



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

Newsletter n. 50

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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

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

- the Rule of procedure of the General Court of 23.04.2015;
- the European Parliament Resolution of 10.03.2015 on progress on equality between women and men in the European Union in 2013;
- the European Parliament Resolution of 11.03.2015 on child sexual abuse online.

For the **Council of Europe** we would like to highlight the following resolutions and recommendations:

of the **Parliamentary Assembly**:

- the Resolution 2054 of 24.04.2015, "Equality and non-discrimination in the access to justice";
- the Resolution 2050 of 23.04.2015, "The human tragedy in the Mediterranean: immediate action needed";
- the Resolution 2048 of 22.04.2015, "Discrimination against transgender people in Europe".

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

- 30.04.2015, C-80/14, *Union of Shop, Distributive and Allied Workers (USDAW), B. Wilson*, on the meaning of "establishment" in the matter of collective redundancies;
- 29.04.2015, C-51/13, *Nationale-Nederlanden Levensverzekering Mij NV v. Hubertus Wilhelmus Van Leeuwen*, on the obligation for the insurer to provide information to customers;
- 29.04.2015, C-528/13, *Geoffrey Léger*, on the permanent exclusion from giving blood for men who have had sexual relations with other men, on the prohibition of discrimination on grounds of sexual orientation and the protection of health;
- 28.04.2015, C-456/13 P, *T & L Sugars and Sidul Açúcares v. Commission*, on the right to an effective judicial protection and the right to bring an action;
- 23.04.2015, C-38/14, *Zaizoune*, on sanctions for illegal staying of third-country nationals;
- 23.04.2015, C-96/14, *Jean-Claude Van Hove*, on consumer protection and transparency of contractual terms in insurance contracts;

- 23.04.2015, C-260/13, *Aykul*, on the refusal of a Member State to recognize, in the case of a person having driven under the influence of narcotic substances, the validity of a driving licence issued by another Member State;
- 23.04.2015, C-382/13, *Franzen and others*, on social security for workers residing in the Member State of which they are citizens, but occasionally working in a Member State other than the State of residence;
- 21.04.2015, C-630/13 P, *Anboubas v. Council*, on restrictive measures against the Syrian Arab Republic;
- 16.04.2015, joined cases from C-446/12 to C-449/12, *W.P. Willems, H.J. Kooistra, M. Roest, L.J.A. van Luijk*, on biometric passport, the right to the respect for private life and the right to the protection of personal data;
- 16.04.2015, C-477/13, *Angerer*, in the matter of access to the profession and recognition of professional qualifications;
- 14.04.2015, C-527/13, *Lourdes Cachaldora Fernández*, on the calculation of the total permanent invalidity pension of a part-time worker and the prohibition of discrimination;
- 26.03.2015, C-316/13, *Gérard Fenoll*, on the right to annual paid leave and the possibility to grant such right to a disabled person placed in a rehabilitation centre, which offers courses that focus on the labour market;
- 26.03.2015, C-556/13, «*Litaksa*» *UAB*, on the differentiation in the amount of the insurance premium depending on the territory in which the vehicle is used and on freedom of movement for persons;
- 19.03.2015, C-266/13, *L. Kik*, on the social security regime applicable to a worker, who is citizen of the Member State in which he resides, but is employed on a pipe-laying vessel flying the flag of another third State outside the territory of the European Union;
- 19.03.2015, C-510/13, *E.ON Földgáz Trade Zrt.*, on the right to effective judicial protection against the decision of a regulatory authority;
- 17.03.2015, C-533/13, *Auto- ja Kuljetusalan Työntekijäliitto AKT ry*, on the protection of workers and on prohibitions and restrictions on the use of temporary agency work;
- 11.03.2015, C-628/13, *Jean-Bernard Lafonta*, on the right to information and the right to inside information which directly concerns the public;
- 05.03.2015, C-220/14 P, *Ezz and others v. Council*, on restrictive measures taken against certain persons and bodies in view of the situation in Egypt;
- 05.03.2015, joined cases C-503/13 and C-504/13, *AOK Sachsen-Anhalt – Die Gesundheitskasse, Betriebskrankenkasse RWE*, on health protection and liability for damage caused by defective products;
- 04.03.2015, C-534/13, *Fipa Group and others*, on liability for damage caused to the environment;

and the conclusions of the **Advocate General**:

- 26.03.2015, C-67/14, *Jobcenter Berlin Neukölln*, on the recognition of social benefits to EU citizens who travel to a Member State of which they are not nationals in order to seek employment;
- 19.03.2015, C-153/14, *K and A*, on the right to family reunification of married couples who are third-country nationals.

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

- 30.04.2015, *Kapetanios and others v. Greece* (n. 3453/12, 42941/12 and 9028/13), on the sentence imposed to the claimants by the administrative court in spite of the acquittal in the criminal proceeding;
- 30.04.2015, *Mitrinovski v. "The former Yugoslav Republic of Macedonia"* (n. 6899/12), on the lack of impartiality of a judicial body, which decided on the dismissal of a judge;
- 23.04.2015, *François v. France* (n. 26690/11), according to which there was no justification for placing a lawyer in police custody after he had been assisting at the police station, in his professional capacity, a youth who was being held by the police;

- 23.04.2015, Grand Chamber judgment, *Morice v. France* (n. 29369/10), according to which the conviction for defamation of the lawyer acting for Judge Borrel's widow amounted to violation of the right to freedom of expression;
- 21.04.2015, *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain* (n. 45892/09), according to which the ban on the strike action imposed on a police trade union did not infringe its freedom of association;
- 21.04.2015, *Danis and Association of Ethnic Turks v. Romania* (n. 16632/09), according to which the late change in the electoral law infringed the right to stand for elections of an association representing the Turkish minority;
- 14.04.2015, *Contrada v. Italy (No. 3)* (n. 66655/13), according to which the principles that the criminal law may not be applied retroactively and must be foreseeable were not respected in this specific case, since aiding and abetting a mafia-type organisation from the outside did not amount to criminal offence at the time when the actions were committed;
- 9.04.2015, *Vamvakas v. Greece (No. 2)* (application n.2870/11), according to which the Court of Cassation failed to ensure practical and effective respect for defence rights, having not guaranteed the presence of the applicant's assigned counsel;
- 9.04.2015, *Tchokontio Happi v. France* (n. 65829/12), on the failure to enforce a final judgment which granted the applicant an accommodation;
- 07.04.2015, *Cestaro v. Italy* (n. 6884/11), according to which Italian law is inadequate and not an effective deterrent to prevent the repetition of ill-treatment by the police;
- 02.04.2015, *Vinci Construction and GTM génie civil et services v. France* (n. 63629/10 and 60567/10), on the violation of the right to a fair trial and to the respect for private life in a case of inspections and seizures carried out pursuant to competition law;
- 31.03.2015, *S.C. Uzinexport S.A. v. Romania* (n. 43807/06), according to which the decision of the Court of Cassation in the applicant's case was arbitrary and incompatible with the principle of legal certainty, since the contrast with the former jurisprudence was unjustified;
- 24.03.2015, *Zaietj v. Romania* (n. 44958/05), with which the Court deemed unjustified the annulment of an adoption, 31 years after it had been approved, in the context of an inheritance proceeding;
- 24.03.2015, *Gallardo Sanchez v. Italy* (n. 11620/07), on the excessive length of a person's detention with a view to his extradition;
- 24.03.2015, *İsmail Sezer v. Turkey* (n. 36807/07), on freedom of assembly and association;
- 19.03.2015, *Corbet and others v. France* (n. 7494/11, 7493/11 and 7989/11), according to which the use in criminal proceedings of statements made by the applicants before a parliamentary commission of inquiry did not infringe his right of defence. The Court further held that the applicant's detention had no lawful basis, since at the time of the events there had been no provisions in French law governing detention from the expiry of a period in police custody until the detainee was brought before an investigating judge;
- 12.03.2015, *Muršić v. Croatia* (n. 7334/13), in the matter of prison overcrowding: the Court deemed that, in spite of some elements for concern with regard to the lack of personal space, they were compensated by having access to time out of the cell as well as to sports and social facilities;
- 12.03.2015, *Lyalyakin v. Russia* (n. 31305/09), on the inhuman and degrading treatment suffered by a soldier, including appearing undressed in front of other soldiers;
- 12.03.2015, *Almeida Leitão Bento Fernandes v. Portugal* (n. 25790/11), on freedom of expression: the Court held that the conviction for libel of the author of a novel, relating family dramas, did not amount to a violation of the Convention;
- 10.03.2015, *Varga and others v. Hungary* (n. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13), according to which the State must take measures to improve the problem of widespread overcrowding in prison;
- 10.03.2015, *Behçet Taş v. Turkey* (n. 48888/09), with which the Court sentenced Turkey on account of the excessive length of proceedings in a case of compensation for damages deriving from the explosion of an anti-personnel mine, despite the

- introduction of a remedy in domestic law;
- 10.03.2015, *Y.Y. v. Turkey* (n. 14793/08), on the violation of the right to the respect for private and family life, in a case in which the authorization for gender reassignment surgery was refused on the grounds that the person requesting it, a transsexual, was not permanently unable to procreate;

and the decisions:

- 16.04.2015, inadmissibility judgment, *Smaltini v. Italy* (n. 43961/09), in a case in which, according to the applicant, there was a causal link between the polluting emissions from a factory located near her home and leukaemia, since such causal link was not found;
- 08.04.2015, two cases struck out from the list, *M.E. v. Sweden* and *W.H. v. Sweden* (n. 71398/12 and 49341/10), which were resolved at a national level and concerned two asylum seekers facing expulsion;
- 19.03.2015, a case struck out from the list, *S.J. v. Belgium* (n. 70055/10), after a friendly settlement between the Belgian government and the applicant, who was a mother with HIV facing expulsion.

For the **extra-European area** we have included:

- the decision of the United States Court of Appeals for the Second Circuit of 07.05.2015, which reversed the decision of the United States District Court Southern District of New York of 27.12.2013, stating that the bulk collection of Americans' phone metadata by the National Security Agency (NSA) was not authorized by Section 215 of the Patriot Act;
- the decision of the High Court of South Africa of 30.04.2015, which, although its effectiveness only concerns the specific case, ruled that the norms which punish and prohibit a medically-assisted suicide limit the right to human dignity and to physical and psychological integrity, in violation of the South-African Bill of Rights;
- the decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia of 08.04.2015, case *Prosecutor v. Zdravko Tolimir*, which confirmed the life imprisonment sentence of first instance against the accused person for the crimes committed in 1995 in the "protected zones" of Srebrenica and Žepa;
- the decision of the Appeals Chamber of the International Criminal Court of 07.04.2015, case *The Prosecutor v. Mathieu Ngudjolo Chui*, which confirmed the acquittal issued by the Trial Chamber II on 18.12.2012 in favour of the accused person, who was the former leader of the *Front des nationalistes et intégrationnistes*, for crimes against humanity and war crimes committed on 24 February 2003 during the attack on the village of Bogoro (Congo);
- the decision of the Supreme Court of India of 24.03.2015, which stated the constitutional illegitimacy of Section 66-A of the Information Technology Act of 2000, which provided the detention for sending offensive messages through a computer or any other communication device, for the violation of the right to freedom of speech and expression;
- the decision of the United States District Court for the Western District of Wisconsin of 20.03.2015, which stated the constitutional illegitimacy of Section 1 of 2013 of the Wisconsin Act 37, because it aimed at limiting abortion in the territory of the State;
- the order of the United States District Court for the District of Nebraska of 02.03.2015, which stated the constitutional illegitimacy of the prohibition of same sex marriages provided for by Section 29 of the Constitution of the State of Nebraska. With the order of 05.03.2015, the United States Court of Appeals for the Eighth Circuit stopped the execution of the decision of the Court of Nebraska, pending the decision on the merits of the same Court of Appeal.

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

- **Belgium:** the decisions of the *Cour Constitutionnelle* n. 38/2015 of 19.03.2015 and n. 35/2015 of 12.03.2015, in the matter of paternity disputes, which recall article 8 of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 34/2015 of 12.03.2015, which states the constitutional illegitimacy of some norms in the matter of teaching in primary and secondary schools, where they did not allow the exemption from the compulsory choice between religious or non-religious instruction, also applying the norms of the ECHR and the jurisprudence of the Court of Strasbourg; and the decision n. 24/2015 of 05.03.2015, which states the constitutional illegitimacy of some articles of the Flemish Region Decree of 31 May 2013, on the requirements to have access to social housing, recalling the norms of the ECHR, EU norms and the jurisprudence of the Court of Strasbourg;
- **France:** the decision of the *Cour de cassation* n. 1986/2015 of 14.4.2015, in the matter of criminal liability for exposure to asbestos, which recalls Directive n. 83/478/EEC; the referring order n. 630/2015, on religious discrimination in the workplace; the decision n. 1381/2015 of 1.4.2015, in the matter of interpretation of the Schengen Agreement concerning the jurisdiction on expulsion measures;
- **Germany:** the decision of the *Bundesverfassungsgericht* of 27.1.2015, on the legitimacy of wearing the veil at school, which recalls articles 8 and 14 of the ECHR and article 4 of Directive 78/2000;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 18.03.2015, on the requirements to have access to social benefits for poor families, in the light of the principle of non-discrimination; the decision of 11.03.2015 in the matter of informed consent to health care and on the obligation for the doctor to provide the patient with all necessary information for a free and conscious choice between the various options and the related risks (in this specific case, between natural and cesarean birth), instead of deciding on his own; and the decision of 4.03.2015, according to which the retention of personal data of the claimant (a British national of 91 years old) in police records, which collect information on citizens involved in extremist political activities, is a legitimate and proportioned interference with private and family life (pursuant to article 8 of the ECHR); the decision of the *England and Wales High Court* of 20.04.2015, in which the Court deems justified the interferences with the right to private life and to non-discrimination deriving from the impossibility, according to national norms, to modify the birth certificate of the child, rectifying the sex of one of the parents; and the decision of 17.04.2015, on the obligation for the United Kingdom, pursuant to article 2 of the ECHR, in relation to activities deriving from the involvement of British troops in Iraq; the decision of the *England and Wales Court of Appeal* of 27.03.2015, in which the Court sentenced Google for having secretly gathered, through the internet, information on users of web browsers; and the decision of the *Court of Session's Appeal Chamber – the Inner House* of 17.04.2015, on the right to family life of a British national, after the permit to stay in the United Kingdom was denied to her husband, of foreign origin, according to national norms in the matter of immigration;
- **Ireland:** the decision of the *Supreme Court* of 05.03.2015, which judges in the matter of responsibility of the employer for the safety of the working tools, in the light of EU norms and explanations provided for by the Court of Justice; the decision of 26.02.2015, on the possibility to appeal against the European arrest warrant on the basis of the alleged violation of the rights provided for by the ECHR and the EU Charter of Fundamental Rights, having the State, which issued the arrest warrant, requested to bring to trial the claimant, who already is on its territory, for other charges different from those which were included in the arrest warrant; and the decision of 06.02.2015, in the matter of parental responsibility and transfer of the minor according to the Hague Convention on Civil Aspects of International Child Abduction and the Regulation (EC) n. 2201/2003, in the light of the decision of the Court of Justice in the case *C v. M*; the decision of the *High Court* of 24.03.2015, which judges on the compatibility of the authorities' decision to expel a Polish national, who is permanently residing in the State, because sentenced for sexual crimes, with the norms provided for by Directive

- 2004/38/EC and the jurisprudence of the Court of Justice; the decision of 06.03.2015, which rejected the claim based on the alleged violation of the right to good administration, in virtue of the double involvement of the Refugee Applications Commissioner in the assessment of the asylum claim and the following request of subsidiary protection, which recalls the norms of the EU Charter of Fundamental Rights and the jurisprudence of the Court of Justice; the decision of 20.02.2015, which rejected the hand-over of the claimant, pursuant to the European arrest warrant, for the possible consequences on the rights provided for by article 8 of the ECHR; another decision of 20.02.2015, in the matter of asylum, which judges on the legitimacy of a decision of the Refugee Applications Commissioner, in the light of EU norms and the decision of the Court of Justice in the case *X,Y,Z v. Minister Voor Immigratie en Asiel*; and the decision of 17.02.2015, which, also recalling the jurisprudence of the Court of Strasbourg, deemed unlawful the regime of isolation imposed for nearly one year to the claimant, in order to protect his safety, and in violation of his constitutional right to physical and mental integrity;
- **Italy:** the decision of the *Corte costituzionale* n. 50/2015 of 26.3.2015, on the constitutional legitimacy of the norms on "metropolitan cities", which considers the European Charter of Local Self-Government as a Document with a programmatic value; the order n. 30/2015 of 11.2.2015, which, in the matter of compensation of damages suffered by the victims of war crimes committed by Germany during the Nazi period, recalls the former decision n. 238/2014; the decision n. 22/2015 of 27.1.2015, which, in the matter of social security for non EU nationals, states the constitutional illegitimacy of the norm subordinating such benefit to the possession of the green card, also for contrast with article 14 of the ECHR; and the decision n. 49/2015 of 14.1.2015, in the matter of confiscation of real estate, which excludes the application of the decision of the Court of Strasbourg in the case *Varvara*; the decision of the *Corte di cassazione* n. 5516/2015 of 19.03.2015, in the matter of protection of the manager employed with a fixed-term contract, which recalls the directive on fixed-term contracts and the jurisprudence of the Court of Justice; the decision n. 12612/2015 of 25.03.2015, which, in the matter of right to adversarial procedure, recalls article 6 of the ECHR and the decision of the Court of Strasbourg in the case *Drassich*; the decision n. 12630/2015 of 25.3.2015, which, in the matter of request to be granted the term to appeal, recalls article 6 of the ECHR and the decision of the Court of Strasbourg in the case *Kimmel, Sejdivic* and others; the decision n. 11648/2015 of 20.03.2015, in the matter of possibility for courts to raise ex officio the violations of the ECHR; the order n. 4881/2015 of 11.3.2015, which, in the matter of retroactive law, with regard to the pension of workers migrating to Switzerland, raises the question of constitutional legitimacy of such law, in the light of the decision of the Court of Justice in the case *Stefanetti*; the order of the *Consiglio di Stato* of 4.3.2015, which raises the question of constitutional legitimacy in relation to the lack of revocation of the administrative decision become final, after the Court of Strasbourg ascertained the contrast with the ECHR; the decision of the *Tribunale di Reggio Calabria* of 10.4.2015, on school short term employees, which recalls the decision of the Court of Justice in the case *Mascolo*; and the decisions of the *Tribunale di Napoli* of 20.3.2015 and the *Tribunale di Bari* of 18.2.2015 on the same issue; the order of the *Tribunale di Milano* of 14.3.2015, which deems discriminatory to subordinate the possibility to request a temporary teaching job to the possession of Italian or EU nationality, recalling the EU directives which equalized the rights provided for by labour law between EU and non EU nationals; the decision of the *Tribunale di Firenze* of 5.11.2014, which deems discriminatory the refusal of a social benefit for big families to non EU nationals, according to EU law; the decision of the *Tribunale di Messina* of 4.11.2014, according to which, subordinating the right to having recognized ones sexual identity to surgery for sterilization, is in contrast with the constitutional and conventional protection of the right to gender identity, which recalls the ECHR and the EU Charter of Rights;
 - **Lithuania:** the decision of the *Konstitucinis Teismas* of 30.10.2014, on the compatibility of some articles of the *Law on the restoration of the rights of ownership of citizens to the existing real property* with the constitutional norms in the matter of right

to property and principle of equality, which recalls the jurisprudence of the Court of Strasbourg;

- **Portugal:** the decision of the *Tribunal Constitucional* of 08.04.2015, in the matter of industrial property in the pharmaceutical field, which recalls EU law in such matter;
- **Spain:** the decision of the *Tribunal Constitucional* n. 18/2015 of 16.02.2015, on the relation between the right to intimacy and freedom of information, which recalls the jurisprudence of the Court of Strasbourg; and the decision n. 16/2015 of 16.02.2015, which, in the light of the jurisprudence of the Court of Strasbourg, judges on the alleged violation of the right to effective judicial protection with regard to the decision of inadmissibility of the claim before the Court of cassation for the lack of formal requirements;
- **The Netherlands:** the decision of the *Rechtbank Den Haag* (District Court of the Hague) of 11.03.2015, which quashed the law on data retention of 18 May 2009 (*Wet bewaarplicht telecommunicatiegegevens*), which transposes Directive 2006/24/EC (*Data Retention Directive*), for the violation of articles 7 and 8 of the European Union Charter of Fundamental Rights, recalling the decision of the Court of Justice in the joined cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd. v. Minister for Communications, Marine and Natural Resources and others* and *Kärntner Landesregierung and others*.

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

Articles:

[Abi Adams et al.](#) "The "Zero-Hours Contract": Regulating Casual Work, or Legitimizing Precarity?"

[Christophe Degryse](#) "The European sectorial social dialogue: a shadow on the picture"

[Jean-Michel Servais](#) "International labour law in the face of the crisis"

[Eugenio Zaniboni](#) "International order and fight against corruption"

Notes and comments:

[Roberto Conti](#) "Law Pinto – but not only - Court of Cassation and ECHR on some debated issues"

[Gina Turatto](#) "Comment on the decision in the case *Moor* (Court of Strasbourg; art. 6 of the ECHR)"

Reports:

[Lucia Tria](#) "State employees between National Supreme Courts and central European Courts"

[Roberto Conti](#) "Reference for a preliminary ruling to the EU Court: resource, problem and *fundamental* principle of cooperation for a *European regulatory competence*"

[Alessandro Criscuolo](#) "Report on the constitutional jurisprudence in 2014"

[Giovanni Grasso, Fabio Giuffrida](#) "The impact on the national *res iudicata* of the decisions of the European Court ascertaining violations of criminal law"

[Pierpaolo Gori](#) "The role of the judge after the opinion of the Court of Justice C-2/13 of 18.12.2014, between effectiveness and execution of the decisions of the ECHR"

[Anton Giulio Lana](#) "Protocol n. 16 to the European Convention for the protection of human rights and fundamental freedoms: lights and shadows"

[Fabio Rosario Morelli](#) "National judges of last instance and reference for a preliminary ruling between the EU Court of Justice and the Court of Strasbourg"

[Andrea Venegoni](#) "Creation of a European common legal area: the role of supranational Courts"

Documents:

The [Charter of Rome](#) of the Consultative Council of European Prosecutors "European norms and principles on the prosecutor" of December 2014

[Report of the House of Lords](#) of 15.03.2015 on the Protocol on Great Britain's opt out with regard to policies on the area of freedom, security and justice and the position of the Government

Study by the House of Lords ["The review of the balance of competences between the UK and the EU"](#), of March 2015

We would finally like to highlight that Fondazione Basso, thanks to the support of OLAF, the European Anti-Fraud Office, is organizing an international [Conference on the European Prosecutor](#), according to the program published on the web site of the Observatory, on 21 and 22 May 2015.