

HUMAN RIGHTS

INTEREST GROUP NEWSLETTER

Editor's note:

The volume of decisions and activities of human rights bodies around the world is overwhelming. Every day the Universal, Inter-American, African, and European Human Rights Systems publish several judgments, opinions, and case reports, not counting other valuable work of their bodies, in addition to their petition and case systems, such as press releases, statements, country visits, thematic reports, among many others.

This newsletter contains a small sample of these decisions and activities between July and September 2021, which may be of particular interest to you because of their novelty or current relevance. For example, the newsletter includes a decision of the United Nations Human Rights Committee that analyzes the relationship between the storage of biometric information and the right to privacy. Also, concerning the COVID-19 pandemic, the newsletter includes an advisory opinion of the African Court on Human and Peoples' Rights on the conduct of elections during public health emergencies and the right to participate in the government of each country; as well as an interesting decision of the European Court of Human Rights dismissing the requests for precautionary measures filed by 30 healthcare workers who sought not to be forced to be vaccinated to practice their profession. Other decisions and pronouncements covered address police profiling based on race, prosecution and protection against cyber-violence, indefinite presidential reelection, the right to freedom of expression of children, and the economic, social, cultural, and environmental rights of Afro-descendants.

This newsletter is the second issue of a new format focused on decisions and pronouncements of the various human rights bodies around the world. We hope you find it interesting and useful. If you would like to include any news, events, or announcements in the next newsletter, you are invited to send them to mhernandez@alvarezmartinezlaw.com.

Best regards,

Mariana Hernández
Newsletter Editor

I. UNIVERSAL HUMAN RIGHTS SYSTEM

1. Human Rights Committee (HRC)

- **On July 30, 2021, the HRC issued its decision in the Case "M.M. v. Mauritius".** According to the facts of the case, M.M., a 67-year-old Mauritian citizen, alleged that the country's smart ID card system contravened his right to privacy under the Mauritian Constitution and the International Covenant on Civil and Political Rights. As alleged by the author of the communication, the State implemented the country's first identity card system in 1985, and subsequently, in 2013, a new National Identity Card Act was enacted, which provided for a new smart ID card, contain-

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ing a microchip that stores biometric data, such as fingerprints, which are read by electronic readers. The government explained that the fingerprint requirement was essential to address identity fraud.

M.M. refused to apply for the new smart ID card and challenged the constitutionality of the new ID card system. The Supreme Court of Mauritius ruled in 2015 that, despite expert evidence showing that the retention of biometric data was insecure and notoriously difficult to protect, the new ID card requirements were made “in the interests of public policy”. M.M. then resorted to the HRC, which decided that the 2013 National Identity Card Act violates citizens’ right to privacy, as there are insufficient guarantees that fingerprints and other biometric data stored on the ID card are securely protected. The decision can be found [here](#).

2. Committee on the Elimination of Racial Discrimination (CERD)

- **On September 1, 2021, the CERD published its conclusions on the human rights situation in Lebanon and the Netherlands, the two States parties it examined during its last session.** The conclusions contain positive aspects of each country’s implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Committee’s main concerns and recommendations.

Concerning Lebanon, considering the increase in racist hate speech against migrants and refugees, the CERD urged the State to amend its legislation to prohibit hate speech and to intensify its efforts to cooperate with internet service providers and social media platforms to curb the dissemination of racist and abusive messages online.

Regarding the Netherlands, the CERD expressed concern about police profiling based on ethnicity, descent, and skin color, during traffic controls, identity checks, preventive searches, and border stops. It recommended the State amend its legislation to prohibit racial profiling and take measures to ensure that all allegations of racial profiling are recorded and followed up. The findings of the CERD can be found [here](#).

II. AFRICAN HUMAN RIGHTS SYSTEM

1. African Court on Human and Peoples Rights (ACtHPR)

- **On July 16, 2021, the ACtHPR issued an advisory opinion on the right to participate in the government of each country in the context of elections held during a public health emergency or pandemic, such as the COVID-19 crisis.** In the advisory opinion, the ACtHPR considered that States may decide to hold or not to hold elections in the context of a public health emergency or pandemic. However, such a decision requires prior consultation with health authorities and political actors, including representatives of civil society.

The ACtHPR stated that measures restricting rights, applied by States in elections held during a public health emergency or pandemic, must, following Article 27.2 of the African Charter on Human and Peoples’ Rights, have the character of a general law; pursue a legitimate aim; be proportional; not impair the essential content of the rights; not derogate from the rights provided for in the Charter; and not be discriminatory. In addition, it stated that it is up to domestic law to establish the legal rules applicable when the term of office of elected officials expires, including rules relating to an interim replacement, an extension of the term of office with full powers, or an interim agreement. In the absence of adequate legislation at the time of a public health emergency or pandemic, the relevant agencies may enact legislation, after consultation with political actors, including representatives of civil society. The advisory opinion can be found [here](#).

III. EUROPEAN HUMAN RIGHTS SYSTEM

1. European Court of Human Rights (ECtHR)

- **On September 7, 2021, the ECtHR rejected requests for interim measures filed by 30 health professionals against the Greek law imposing mandatory vaccination of healthcare workers against COVID-19 to practice their profession.** On September 2, 2021, the ECtHR received two applica-



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tions against Greece, filed by 30 health professionals, who alleged that the provisions of Article 206 of Law No. 4820/2021, which impose mandatory vaccination of health professionals against COVID-19 as a condition for continuing to practice their profession, violate Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 4 (prohibition of slavery and forced labor), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights. The applicants also requested the Court for interim measures, specifically, that Greece be ordered to immediately suspend the application of the law.

On September 7, 2021, the ECtHR decided to dismiss the requests for interim measures, and it recalled that it only grants such requests on an exceptional basis, when the applicants face a real risk of irreversible harm. The full decision of the ECtHR has not yet been published, but the press release can be found [here](#).

- **On September 14, 2021, the ECtHR issued a judgment in the Case “Volodina v. Russia”.** The case concerns the applicant’s allegation that the Russian authorities had failed to protect her against repeated cyber-violence by her partner, who had created fake profiles in her name, posted intimate photos of her, tracked her movements, and sent death threats via social networks. The Court found that, despite having the legal tools available to prosecute the applicant’s partner, the authorities had failed to carry out an effective investigation and had at no point considered what could and should have been done to protect the applicant from recurrent online harassment. The ECtHR, therefore, concluded that the authorities had breached their obligations under Article 8 of the European Convention (right to respect for private and family life).

These findings are related to those of an earlier judgment concerning the same applicant, “Volodina v. Russia” (no. 41261/17), in which the ECtHR concluded that the Russian authorities’ response to repeated acts of domestic violence had been manifestly inadequate. The judgment can be found [here](#).

IV. INTER-AMERICAN HUMAN RIGHTS SYSTEM

I. Inter-American Commission on Human Rights (IACHR)

- In the framework of a comprehensive process that seeks to strengthen the effectiveness of the IACHR mechanisms and the systematization of its impacts in the Americas, **the IACHR announced the launch of its Impact Observatory** through a press release dated July 2, 2021. The mechanism was created through Resolution No. 2/19, which established the creation of a collaborative platform to reflect, systematize and make visible the impact of its actions in the defense and protection of human rights in the Hemisphere. In addition, the initiative proposes to foster synergies with other similar initiatives, promoting an articulated dialogue with strategic actors and communities interested in the Inter-American Human Rights System. As part of its operation, the Impact Observatory will present various studies, reflections, and findings on the basis of an editorial line formed by three specific axes, which are: (i) Transformations Series, which will include academic studies associated with the analysis of situations or areas relevant to the regional human rights agenda; (ii) Voices and Experiences Series, which will identify, from a psychosocial approach, the perspectives of those who daily experience the processes related to the implementation and impact of the recommendations; and (iii) Dialogues Series, which will consist of accessible space for dissemination and disclosure that, using graphic and audiovisual materials, will expose the main findings derived from the actions developed by the institution. The press release announcing the Impact Observatory can be found [here](#).
- **On August 31, 2021, on the International Day for People of African Descent, the IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA, for the acronym in Spanish) published a new thematic report on economic, social, cultural and environmental rights of persons of African de-**



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scent. The report points out that the multiple forms of discrimination suffered by Afro-descendants have effects both at the individual and social levels, since they obstruct access to basic rights such as work, health, education, and housing; situations that can be exacerbated by contexts of poverty and deprivation of economic opportunities. Also, the report states that poverty has a differentiated impact on Afro-descendants, to the extent that this ethnic-racial origin intersects with other factors of discrimination that deepen the conditions of vulnerability, such as gender identity and/or expression, disability, age, sexual orientation, migratory status, socioeconomic situation, among others. The IACHR emphasized that the conditions of the vulnerability described in the report demonstrate, on the one hand, the interdependence and indivisibility of economic, social, cultural, and environmental rights; and on the other, the interdependence and intersectionality of human rights violations.

The IACHR and its REDESCA understand that this report is in itself a form of reparation to invoke the collective memory of Afro-descendants in the region; to recognize their social struggles and historical legacy, as well as to make visible different human rights violations. Additionally, they called on the States of the region to ratify the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, while emphasizing that the ratification of the Inter-American instruments is an indispensable step for the respect and guarantee of the human rights of all people in the Americas. The report can be found [here](#).

- **On August 23, 2021, the IACHR reiterated its concern regarding the legal thesis of the “time frame” concerning the right to collective property of indigenous and tribal peoples in Brazil.** The so-called “temporal framework” is a legal thesis of the general repercussion of Brazil’s Supreme Federal Court (STF), according to which indigenous peoples can only claim lands where they were already on October 5, 1988, the day the Brazilian Constitution came into force. The country’s Federal Constitution guarantees the creation of the so-called Indigenous Lands in Article 231. These are lands belonging to indigenous peoples, where they can exploit their natural resources and develop their culture and can

be inhabited by one or more ethnic groups and have an exclusive and permanent right to the territory.

In this regard, the IACHR reaffirmed that the application of this thesis contradicts international and Inter-American human rights standards, in particular the American Convention on Human Rights and the American Declaration on the Rights of Indigenous Peoples. Specifically, because it does not take into consideration the innumerable cases in which indigenous peoples were forcibly displaced from their territories, often with extreme violence, which is why they were not under occupation in 1988. The press release can be found [here](#).

- **On August 31, 2021, the Office of the Special Rapporteur for Freedom of Expression published a new thematic report: “Children, Freedom of Expression and the Media”.** The report analyzes the right to freedom of expression of children and adolescents in the context of traditional media and the challenges of the new paradigm that the Internet represents for guaranteeing human rights. The document aims to contribute to a better understanding of the right to freedom of expression of children and adolescents, recognizing that this should be interpreted most broadly and effectively possible, and that it is necessary to see and treat children and adolescents as subjects of rights according to the principle of progressive autonomy. The report also states that the right to freedom of expression is universal in content and should not be interpreted in opposition to other rights, such as the protection of privacy and dignity of children and adolescents. More information can be found [here](#) and the thematic report can be found [here](#).

2. Inter-American Court of Human Rights (IACtHR)

- **On August 13, 2021, the IACtHR published the Advisory Opinion OC-28/21 on presidential reelection without term limits in the context of the Inter-American Human Rights System, requested by the State of Colombia.** The Court concluded that indefinite presidential reelection is contrary to the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man.

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The Court addressed the interdependence between democracy, the rule of law, and the protection of human rights; and affirmed that the effective exercise of democracy in the American States constitutes an international legal obligation. It also established that the principles of representative democracy include, among other issues, the periodicity of elections, political pluralism, the obligation to prevent one person from perpetuating himself in power, alternation, and separation of powers. Finally, the Court warned that “the greatest current danger facing the region’s democracies is not the abrupt breakdown of the constitutional order, but the gradual erosion of democratic safeguards that can lead to an authoritarian regime, even if it is popularly elected”. The advisory opinion can be found [here](#). ■



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