

# EU CHARTER OF FUNDAMENTAL RIGHTS : CASE LAB

## CASE 1 : CATHERINA LITEL CASE




The following articles from the EChFR are relevant for resolving this case:

- **Article 7:** Right to respect for private and family life
- **Article 8:** Protection of personal data
- **Article 9:** Right to marry and found a family
- **Article 10:** Freedom of thought, conscience, and religion
- **Article 18:** Right to asylum
- **Article 24:** Rights of the child
- **Article 45:** Freedom of movement and residence
- **Article 47:** Right to an effective remedy and a fair trial

Mrs Caterina LITEL and her two daughters (G and N) of Cameroonian origin have lived in France for 25 years and obtained French nationality in 2015. Mr. Marcus LITEL, of Cameroonian nationality, was presumed dead by his wife after an air disaster in Cameroon in 2008. He now wishes to join his wife in Nice (south of France, “la Riviera”) to meet his two daughters born, who were born after the plane crash. He applied to the French Consulate in Yaoundé, which, after a three-month investigation, rejected his visa application without giving any reasons.

Marcus filed with a case before the Administrative Court of Nice (southern France) to contest the decision. However the Court declared his claim inadmissible, considering that the French Minister of the Interior was not required to provide reasons for the decision. The Court further determined that the decision was not open to judicial appeal due to confidential State security information alleging that Marcus was responsible for the Yaoundé air disaster, which he had survived for unknown reasons. The French intelligence services supported this claim with evidence derived from Marcus’s mobile phone records and location data provided by telephone operators.



During the proceedings, the Public Prosecutor reviewed the civil status of Mrs. LITEL's daughters and discovered that they were born in Spain through medically assisted procreation (MAP. According to the birth certificate issues by the province of Girona, their parents are listed as Mrs. Caterina LITEL and Mrs. Veronica LITEL (Marcus's sister). Caterina had married Marcus out of desperation, despite being in love with Veronica, as such a union was impossible in her village in Cameroon, where homosexuality is criminalised.

Following this discovery, the Public Prosecutor revoked G and N's passports and identity cards, preventing them from traveling within the European Union.

The French Embassy informed the Yaoundé Public Prosecutor of Veronica's parental status. She was subsequently arrested and sentenced to five years in prison for homosexuality and using MAP abroad, both of which were illegal in Cameroon at the time. Veronica applied for refugee status in Spain, claiming to be a victim of discrimination based on her sexual orientation, which would put her at risk in prison. However, the Spanish authorities denied her application.

Marcus, Caterina and Veronica LITEL along with their two daughters are contacting you for legal advice. They found your LinkedIn profile specifying your expertise in European Union law, and more particularly the Charter of Fundamental Rights. **Veronica**, whose refugee status was rejected by the Spanish authority, **wants to contest the decision in Spain.**

Marcus also points out that he formerly taught European law at the University of Yaoundé before joining a revolutionary political opposition movement. He is familiar with **Regulation (EC) No 810/2009 of the European Parliament and of the Council of July 13, 2009** establishing a Community Code on Visas. Regarding privacy and data protection (under the GDPR and Directive 2002/58/EC of the European Parliament and of the Council, of July 12, 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector), **Marcus intends to challenge the seizure and retention of his location and phone records, as well as the non-disclosure of French intelligence information, before the Court of Appeal.**

Before initiating these complex proceedings, the LITEL family seeks your legal advice.

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This section provides a detailed legal analysis and actionable steps for resolving the case. Trainers can use this solution guide to facilitate discussion and assist trainees in applying legal principles.

### Issue No. 1 : The lack of access to an effective remedy and judicial review following the rejection of Marcus's visa application

#### Relevant facts

- Marcus's visa application was rejected by the French Consulate in Yaoundé without any explanation.
- Marcus filed proceedings with the Administrative Court of Nice, but the Court ruled his claim inadmissible.
- The French Minister of the Interior justified the rejection based on confidential state security information linking Marcus to the Yaoundé air disaster as Marcus is member of a revolutionary political opposition movement.
- The decision was not open to judicial appeal or review, citing national security concerns.

#### Applicable provisions

- Regulation (EC) No 810/2009 of the European Parliament and of the Council, of 13 July 2009, establishing a Community Code on Visas (Visa Code).
  - Article 32 Refusal of a visa:
    2. **A decision on refusal and the reasons on which it is based shall be notified to the applicant** by means of the standard form set out in Annex VI.
    3. **Applicants who have been refused a visa shall have the right to appeal.** Appeals shall be conducted against the Member State that has taken the final decision on the application and in accordance with the national law of that Member State. Member States shall provide applicants with information regarding the procedure to be followed in the event of an appeal, as specified in Annex VI.
- Article 47 of the Charter: guarantees the **right to an effective remedy and fair trial**.

## Key case law

CJEU Judgment, 13 december 2017, Soufiane El Hassani v Minister Spraw Zagranicznych, C-403/16, ECLI:EU:C:2017:960.

### Facts:

Mr El Hassani, a Moroccan national, applied for a short-stay visa at the Polish Consulate in Rabat as he intended to visit his wife and child, both of Polish nationality, in Poland. His application and subsequent appeal against the visa refusal were rejected due to doubt about his intention to leave Poland before the visa expired. Mr El Hassani brought an action against the visa refusal before the Regional Administrative Court in Warsaw which ruled that it lacked jurisdiction to review the Consul's decision. Mr El Hassani took his case to the Polish Supreme Administrative Court, which referred a preliminary ruling request to the CJEU.

### Ruling:

The CJEU concluded that **the provisions of the secondary legislation (namely provision of the Visa Code), interpreted in the light of Article 47 of EChFR, oblige Member States to guarantee, at a certain stage of the proceedings, the possibility to challenge the visa refusal before a court.**

*"36. Although it is true that in examining a visa application the national authorities have a broad discretion as regards the conditions for applying the grounds of refusal laid down by the Visa Code and the evaluation of the relevant facts, the fact remains that such discretion has no influence on the fact that the authorities directly apply a provision of EU law [...]"*

*37. It is clear that the Charter is applicable where a Member State adopts a decision refusing to issue a visa under Article 32(1) of the Visa Code [...]"*

*39. Furthermore, the second paragraph of Article 47 of the Charter provides that everyone is entitled to a hearing by an independent and impartial tribunal. Compliance with that right assumes that a decision of an administrative authority that does not itself satisfy the conditions of independence and impartiality must be subject to subsequent control by a judicial body that must, in particular, have jurisdiction to consider all the relevant issues [...]"*

*41. It follows [...] that Article 47 of the Charter requires the Member States to guarantee, at a certain stage of the proceedings, the possibility to bring the case concerning a final decision refusing a visa before a court"*

## Solution

1. Challenge the lack of reasons for the visa refusal to Marcus:

- Invoke Article 32(2) of the Visa Code, which mandates that visa refusal decisions must be communicated with reasons.
- Argue that the absence of reasons denies Marcus the ability to effectively challenge the decision, violating **his right to an effective remedy under Article 47 of the EU Charter**.

## 2. Argue for Marcus's right to obtain a review of the visa refusal decision

- **Article 32(3) of the Visa Code** guarantees the right to appeal visa refusals. Highlight that Marcus was deprived of this right, contrary to EU law
- Cite **CJEU Soufiane El Hassani v Minister Spraw Zagranicznych (C-403/16)**, which confirms that visa applicants are entitled to judicial appeal.

## 3. Invoke Article 51 of the EU Charter:

- Emphasize that the French authorities were implementing **EU law** (the Visa Code), making the EU Charter applicable. This compels compliance with fundamental rights guaranteed under EU law.

**Key outcome:** Marcus has the right to appeal and obtain a review of the visa refusal decision, and to obtain the information on which the authority based its decision to refuse the visa.

## Issue No 2 : The seizure and retention of Marcus's location and phone records.

### Relevant facts

- Marcus filed a case before the Administrative Court of Nice to contest the visa refusal.
- The Court declared his claim inadmissible and that the decision was not open to judicial appeal due to confidential State security information.
- This information is derived from Marcus's mobile phone records and location data.
- Marcus intends to challenge the seizure and retention of location and telephone records and the non-disclosure of French secret service information before the Court of Appeal.

### Applicable provisions

- Articles 7 and 8 of the Charter: Privacy and Data Protection
- Directive 2002/58/EC : Electronic Communications Privacy

### Module materials

- Summary sheet Article 7 EChFR

- Summary sheet Article 8 EChFR

## Key case law

CJUE Judgment, *V.M.A. c. Stolichna obshtina, rayon «Pancharevo»*, 14 December 2021, C-490/20

The Court has repeatedly held that **the concept of public policy as justification for a derogation from a fundamental freedom must be interpreted strictly**, with the result that its scope cannot be determined unilaterally by each Member State without any control by the EU institutions. It follows that **public policy may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society**.

**Facts:**

This case concerns the interpretation of **Article 15(1)** of Directive 2002/58/EC (the Directive on privacy and electronic communications), which governs the retention of traffic and location data by companies in the electronic communications sector. Specifically, it examines the balance between such obligations and the protection of fundamental rights as enshrined in the **Charter of Fundamental Rights of the European Union**.

The Court focused on the principle of confidentiality established under **Article 5(1)** of Directive 2002/58/EC, which prohibits the retention of electronic communications and related traffic data without user consent.

The case arose from national legislative measures that required telecommunications companies to retain traffic and location data for use by national authorities in combating serious crime and addressing threats to public security.

**Legal context:**

1. **Directive 2002/58/EC and Recitals**

- **Objective of the Directive:** Ensuring a high level of personal data and privacy protection for all electronic communications users, irrespective of the technology employed.
- **Recitals 6 and 7:** Highlight risks posed by new technologies, particularly automated data storage and processing, and the need to protect privacy and personal data.
- **Recital 2:** Aligns with Articles 7 (private and family life) and 8 (protection of personal data) of the Charter.

2. **Article 15(1) of Directive 2002/58/EC**

- Allows Member States to restrict the confidentiality principle under certain conditions.
- Such measures must comply with general EU law principles, including **proportionality**, and respect fundamental rights under the Charter.

3. **Relevant Charter Articles**

- **Article 7:** Respect for private and family life.
- **Article 8:** Protection of personal data.
- **Article 11:** Freedom of expression, foundational to democratic society.
- **Article 52(1):** Proportionality in limiting fundamental rights.

**Ruling**

the Court held that **the general and indiscriminate retention of traffic and location data constitutes a derogation** from Article 5(1) of Directive 2002/58/EC, which prohibits such data without user consent as well as **an interference with fundamental rights** enshrined in Articles 7 and 8 of the Charter, regardless of whether the data are sensitive, whether individuals are inconvenienced or whether the retained data are ultimately used.

Moreover, the Court held that Article 15(1) read in conjunction with the Charter **precludes national measures mandating such retention on a preventive basis, even for purposes like combating serious crimes or preventing public security threats**.

Finally, national laws must respect the principle of proportionality, ensuring any interference with fundamental rights is strictly necessary and limited to what is essential to achieve legitimate objectives.

## Solution

### Violation of Articles 7 and 8 of the EChFR

The seizure and retention of Marcus's location and telephone records interfere with his right to privacy (Art 7). These actions are subject to strict conditions of necessity and proportionality under EU law. As established in **Bundesrepublik Deutschland v SpaceNet AG (C-793/19)**, such measures must address a genuine and sufficiently serious threat to public security, which is absent here [*This can be further discussed by the trainee*].

The retention and use of Marcus's phone records also violates his right to protection of personal data (Art 8). Indeed, under **Directive 2002/58/EC**, specifically Article 15(1), restrictions on privacy and data protection must align with general EU law principles, including **necessity** and **proportionality**. The lack of clear justification for retaining Marcus's data, and the failure to disclose the data's relevance, contravenes these requirements.

The seizure and retention measures taken against Marcus are disproportionate under EU law.

### Issue No 3: The withdrawal of G and N's passports by the Public Prosecutor


#### Relevant facts

- In the course of these proceedings, the Public Prosecutor examined the civil status of Mrs. LITEL's daughters.
- It was discovered that the daughters were born in Spain through medically assisted procreation (MAP).
- Their birth certificate from Girona list their parents as: Mrs Caterina LITEL and Mrs Veronica LITEL (Marcus's sister).
- Caterina had married Marcus out of desperation, despite being in love with Veronica because same-sex relationships in Caterina's native village in Cameroon are criminally prosecuted.
- Following these findings, the Public Prosecutor withdrew G and N's passports and identity cards, preventing them from traveling within the European Union.

#### Applicable provisions

- Articles 7, 8, 9, 24 and 45 of the EUChFR
- Article 20 TFEU:
  1. *Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.*
  2. *Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, inter alia:*
    - (a) *the right to move and reside freely within the territory of the Member States; [...]*
- Article 21(1) TFEU:





*“Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.”*

- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35)

Article 4, entitled “Right of exit”:

*1. Without prejudice to the provisions on travel documents applicable to national border controls, all Union citizens with a valid identity card or passport and their family members who are not nationals of a Member State and who hold a valid passport shall have the right to leave the territory of a Member State to travel to another Member State. [...]*

*4. The passport shall be valid at least for all Member States and for countries through which the holder must pass when travelling between Member States. Where the law of a Member State does not provide for identity cards to be issued, the period of validity of any passport on being issued or renewed shall be not less than five years.*

## Module Materials

- Summary sheets Article 7 and 8 EChFR

## Key Case Law:

CJUE Judgement, 14 December 2021, C-490/20, V.M.A. c. Stolichna obshtina, rayon «Pancharevo»

“42. As is apparent from the Court’s case-law, a national of a Member State who has exercised, in his or her capacity as a Union citizen, his or her freedom to move and reside within a Member State other than his or her Member State of origin, may rely on the rights pertaining to Union citizenship, in particular the rights provided for in Article 21(1) TFEU, including, where appropriate, against his or her Member State of origin. Union citizens who were born in the host Member State of their parents and who have never made use of their right to freedom of movement can also rely on that provision and the measures adopted to give it effect

43. Under Article 21(1) TFEU, every citizen of the Union is to have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. In order to enable their nationals to exercise that right, Article 4(3) of Directive 2004/38 requires Member States, acting in accordance with their laws, to issue to their own nationals an identity card or passport stating their nationality.”

(...)

“51. Article 9 of the Charter provides that the right to marry and the right to found a family are to be guaranteed in accordance with the national laws governing the exercise of these rights.

52. In that regard, as EU law currently stands, a person’s status, which is relevant to the rules on marriage and parentage, is a matter that falls within the competence of the Member States and EU law does not detract from that competence. The Member States are thus free to decide whether or not to allow marriage and parenthood for persons of the same sex under their national law. Nevertheless, in exercising that competence, each Member State must comply with EU law, in particular the provisions of the FEU Treaty on the freedom conferred on all Union citizens to move and reside within the territory of the Member States, by recognising, for that purpose, the civil status of persons that has been established in another Member State in accordance with the law of that other Member State.”

(...)

“59. In the situation with which the main proceedings are concerned, the right to respect for private and family life guaranteed in Article 7 of the Charter and the rights of the child guaranteed in Article 24 of the Charter, in particular the right to have the child’s best interests taken into account as a primary consideration in all actions relating to children, and the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, are fundamental.”


### Ruling:

The Court held that in it would be contrary to the fundamental rights which are guaranteed to the child under Articles 7 and 24 of the Charter for her to be deprived of the relationship with one of her parents when exercising her right to move and reside freely within the territory of the Member States or for her exercise of that right to be made impossible or excessively difficult in practice on the ground that her parents are of the same sex.

## Solution

### 1. Violation of EU Citizenship Rights

Article 20 TFEU establishes EU citizenship for nationals of Member States, granting fundamental rights, including the right to move and reside freely within the EU. Article 21(1) TFEU explicitly guarantees the freedom of movement for EU citizens, subject only to limitations and conditions outlined in the Treaties and related measures. In *V.M.A. v Stolichna Obshtina* (C-490/20), the



CJEU ruled that limitations on EU citizenship rights must respect the principles of **proportionality** and **necessity**.

The withdrawal of passports cannot be justified unless there is a genuine and sufficiently serious threat to fundamental interests of society, which is absent in this case. By withdrawing G and N's passports, the French authorities directly impede their ability to exercise their EU citizenship rights, specifically their **freedom of movement and residence** under **Directive 2004/38/EC** (Article 4).

## 2. Violation of fundamental rights

**Article 7 of the Charter (Respect for Private and Family Life):** The withdrawal of passports disrupts the children's ability to maintain personal and direct contact with their parents, violating their right to family life.

**Article 24 of the Charter (Rights of the Child):** children's best interests must be the primary consideration in all decisions affecting them. The withdrawal of passports denies G and N the ability to travel and maintain familial relationships, which contravenes their rights under Article 24.

## Issue No 4: Veronica's refugee status

### Relevant facts:

- The French Embassy informed the Yaoundé Public Prosecutor of Veronica's status as mother, her sexual orientation and her use of MAP abroad.
- She was arrested and sentenced to 5 years' imprisonment for homosexuality and using MAP abroad, both prohibited in Cameroon at the time.
- She applied to Spain for refugee status, claiming to be a victim of discrimination based on her sexual orientation, which would put her at risk in prison.
- The refugee status has been refused by the Spanish authorities.

### Applicable provisions

- Articles 1, 10 and 18 of the EChFR
- Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

## Module Materials

- Summary sheets on Articles 1, 10, and 18 EChFR

## Key Case Law

### CJUE Judgment, 5 September 2012, C-71/11 and C-99/11, Bundesrepublik Deutschland, v Y (C-71/11) and Z (C-99/11)

The CJEU examined whether restrictions on practicing religion publicly, enforced through threats of severe harm, could constitute "persecution" under EU asylum law.

#### **Ruling:**

The Court held that persecution as defined by Article 9(1)(a) of Directive 2004/83/EC means that the acts constituting persecution must be "sufficiently serious" by their nature or repetition to represent a **severe violation of basic human rights**, particularly the non-derogable rights under **Article 15(2) of the ECHR**. **Article 9(1)(b)** also states that an accumulation of less severe measures, including human rights violations, may also amount to persecution if they have a comparable effect on the individual.

The Court noted that the right to religious freedom in Article 10(1) of the ECHR corresponds to Article 9 of the ECHR and is one of the cornerstones of a democratic society.

Interference with religious freedom may amount to persecution if it has a severity comparable to non-derogable rights violations under Article 15(2) of the ECHR.

Not all infringements of religious freedom constitute persecution. For an act to qualify:

- There must be a **severe violation of religious freedom** that significantly affects the individual.
- The gravity must equate to an infringement of basic human rights under **Article 15(2) of the ECHR**.
- Acts targeting the **external manifestations of religious freedom** (e.g., public worship) may constitute persecution if they result in genuine risks of **prosecution, inhuman or degrading treatment**, or punishment.


**Individual Circumstances Must Be Considered.** Authorities must assess whether the individual, based on their personal circumstances and religious practices, faces a **genuine risk** of severe harm or persecution in their country of origin due to their religious beliefs.

**The Court held that interference with the right to religious freedom does not always qualify as persecution.** However, where interference is severe and directly linked to the individual's religion, and where it creates a risk of prosecution, inhuman treatment, or punishment, it must be treated as persecution.

## SOLUTION

**Article 18 ECHR: Right to Asylum:** guarantees the right to asylum in accordance with the Geneva Convention on Refugees and the TFEU. Veronica's application for asylum is grounded in her risk of persecution in Cameroon due to her sexual orientation and her use of medically assisted procreation (MAP), both of which are criminalized in her home country.

**Directive 2004/83/EC:** Article 9(1)(a) defines persecution as acts that are sufficiently serious to constitute a severe violation of basic human rights, including acts of discrimination and punishment based on sexual orientation. In *Bundesrepublik Deutschland v Y and Z (C-71/11, C-99/11)*, the CJEU held that acts targeting fundamental rights, such as public or private behavior linked to sexual orientation, may qualify as persecution if they cause severe harm or inhuman treatment. The discovery of Veronica's status as a mother, combined with Cameroon's laws criminalizing homosexuality, exposes her to a real and imminent risk of imprisonment and further persecution.



**Directive 2004/83/EC, Article 4(3):** requires Member States to assess an asylum applicant's personal circumstances, including the risk of persecution based on sexual orientation. Spanish authorities' rejection of Veronica's claim without a full consideration of the severe risks she faces contradicts this requirement.

She will not be able to obtain refugee status unless she can prove serious and personal threats.