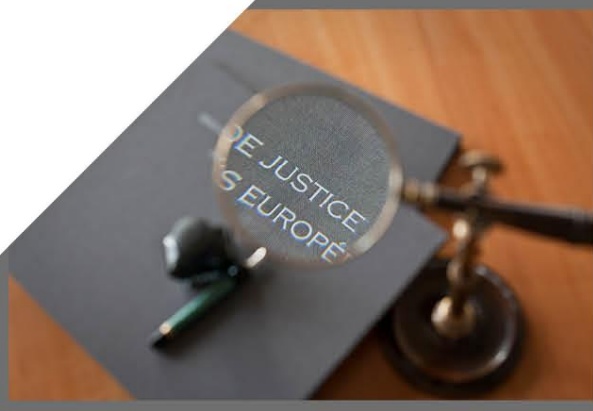
Right to respect for private and family life - Legal recognition and protection of same-sex couples - Failure to recognise the positive obligation of States to guarantee a specific legal framework

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

The applicants, 10 Polish nationals forming five same-sex couples, complained of the lack of any form of legal recognition and protection for same-sex couples in Poland. They argued that the vast majority of Council of Europe Member States grant same-sex couples the right to marry or enter into some form of registered civil union. They therefore felt that they had been disadvantaged by the lack of official recognition of their relationship, particularly in terms of taxation, social rights and family rights.

Judgment of 12/12/2023 (applications Nos 11454/17 and 9 others) (FR)
Press release (FR/EN)

On this subject, see also the pending case C-713/23, Wojewoda Mazowiecki.



BG / KRACHUNOVA v BULGARIA

Prohibition of slavery and forced labour - Trafficking in human beings - Exploitation through sex work - Compensation by the trafficker for loss of earnings - Positive obligations of States

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

The applicant, a Bulgarian national, under the control of pimp X, engaged in sex work. In 2017, X was convicted of human trafficking and sentenced to a suspended prison term, probation and a fine. As compensation for the non-material damage caused, he was also ordered to pay the applicant EUR 8 000. In contrast, the Bulgarian courts did not uphold the claim for compensation for the material damage caused by the removal of the latter's income by X.
The applicant therefore complained of a lack of legal remedies enabling her to obtain compensation for the income from her sex work that had been taken from her. The Bulgarian courts had ruled that no damage could arise from contracts for sexual services, which were null and void because they were an affront to common decency.

Judgment of 28/11/2023 (application No 18269/18) (EN)
Press release (FR/EN)

DE / HUMPERT AND OTHERS v GERMANY [GC]

Freedom of assembly and of association - Right to freedom of association - Strike ban imposed on civil servant teachers - Penalties for infringement of that ban - Margin of discretion of the national authorities

Non-infringement of Article 11 (freedom of assembly and association) of the ECHR.

The applicants, German nationals, are teachers with civil servant status. They were punished for taking part, during working hours, in strikes organised by their union to protest against a deterioration in their working conditions.
They alleged that the disciplinary measures to which they had been subjected and the general ban on strikes imposed on civil servants were not provided for by law and were disproportionate, and, in relation to teachers with contractual status, that they were discriminatory. They also alleged, with reference to Article 6 § 1 (right to a fair trial) of the ECHR, that the Federal Constitutional Court had failed to take account of the relevant international treaties.

Judgment of 14/12/2023 (applications Nos 59433/18 and 3 others) (FR/EN)
Press release (FR/EN)

RO / ŢÎMPĂU v ROMANIA

Right to respect for private life - Automatic dismissal of a lay teacher of the Orthodox religion - Exclusive jurisdiction of the ecclesiastical courts

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

After working for 20 years as a lay teacher of the Orthodox religion in a state school, the applicant had her licence (binecuvântarea) to teach religion withdrawn by the Archbishop of Suceava. The latter criticised her for failing in her professional obligations and for not having demonstrated that she was a true preacher of the word of God. The applicant complained that the secular courts had refused to rule on her case, declaring themselves incompetent to hear her challenge to the archbishop's decision.

Judgment of 5/12/2023 (application No 70267/17) (EN)
Press release (FR/EN)

CH / COMMUNAUTÉ GENEVOISE D'ACTION SYNDICALE (CGAS) v SWITZERLAND [GC]

Freedom of assembly and association - Right to organise and take part in public meetings - Measures to combat COVID-19 that led to a ban on public demonstrations

Inadmissibility of the application under Article 35 of the ECHR.

The applicant is an association bringing together all the trade unions in the Canton of Geneva, whose statutory aim is to defend the interests of member workers and organisers. It lodged an appeal against the 'COVID-19 No 2' ordinance, adopted by the Swiss authorities, banning events as part of measures to combat the coronavirus.
Before the European Court of Human Rights, she complained that she had been deprived of the right to organise and take part in public meetings. Before the Grand Chamber, she alleged that the prohibition on all gatherings, both public and private, introduced by the said ordinance, infringed not only her freedom of peaceful assembly but also her freedom of association.

Judgment of 27/11/2023 (application No 21881/20) (FR/EN)
Press release (FR/EN)