



*News about Family Law in Europe: from the cases to the law*

Jan/Dec 2021

**A. CASES**

- 1. The right to school inclusion (decision of EDU Court, September 10, 2020, no. 59751/2015).**

*The decision regards the case of an Italian autistic child who could not benefit of the teacher's aide at the elementary school despite it is provided by the Italian legislation and despite the local authorities have all the resource to assist the minor.*

*For this reason, Italy was charged for failing to ensure the minor to attend the class and to give her equal opportunity as other children in violation of the article 12, L. 104/1992 and of the article 24 of the ONU Convention.*

*The decision underlines also the gap between the legislation and its practical application.*

(The decision and the comment can be read in Italian at <https://www.rivistafamilia.it/2021/04/06/il-diritto-allinclusione-scolastica/>)

- 2. The EDU Court charges Italy for tolerating that a mother prohibits the relationship between father and son in violation of the article 8 of CEDU (decision of EDU Court, December 10, 2020, no. 36936/18).**

*The case regards the lengthy process of the Italian Court in taking measurement about the constant request of a father to organize meeting with his son since the mother's obstacles and, at a later time, the denial of the child of meeting the father.*

*In fact, despite the Italian legislation provides the necessary means to ensure the respect of the family life, the court took time to apply them.*

*The decision focuses as well on the importance of the special guardian to assist the minor in front of the judge and to understand the will of the minor in the relationship with both parents.*



(The decision and the comment can be read in Italian at <https://www.rivistafamilia.it/2021/07/05/condannata-litalia-ai-sensi-dellart-8-cedu-per-aver-tollerato-che-la-madre-impedisce-i-contatti-tra-il-figlio-minore-e-suo-padre/>)

**3. The right to the private and family life and data protection: Austria was charged for demanding to enter the full divorce agreement on the land register (decision of EDU Court, April 6, 2021, no. 5434/17).**

*The Austriac Law requires the production of the title according to which the parties transfer a property. The Austriac judges interpret the term “production” as publication of the mentioned title as well, and the publication regards the full document and not only the extract. In the case analyzed by the EDU Court, the title was a divorce agreement.*

*According to the EDU Court the publication of the full divorce agreement violates the art. 8 of the CEDU, since it contains personal data and the data protection right has to be considered as one of the right to the private and family life protected by the art. 8 of the CEDU.*

(The decision and the comment can be read in Italian at <https://www.rivistafamilia.it/2021/07/30/diritto-alla-vita-privata-e-familiare-e-protezione-dei-dati-personali-condannata-laustria-per-aver-preteso-la-pubblicazione-integrale-dellaccordo-divorzile-allinterno-del/>)

**4. The right of free movement of the European citizens requires the recognition of the parent-child relationship between the minor and the same-sex couple consisting of two women and married abroad (Advocate General Kokott’s Opinion in case C-490/20 published on April 15, 2021).**

*The case, still not decided by the CGUE, regards the refuse of the Bulgarian authorities to release the birth certificate to the child born from a same-sex couple consisting of two women (one Bulgarian and the other English), married abroad, and the refuse to recognize the double maternity in the birth certificate.*



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*In this case, the Bulgarian Tribunal required to the CGUE to clarify the relationship between the right of free movement (art. 21, § 1 TFUE) and the right of national identity of EU States (art. 4, TFUE), considering that the Bulgarian Law requires the birth certificate to obtain the identity card in order to move freely through Europe.*

*The Advocate General Kokott affirms that a State cannot refuse to recognize the parent-child relationship in order to respect the right of free movement guaranteed for the European citizen.*

(The decision and the comment can be read in Italian at <https://www.rivistafamilia.it/2021/05/04/anche-il-diritto-alla-libera-circolazione-dei-cittadini-ue-esige-il-riconoscimento-del-rapporto-di-filiazione-tra-un-bambino-ed-una-coppia-di-due-donne-coniugate-alleestero/>)

## **B. LAW**

### **1. Digital word and minor's protection online: the European strategy.**

*The pandemia Covid-19 has increased the use of Internet especially among children. For this reason, with the parliamentary inquiry no. E-005402/2020, the European Commission confirmed that the protection of the minors online is one of the European Commission priorities since, actually, internet is easily available to them.*

*In particular, the European Commission co-founds the Safer Internet Centers (SIC) in all Europe, that organizes awareness campaign, provides information to families and schools, manages telephone assistance services in order to answer questions about online minor's solicitations or to report anonymously online child pornography materials.*

(The comment can be read in Italian at <https://www.rivistafamilia.it/2021/02/08/ambiente-digitale-tutela-dei-minori-online-la-strategia-europea/>)



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## **C. EUROPEAN PROJECTS**

### **1. MiRI Project “Minor’s Right to Information in EU civil cases” (JUST-JCOO-AG-2018-831608)**

*The E.F.L. Association has been involved in the European Project “MiRI-Minor’s Right to Information in EU civil cases” (JUST-JCOO-AG-2018-831608).*

*The project has the scope to create Guidelines that lawyers, judges and practitioners of the law could apply in all European countries.*

*The national report, all the material adopted to create the Guidelines are published in the final book directed by I. Queirolo, S. Patti, C. Esplugues Mota, B. Musseva, D. Rone; eds. L. Carpaneto, F. Maoli and edited by Pacini Giuridica.*

*PDF form can be find online at [Children’s Right to Information in EU Civil Actions: Improving Children’s Right to Information in Cross-Border Civil Cases](#).*

*The Guidelines with comments in English can be find at [Guidelines on the right of the child to information - English version with comments](#) (if you are interested in reading them in other languages, look at [Guidelines on the right of the child to information - MULTILINGUAL version](#)).*

## **D. INTERNATIONAL FOCUS**

### **1. Best interest and custody of the child. The Japanese case in some circumstances of International Private Law.**

*The essay analyzes the main differences between the Japanese and Italian legislation specially with regard the custody of the minor in case of separation or divorce since the Japanese Civil Code does not regulate the uniqueness of the child status.*

(The comment can be read in Italian at <https://www.rivistafamilia.it/2021/12/23/best-interest-of-the-child-e-affidamento-del-minore-il-caso-del-giappone-in-alcune-fattispecie-di-diritto-internazionale-privato/>)