

SUMMARY SHEETS : ARTICLE 7 ECHFR

"Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications."

Content and scope of the article

The Multi-Faceted Nature of Article 7

Despite its modest wording, Article 7 contains several rights that contribute significantly to the CJEU's ever growing jurisprudence.

Article 7 protects not just one, but four distinct rights which are addressed equally to all individuals and in some cases, the beneficiaries of Article 7 may also include legal persons.

These rights include

- (1) the protection of **family life**,
- (2) the protection of **private life**,
- (3) the protection of the **home**,
- (4) the protection of **communications**.


Thus, Article 7 of the EChFR is a multi-faceted right. It mirrors and corresponds to [Article 8 of the European Convention on Human Rights \(ECHR\)](#) and under the effect of Article 52(3) of the EChFR, is subject to same limitations that may be imposed on these rights.

The significance of the rights protected by Article 7 EChFR, and of Article 8 EChFR itself, is evident in many areas of EU law. In other words, the applicability of Article 7 is broad, as evidenced by the case law of the CJEU. This provides a significant opportunity for practitioners, who can invoke this provision across various areas of practice.

Key Legal and Practical Questions

Article 7 EChFR is relevant in fields such as **asylum law**, **data protection**, **equal treatment issues (including gender equality)**, **maternity rights**, **social security**, **the free movement of persons** and **EU citizenship** as well as in areas of EU law concerning **children and the protection of their best interest**.

At the heart of each of these rights is a protected concept and its interpretation. For instance what does "family life" mean in the context of Article 7? What constitutes



"private life" under this provision and which aspects of it are protected? What qualifies as a "home" within the meaning of the EChFR and what protection does it receive in particular cases? A corollary question for each right within the scope of article 7 is: to whom does this right apply?

These concepts are inherently abstract and open to interpretation and the CJEU's case law continues to evolve regarding their content and meaning.

One area of EU law that significantly impacts one of the rights listed in Article 7 EChFR is the right to family life.

The selection of at least one of these rights arises from a practical consideration: there is a significant body of case law concerning all rights enshrined in Article 7 of the EChFR, which is further complemented by an extensive body of secondary legislation addressing each of the rights listed under Article 7.

The right to a family life applies to all individuals irrespective of nationality, and may be invoked in any areas of European Union law that is factually related to the concept of family.


One such area is **immigration law**, in which the European Union is developing a common immigration policy. This policy includes (but is not limited to) the adoption of common rules on the entry and residence of third-country nationals within the territory of EU Member States (see TFEU art. 79).

This policy also includes individual immigration measures concerning family reunification. EU migration law allows for reunification in two main contexts: for certain categories of third-country nationals, as defined by EU law (foreign nationals who do not possess EU citizenship or citizenship of any EU Member State) under [Directive 2003/86/EC](#); and for the so-called EU family members of EU citizens, i.e. persons who derive their residence rights from EU citizens under [Directive 2004/38/ES](#).

Both directives establish a series of conditions under which family reunification may be granted, as well as individual restrictions that may prevent a foreign national from residing in the EU Member States, thereby obstructing their ability to exercise the right to family life. Such restrictions may include concerns related to the protection of public order or non-compliance with the formal conditions of a family reunification application.

However, it is essential to note that the content of a specific right protected by the EChFR is not determined by the form of secondary EU law. Rather, any conditions or limitations on the right to respect for family life in EU secondary law must first and foremost respect the provisions of Article 7 EChFR.

The CJEU had already established, prior to the adoption of the Lisbon Treaty, in *European Parliament v Council of the European Union* (C-504/2003) that the content of Directive 2003/86/EC must be interpreted in light of fundamental rights (in this case Article 8 ECHR) and must also align with the principle of the best interests of the child.



The right to family life under the ECHR extends far beyond any single area of EU law. Moreover, in an ever-evolving society, it raises new questions that challenge and redefine concepts previously interpreted.

CJEU Case Law

CJEU Judgement in Cases C-356/11 and C-357/11 (*O, S, v Maahanmuuttovirasto and Maahanmuuttovirasto v L*, December 6, 2012): request for a preliminary ruling from the from the Korkein hallinto-oikeus (Finland)

Key words: Best interest of the child - dependent person - right to family unity - right to respect family life - family reunification

CJEU Judgement in Case C-560/20 (*CR, GF, TY v Landeshaupmann von Wien*, January 30, 2024): request for a preliminary ruling from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria)

Key words: family reunification of an unaccompanied minor refugee with his or her first-degree relatives in the direct ascending line - unaccompanied minor, effectiveness of the right to family reunification of an unaccompanied minor refugee - family reunification

CJEU Judgement in Case C-400/10 PPU (*J. McB. v L. E.*, October 5, 2010): request for a preliminary ruling from the Supreme Court (Ireland)

Key words: parental responsibility - children whose parents are not married - right of custody of father - enforce of return of the children

CJEU Judgement in Case C-131/12 (*Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD), Mario Costeja González*, May 13, 2014): request for a preliminary ruling from the Audiencia Nacional (Spain)

Key words: personal data - protection of individuals with regards to personal data, responsibility of operator - free movement of data - interest of the general public v protection of individuals

CJEU Judgement in Case C-212/13 (*František Ryneš v Úřad pro ochranu osobních údajů*, December 11, 2014): request for a preliminary ruling from the from the Nejvyšší správní soud (Czech Republic)

Key words: concept of in the course of a purely personal or household activity - processing personal data - derogations and limitations in relation to the protection of personal data must apply only in so far as is strictly necessary - home camera system recording people, protection of property - health and life

CJEU Judgement in Cases C-148/13, C-149/13 and C-150/13 (*A, B, C v Staatssecretaris van Veiligheid en Justitie*, December 2, 2014): request for a preliminary ruling from the Raad van State (Netherlands)

Key words: standards for granting refugee status - fear of persecution on grounds of sexual orientation - declared sexual orientation v evidence human dignity - respect to family life

CJEU Judgement in Case C-5673/16 (*Relu Adrian Coman, Robert Clabourn Hamilton, Asociația Accept v Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne*, June 5, 2018): **request for a preliminary ruling from the Curtea Constituțională (Constitutional Court, Romania)**

Key words: free movement of EU citizens - family members, definition of spouse - same sex marriage recognition - right of residence for more than three months

CJEU Judgement in Case C-193/19 (*A v Migrationsverket*, March 4 2021) **request for a preliminary ruling from the Förvaltningsrätten i Malmö – Migrationsdomstolen (Administrative Court for Immigration Matters, Malmö, Sweden)**

Key words: Schengen Information System - entry conditions for third-country nationals - refusal to renew a residence permit for the purposes of family reunification on the ground that the applicant's identity cannot be established with certainty - movement of persons across borders - authorisation given by the public prosecutor's office

CJEU Judgement in Case C-746/18 (*H. K. v Prokuratuur*, March 2, 2021) **request for a preliminary ruling from the Riigikohus (Supreme Court, Estonia)**

Key words: processing of personal data - confidentiality of communications - retention of traffic and location data by providers of electronic communications services - use of data in criminal proceedings as evidence – admissibility

CJEU Judgement in Case C-490/20 (*V.M.A v Stolichna obshtina, rayon 'Pancharevo'*, December 14, 2021) **request for a preliminary ruling from the Administrativen sad Sofia-grad (Administrative Court of the City of Sofia, Bulgaria)**

Key words: free movement - birth certificate mentioning two mothers - refusal to issue a birth certificate for the child in the absence of information as to the identity of the child's biological mother - persons of the same sex not recognised as parents under the national legislation - certificate problem precluding the issue of identity card or passport - family life.

Highlights

As previously stated in the section addressing the interpretation of the substance of the rights protected by Article 7 EChFR, this Article safeguards not one, but four distinct individual rights. Due to the breadth of these protections, a wide range of issues may be relevant for practitioners. The expansive scope of rights under Article 7 EChFR has generated significant case law, reflecting the complexity of its application.

It is also essential to note that the evolving case law of the European Court of Human Rights (ECtHR) plays an influential role in this context and should be closely monitored by practitioners. Why is it important? The ECtHR's rulings in cases involving the application of the similarly worded Article 8 of the European Convention establish a minimum standard of protection for the rights enshrined in Article 7 EChFR (See the "*minimum protection level*" clause in article 53 EChFR). Consequently, the protection of fundamental rights within the European Union must, at a minimum, adhere to this standard. Nevertheless, **the EChFR does not preclude the provision of a higher standard of protection, which opens up opportunities for practitioners to pursue an elevated**

level of fundamental rights protection for their clients, within the EChFR framework, beyond European Convention protection regime.

Returning to the heart of the matter, the content of Article 7 EChFR contains a wealth of issues, many of which will continue to be clarified by the CJEU in the future. This is due both to the general nature of the core concepts protected by Article 7 EChFR and the evolving societal understandings of key concepts contained within the article.

Questions that continue to arise in the application of Article 7 include:

- *How do EU member states ensure the best interests of the child in family-related decisions, including custody arrangements and parental rights?*
- *What measures are in place to combat discrimination based on family status, and how effective are they in promoting equal treatment and opportunities for all individuals?*
- *How does the interpretation and application of Article 7 differ across EU member states, and what challenges arise in harmonizing family law and policies at the European level?*
- *How does Article 7 balance the right to privacy with the legitimate interests of data controllers and processors?*
- *What constitutes lawful and fair processing of personal data under Article 7, and how do organizations ensure compliance?*
- *What are the implications of Article 7 for cross-border data transfers and international data-sharing arrangements?*
- *How does Article 7 of the Charter reconcile the right to privacy with the legitimate interests of public authorities and private entities in data processing and surveillance?*
- *How do emerging technologies and digital surveillance practices impact the scope and enforcement of privacy rights under Article 7?*

Use of Article 7 in Legal Practice

Article 7 is particularly relevant for lawyers dealing with cases in:

- **Immigration and Family Reunification:** Used to challenge national laws restricting family reunification for non-EU nationals.
- **Employment Law:** Invoked in disputes concerning **workplace surveillance**, discrimination, and parental leave rights.
- **Criminal Law and Surveillance:** Applied in cases where government surveillance or law enforcement measures infringe on privacy rights.
- **Housing and Eviction Cases:** Supports claims against **forced evictions** or housing conditions violating fundamental rights.

Correspondence with other European/International instruments

- European Convention on Human Rights, Article 8
- International Covenant on Civil and Political Rights, Article 17
- Universal Declaration of Human Rights, Article 12
- UN Convention on the Rights of the Child, Article 3



Further readings

- Hailbronner, K. and Thym, D. (2022) *EU Immigration and Asylum Law: Article-by-article commentary*. München: C.H. Beck.
- Peers, S. et al. (2022) *The EU Charter of Fundamental Rights A Commentary*. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG.
- Tryfonidou, A. (2019) 'EU Free Movement Law and the children of rainbow families: Children of a lesser god?', *Yearbook of European Law*, 38, pp. 220–266. doi:10.1093/yel/yez001.
- Greer, S., Gerards, J.H. and Slowe, R. (2019) *Human rights in the Council of Europe and the European Union Achievements, trends and challenges*. Cambridge, United Kingdom: Cambridge University Press.