



## OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

### **Newsletter n. 102**

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Below are the main updates concerning case-law and acts relevant to the protection of fundamental rights, as published in the web site [www.europeanrights.eu](http://www.europeanrights.eu)

For the acts of the **European Union** we have included:

- the European Commission's Notice of 22.12.2023 "Guidance on the right of free movement of EU citizens and their families";
- the European Commission 2023 Annual Report of 4.12.2023 on the application of the European Union Charter of Fundamental Rights;
- the Directive (EU) 2023/2225 of 18.10.2023 on credit agreements for consumers.

For the **Court of Justice**, we added the decisions:

- 14.12.2023, C-340/21, *Natsionalna agentsia za prihodite*, on non-authorized free movement and processing of personal data and on the protection of natural persons;
- 14.12.2023, C-206/22, *Sparkasse Südpfalz*, on quarantine measures, on the protection of safety and health of workers and on the right to paid annual leave;
- 07.12.2022, C-518/22, *AP Assistenzprofis*, on the job offer and discrimination on grounds of age justified with the assistance service for persons with disabilities;
- 07.12.2023, C-634/21, *SCHUFA Holding (Scoring)*, on automated establishment of a probability value concerning the ability of a person to meet payment commitments in the future ('scoring'), on the use of that probability value by third parties and on the protection of personal data;
- 07.12.2023, joined cases C-26/22 and C-64/22, *SCHUFA Holding (Libération de reliquat de dette)*, on the storage of data by firms which provide for commercial information from a public register, on the right to erasure where personal data have been unlawfully processed and on the right to an effective judicial remedy against a supervisory authority;
- 05.12.2023, C-128/22, *NORDIC INFO*, on measures restricting the free movement of Union citizens and on the obligation for every traveler to undergo screening tests during the pandemic period;
- 05.12.2023, C-683/21, *Nacionalinis visuomenės sveikatos centras*, and C-807/21, *Deutsche Wohnen*, both on the imposition of administrative fines only in the event of intentional or negligent infringement of the general regulation on the protection of personal data;
- 30.11.2023, joined cases C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21, *Ministero dell'Interno (Brochure commune - Refoulement indirect)*, on asylum procedures;
- 30.11.2023, C-270/22, *Ministero dell'Istruzione and INPS*, on the determination of the period of service deemed accrued;

- 28.11.2023, C-148/22, *Commune d'Ans*, on the prohibition of the visible wearing of any philosophical or religious sign in the workplace;
- 23.11.2023, C-201/22, *Telia Finland*, on the collective management of copyright and related rights;
- 23.11.2023, C-260/22, *Seven.One Entertainment Group*, on copyright and related rights in the information society;
- 23.11.2023, C-321/22, *Provident Polska*, on consumer protection;
- 23.11.2023, C-374/22, *Commissaire général aux réfugiés and aux apatrides (Unité familiale)*, on the application for the grant of international protection, as a derived right, submitted by the father of minor refugee children;
- 23.11.2023, C-614/22, *Commissaire général aux réfugiés and aux apatrides (Unité familiale)*, on the application for the grant of international protection, as a derived right, submitted by the mother of minor refugee children;
- 16.11.2023, C-333/22, *Ligue des droits humains (Vérification du traitement des données par l'autorité de contrôle)*, on processing of personal data and on the right to an effective judicial protection;
- 09.11.2023, C-125/22, *Staatssecretaris van Justitie en Veiligheid (Notion d'atteintes graves)*, on the conditions for granting subsidiary protection;
- 09.11.2023, C-175/22, *BK (Requalification de l'infraction)*, on the right to a fair trial, on the right of the defence and presumption of innocence;
- 09.11.2023, joined cases from C-271/22 to C-275/22, *Keolis Agen*, on the right to paid annual leave;
- 09.11.2023, C-376/22, *Google Ireland and others*, on freedom to provide services;
- 09.11.2023, C-598/21, *Všeobecná úverová banka*, on consumer credit contracts and on consumer protection;
- 09.11.2023, C-819/21, *Staatsanwaltschaft Aachen*, on the recognition of judgments imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in another Member State, and on the fundamental right to a fair trial before an independent and impartial tribunal previously established by law.

For the **European Court of Human Rights** we would like to highlight the judgments:

- 09.01.2024, *Miranda Magro v. Portugal* (n. 30138/21), on the structural problems of the Portuguese penitentiary system with regard to mentally ill persons;
- 14.12.2023, *Syndicat National Des Journalistes and others v. France* (n. 41236/18), on the violation of article 6 of the Convention in virtue of the question on the impartiality of some judges of the Court of Cassation, who had regular professional relations with one of the parties of the proceedings;
- 14.12.2023, *M.L. v. Poland* (n. 40119/21), on the violation of the Convention with regard to a woman, who had to interrupt the pregnancy abroad because of the amendment of the law in Poland;
- 12.12.2023, *Vučković v. Croatia* (n. 15798/20), according to which the Croatian courts did not adequately assess a case concerning continuous sexual harassment at the workplace;
- 12.12.2023, *Ștefan-Gabriel Mocanu and others v. Romania* (n. 34323/21 and other 8), according to which the investigation into the repression of the demonstrations of June 1990 in Bucharest is still ineffective after more than 30 years from its beginning, despite an initial finding of violation in 2014;
- 12.12.2023, *Jasutis and Šimaitis v. Lithuania* (n. 28186/19 and 29092/19), according to which the definition of trafficking in human beings can be applied also to the fact of hiring women on the internet in order to work as "web models";
- 28.11.2023, *Tadić v. Croatia* (n. 25551/18), on the impartiality of the Supreme Court in a case concerning conspiracy to influence a trial for war crimes;
- 28.11.2023, *Krachunova v. Bulgaria* (n. 18269/18), on a victim of trafficking of human beings and on the right to ask the human smuggler for compensation: the Court found the violation of article 4 of the Convention on the prohibition of slavery and forced labour;

- 28.11.2023, *Mariya Alekhina and others v. Russia (No. 2)* (n. 10299/15), on the repeated refusal to register an organization for the defence of fundamental rights on grounds of not having respected some legal formalities;
- 27.11.2023, Grand Chamber judgment, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* (n. 21881/20), concerning the claim of an association against anti-Covid measures aiming at banning public demonstrations in Switzerland in 2020, which was found inadmissible for not having respected the term of 6 months for the introduction of the claim and not having exercised first all national legal actions;
- 23.11.2023, *Wałęsa v. Poland* (n. 50849/21), on the violation of the right of Lech Walesa to a fair trial: the pilot decision against Poland invited the Country to adopt adequate norms in order to align Polish legislation to article 6 of the Convention and in particular to the principle of independence of the judicial power;
- 21.11.2023, *Laurijsen and others v. the Netherlands* (n. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17), on the unjustified arrest and criminal conviction inflicted to some applicants who had demonstrated for a squat in Amsterdam;
- 21.11.2023, *Pleshkov and others v. Russia* (n. 29356/19 and 31119/19), on restrictions concerning the choice of the place for public demonstrations which were not justified by convincing and important reasons;
- 14.12.2023, Grand Chamber judgment, *Humpert and others v. Germany* (n. 59433/18 and other 3), according to which the imposition of a pecuniary sanction to some teachers on strike (in particular for having participated, during the working hours, to strikes organized by their trade union in order to protest against the deterioration of teachers' working conditions) does not amount to a violation of their rights.

As far as **case law of national courts** is concerned, the following decisions must be highlighted:

- **France:** the decision of the *Cour de cassation* n. 1248/2023 of 21.12.2023, which, while assessing the obligations of the parties after the interruption of the trial, recalls the jurisprudence of the Court of Strasbourg; the decision n. 2217/2023 of 20.12.2023, on the obligation of information of the employer, which recalls article 27 of the EU Charter of Fundamental Rights; and n. 2209/2023 of 20.12.2023, which recalls European Union sources concerning the procedures for the declaration of the state of insolvency and in particular the jurisprudence of the Court of Justice;
- **Germany:** the order of the *Bundesgerichtshof* (Federal Court of Justice) of 21.12.2023, for a reference for a preliminary ruling, which submits to the European Court of Justice questions on the concept of copyright; the decision of the *Bundesarbeitsgericht* (Federal Labour Tribunal) of 24.8.2023, which applies article 6 of the GDPR stating that, in the event of offensive declarations concerning employees of the firm in a private chat of seven persons, a special explanation is necessary on the reason why the employee had the right to assume that his statements would not be communicated to third persons by no one of the people in the chat; the decision of the *Oberlandesgericht Düsseldorf* (Court of Appeal of Düsseldorf) of 5.10.2023, which, in the matter of (denied) right to be forgotten concerning a person who wanted to be erased from a public legal database, recalls article 8 of the EU Charter of Fundamental Rights; and the decision of the *Verwaltungsgericht Berlin* (Administrative Tribunal of Berlin) of 12.10.2023, which in second instance annulled a warning issued by the DPA of Berlin and established that the Berlin S-Bahn network operator, being responsible for the processing, is not obliged to provide the CCTV recordings to a person who requires the access, pursuant to article 15 of the GDPR;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 21.11.2023, in which the Court finds that the job relation between riders and the platform Deliveroo cannot be considered as an employment relationship and therefore the riders' trade union created to negotiate with the firm is not recognized according to article 11 of the ECHR; the decision of 15.11.2023, in which the Court finds in contrast with several national and international norms (including the relevant norms of the ECHR) the decision of the English Government to transfer in Rwanda asylum seekers in order to

process their asylum applications; the decision of 21.6.2023, on substantial and procedural obligations provided for by article 2 of the ECHR in the investigations of the coroner in the case of the death of a woman affected by several problems; the decision of 19.4.2023, in which the Court deems compatible with articles 5 and 7 of the ECHR the norms of the Counter Terrorism and Sentencing Act 2021, where they provide for the access to parole for those who have been sentenced for terrorism only after 2/3 of the sentence; the decision of the England and Wales High Court of 15.9.2023, in the matter of environmental protection in the light of articles 2 and 8 of the ECHR, and of the right to property; and the decision of 9.5.2023, on the limitation of the right to assembly during the Covid-19 pandemic period; the decision of the Court of Session Inner House of 1.11.2023, in which the Court explains that the concept of "sex" in the norms of the Equality Act 2010 must be read in combination with the norms of the Gender Recognition Act 2004; and the decision of the United Kingdom First-Tier Tribunal of 6.7.2023, in the matter of freedom of expression;

- **Italy:** the orders of the Corte di Cassazione n. 35969 of 27.12.2023, which deems relevant, with regard to the calculation of the divorce allowance, also the years of cohabitation as civil union, also in the light of the jurisprudence of the Court of Strasbourg; the decision n. 35385 of 18.12.2023, which deems relevant, with regard to the calculation of the divorce allowance, also the years of cohabitation, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 47798 of 30.11.2023, in the matter of acquisition of messages exchanged with an encrypted system following a European order of investigation by the foreign judicial authority which carried out the decryption, which recalls the articles of the relevant European Charters and supra-national sources; the decision n. 32418/2023 of 22.11.2023, which, with regard to the criteria for the determination of the working hours, recalls the jurisprudence of the Court of Justice and article 31 of the EU Charter of Fundamental Rights; and the decision n. 32070 of 20.11.2023, according to which in the matter of international protection, the migrant has the right to be fully informed since the first contact with the police, in the light of Directive 2008/115/EC; and the decree of the Court of Milan of 3.10.2023, which ascertains the discrimination on grounds of gender in the access to training courses and the consequent nullity of the dismissal for the lack of adequate qualification, recalling the supra-national legal sources in the matter of burden of proof.

For what concerns **comments**, we have included the following texts:

#### **Articles:**

[Giuseppe Bronzini](#) "Contribute of the Court of Cassation in order to solve the problem of 'indecent salaries'"

[Sergio Galleano](#) "The Court of Justice is called to decide on the prevalence between the right to non-discrimination on grounds of age and the protection of disability"

[Lucia Tria](#) "Dismissal for occurred work disability within the problem of well-being at the workplace"

#### **Notes and comments:**

[Erasmus Mancini](#) "Dynamics, priorities and critical issues of the macro-regional strategies of the European Union"

[Erasmus Mancini](#) "Story and development of the African Union organization"

[Gabriella Cappello](#) "With regard to the EUCJ decision of 9 November 2023, *Staatsanwaltschaft Aachen*, on the principle of the mutual recognition of criminal decisions"

[Alessandro Andronio](#) "With regard to the EUCJ decision of 9 November 2023, *BK v. Bulgaria*, on procedural guarantees on the juridical requalification of the fact"

[Francesca Picardi](#) "With regard to the EUCJ decision of 14 September 2023, *Volkswagen Group Italia s.p.a.*, on the principle of *ne bis in idem* applied to legal persons"

#### **Documents:**

[Opinion n. 26/2023](#) of the Consultative Council of European Judges - CCJE "Moving forward: the use of assistive technology in the judiciary", of 1 December 2023

[The Technical Paper](#) prepared by Filipe Marques and Kyela Leakey for the Council of Europe "on Trends and practice of Special Courts and Specialised Judges in the Anti-Corruption area", of 31 October 2023

[Report for the French Parliament](#) presented by M. Jean-Louis Bourlanges on the follow-up to the Conference on the future of the Union (CoFoE), of 3 July 2023