



## FLASH NEWS

3/20

# EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 03/02 TO 28/02/2020

### UK / GAUGHRAN v UNITED KINGDOM

#### Right to respect for private and family life - Indefinite retention of personal data

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

The applicant, a British national, had been convicted of drink-driving. At the end of the period stipulated by law, his conviction had been expunged from his criminal record. He complained about the retention of his DNA profile, fingerprints and photograph by the police without any time limit and without the possibility of re-examination.

Judgment of 13/02/2020 (application no. 45245/15) ([EN](#))

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

See also the judgment of 13/02/2020 (applications nos. 53205/13 and 63320/13), Trajkovski and Chipovski v North Macedonia ([EN](#))

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

### IT / FELLONI v ITALY

#### Right to a fair trial - Obligation to state reasons - Procedure not guaranteeing effective consideration of the applicant's main arguments

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

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

The applicant, an Italian national, had been convicted of drink-driving. He argued that the sentence imposed on him was set in accordance with a more severe retroactive criminal law, so that he did not benefit from mitigating circumstances under the law in force at the time of the events. He also complained that the judgment of the Court of Cassation before which he had invoked this defence lacked a statement of reasons.

Judgment of 06/02/2020 (application no. 44221/14) ([FR](#))

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

### FR / SANOFI PASTEUR v FRANCE

#### Right to a fair trial - Refusal by a court of last instance to make a reference for a preliminary ruling - Lack of statement of reasons

**Non-infringement** of Article 6 § 1 (right to a fair trial) of the ECHR, by reason of the manner in which the starting point of the limitation period of the action for damages against the applicant company was fixed.

**Infringement** of Article 6 §1 of the ECHR, by reason of the failure to state reasons for the decision rejecting the applicant company's request for a preliminary ruling from the ECJ.

The case concerned the liability of the applicant, Sanofi Pasteur, in respect of a person who had been vaccinated against hepatitis B and subsequently suffered from a variety of illnesses. After obtaining compensation for his damages in an action for State liability, this person brought an action against Sanofi Pasteur, the manufacturer of the vaccine in question, in order to obtain compensation due to the aggravation of his damages. The courts of first instance and of appeal had declared the action admissible, making the limitation period run from the consolidation of the damage. The Court of Cassation dismissed the applicant's appeal and its request for a preliminary ruling from the ECJ. Before the European Court of Human Rights, the applicant complained about the procedures for determining the starting point of the limitation period and the fact that the Court of Cassation had rejected its request for a preliminary ruling from the CJEU without giving any reasons.

Judgment of 13/02/2020 (application no. 25137/16) ([FR](#))

## BE / MAKDOUDI v BELGIUM

**Right to respect for private and family life - Removal of a foreign national without taking into account his paternity towards a Belgian child**

**Infringement** of Article 5 §4 (right to a prompt decision on the lawfulness of detention) of the ECHR.

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

The applicant, a Tunisian national, complained that he had been expelled from Belgian territory and prohibited from residing there for 10 years because he had been convicted of various offences committed in Belgium, and that the national authorities had refused to take account of his paternity towards a Belgian child. He also complained that the remedies used to challenge the lawfulness of his detention in a closed centre for aliens with a view to his removal had not enabled the domestic courts to take a final decision in this regard.

Judgment of 18/02/2020 (application no. 12848/15) ([ER](#))

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

## IS / SIGRÍÐUR ELÍN SIGFÚSDÓTTIR v ICELAND

**Right to a fair trial - Right of access to an impartial tribunal**

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

The applicant, an Icelandic national, was one of the directors of Landsbanki Islands Bank, which went bankrupt in 2008. The Supreme Court had found her guilty of fraud and various financial offences when it ruled that her imprudent decisions to make loans just before the bankruptcy resulted in financial losses to Landsbanki's shareholders. The applicant alleged that some of the judges who had ruled in the proceedings against her could not be impartial because they held shares in the bank of which she was a director and had suffered significant financial losses as a result of her activities.

Judgment of 25/02/2020 (application no. 41382/17) ([EN](#))

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

## ES / N.D. AND N.T. v SPAIN [GC]

**Prohibition of collective expulsions - Immediate return of migrants attempting to enter a Member State - No prior administrative or judicial decision**

**Non-infringement** of Article 4 of Protocol no. 4 (prohibition of collective expulsions) to the ECHR.

**Non-infringement** of Article 13 of the ECHR (right to an effective remedy) in conjunction with Article 4 of Protocol no. 4 to the ECHR.

The applicants, sub-Saharan migrants, had attempted to enter Spain illegally, together with a group of other migrants, by climbing the fence on the border between Morocco and the Spanish enclave of Melilla. They were immediately apprehended and sent back to Morocco without any identification procedure and without having been able to express themselves on their personal circumstances. Before the European Court of Human Rights, they claimed to have been collectively expelled, without individual examination and in the absence of any procedure and legal assistance.

Judgment of 13/02/2020 (applications nos. 8675/15 and 8697/15) ([FR](#) / [EN](#))

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

See also, in Flash News no. 9/17, the judgment of the Chamber of 03/10/2017, [N.D. and N.T. v Spain](#), in which the European Court of Human Rights (Third Section) had found an infringement of the aforementioned articles.

## OTHER INFORMATION

### Hearings of the Grand Chamber

On 5 February 2020, a hearing was held in the case of **Guðmundur Andri Ástráðsson v Iceland** (application no. 26374/18), in which the applicant argued that the new Icelandic Court of Appeal (Landsréttur) that upheld her conviction had not been established by law because of irregularities in the appointment of one of the judges who had sat in her trial. In its Chamber [judgment](#) of 12 March 2019, the European Court of Human Rights had found an infringement of Article 6 §1 of the ECHR (see Flash News no. 5/19).

On 26 February 2020, a hearing was held in the case of **Hanan v Germany** (application no. 4871/16), concerning the investigation into an air strike in Afghanistan in which the applicant's two sons were killed.

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