



## FLASH NEWS

3/23

# EUROPEAN COURT OF HUMAN RIGHTS

## OVERVIEW FROM 27/3 TO 5/5/2023

### ADVISORY OPINION UNDER PROTOCOL No 16 TO THE ECHR [GC]

#### Right to privacy – Civil rights and obligations – Right of access to a court – Procedural rights and status of a biological parent in adult adoption proceedings

In the opinion delivered on 13 April 2023, the ECtHR answered the questions raised by the Supreme Court of Finland concerning the procedural rights and status of a biological mother in the context of an adoption procedure concerning her son. The ECtHR considers, firstly, that legal proceedings relating to the adoption of an adult child can be considered as affecting the private life of the biological parent and that Article 8 (right to privacy) of the ECHR is applicable. It concludes, however, that compliance with the procedural requirements arising for the biological mother from this provision does not require that she be offered guarantees such as party status in the adoption proceedings or the right to appeal. It goes on to point out that Article 6 (right of access to a court) of the ECHR will only be applicable in the present case if the national court proceedings give rise to any right of the biological mother under national law.

Opinion of 13/4/2023 (request No P16-2022-001) ([FR/EN](#))

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

### CZ / X. v CZECH REPUBLIC

#### Application for review of a judgment of the ECtHR – Impediment, deferment or waiver – New fact likely to have had a decisive influence on the judgment – Principle of objective impartiality

**Review** of the judgment of 12/5/2022 (application No 64886/19)

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

The applicant argued that there had been a violation of Article 28 of the Regulations of the ECtHR because the judge elected in respect of the Czech Republic had been involved – while she was a member of the Czech Constitutional Court – in the constitutional proceedings that were closely related to the ones examined in the original judgment of the ECtHR, concerning the return of her daughter to the United States under the Hague Convention on the Civil Aspects of International Child Abduction.

Judgment of 30/3/2023 (application No 64886/19) ([EN](#))

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

### DE / O.H. and G.H. v Germany and A.H. and OTHERS v Germany

#### Right to privacy – Transgender persons – Legal impossibility for a transgender parent to indicate his or her current gender, unrelated to his or her reproductive function, on the birth certificate of his or her child conceived after the change of gender – Wide margin of discretion

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

The first case concerned two applicants, one a transgender parent (O.H.) who gave birth to the second (G.H.), who complained that the German courts had refused to register O.H. in the birth register as the father of the child with the new given names, on the grounds that O.H. gave birth to the latter, despite the judicial recognition of the change of gender of the person concerned that took place before the child's conception. O.H. was therefore registered as the mother. The second case concerned three applicants, including a transgender parent (A.H.) who complained that the authorities had refused to register her as the mother of the applicant (L.D.H.) with her new given names in the birth register, on the grounds that she had not given birth to the latter, as G.H. had given birth to the child that had been conceived with A.H.'s male gametes. A.H. was therefore registered as the father.

Judgment of 4/4/2023 (applications Nos 53568/18 and 54741/18) ([FR](#))

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

Judgment of 4/4/2023 (application No 7246/20) ([FR](#))

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

## FR / A.C. and M.C. v FRANCE

**Prohibition of inhuman and degrading treatment – Right to liberty and security – Asylum seekers – Transfer on the basis of the Dublin III Regulation – Placement in administrative detention – Conditions of reception in detention centre**

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

**Infringement** of Article 5 §1 (right to liberty and security) and §4 (right to a prompt decision on the lawfulness of detention) of the ECHR.

The applicant and her minor son, aged seven-and-a-half months at the time of the events, had been held in administrative detention for 9 days with a view to their transfer to Spain under the Dublin III Regulation. The applicants argued that their detention was contrary to Articles 3 and 8 of the ECHR. The minor applicant alleged that his placement in administrative detention was contrary to Article 5 §1 of the ECHR. Moreover, invoking Article 5 §4 of the ECHR, he complained that he had not been able to benefit from an effective remedy to challenge said placement in administrative detention.

Judgment of 4/5/2023 (application No 4289/21) (FR)  
Press release (FR/EN)

## BG / MESTAN v BULGARIA

**Freedom of expression – Absolute legal prohibition on the use of a non-official language in an election campaign – Administrative sanction – Margin of discretion – Prohibition not proportionate**

**Infringement** of Article 10 (freedom of expression) of the ECHR.

The applicant held a series of public meetings in Turkish in 2013 as part of his campaign for the parliamentary elections in Bulgaria. He was fined for campaigning in a non-official language, in violation of the electoral code, which requires that only Bulgarian be used. The applicant considered that such an administrative sanction violated Article 10 of the ECHR, as it reflected an absolute prohibition, without legitimate aims.

Judgment of 2/5/2023 (application No 24108/15) (FR).  
Press release (FR/EN)

## BE / N.M. v BELGIUM

**Right to liberty and security – Right to a prompt decision on the lawfulness of detention – Prohibition of inhuman or degrading treatment – Detention of the applicant with a view to deportation on grounds of public order and national security – Solitary confinement in a closed centre**

**Non-infringement** of Article 5 §1(f) (right to liberty and security) and §4 (right to a prompt decision on the lawfulness of detention) of the ECHR.

**Non-infringement** of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR.

The applicant, an Algerian national who had been convicted of membership of a terrorist group, had been detained for 31 months in a closed centre for foreigners with a view to being deported from Belgian territory because of the risk of undermining public order and national security. He challenged the purpose and legality of his detention, as well as its duration and the conditions of his detention in a closed centre.

Judgment of 18/4/2023 (application No 43966/19) (FR)  
Press release (FR/EN)

## CZ / JÍROVÁ AND OTHERS v CZECH REPUBLIC

**Right to respect for family life – Prohibition of contact between members of a foster family and the child placed with them – Best interests of the child – Margin of discretion**

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

The applicants were prohibited by court order from having contact with the child who had been placed with them. This prohibition was enacted following an order to place the child in a foster home after the quality of the care he was receiving in his foster family was questioned. The applicants argued that they had not been given a reasonable opportunity to raise certain objections before the national courts.

Judgment of 13/4/2023 (application No 66015/17) (EN)  
Press release (FR/EN)