



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

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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 EU Fundamental Rights Agency Report of 01.07.2015 on "Freedom to conduct a business: exploring the dimension of a fundamental right".

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

- 3.09.2015, C-110/14, *Ovidiu Costea*, on the concept of consumer according to Directive 93/13/EC on unfair terms;
- 2.09.2015, C-309/14, *CGIL and INCA*, on the issue and renewal of a residence permit;
- 16.07.2015, C-681/13 *Diageo Brands BV*, on the recognition and enforcement of judgments in civil and commercial matters in a case where the decision of the court of the Member State of origin is manifestly contrary to EU law;
- 16.07.2015, C-83/14, *CHEZ Razpredelenie Bulgaria*, on the principle of equal treatment between persons irrespective of ethnic or religious origin, with regard to the supply of electricity in urban districts mostly lived by people of Roma origin;
- 16.07.2015, C-184/14, *A v. B*, on jurisdiction in matters relating to the maintenance obligations, in respect of minor children concurrent with the parents' separation proceeding, brought in a Member State other than that in which the children are habitually resident;
- 16.07.2015, C-218/14, *Singh and others*, on the right of residence of a third-Country national, who is married to a EU citizen, in the event of divorce;
- 16.07.2015, C-222/14, *Maïstrellis*, on the individual right to parental leave, equal treatment between men and women in matters of employment and occupation and the principle of non-discrimination;
- 16.07.2015, C-237/15 PPU, *Lanigan*, on keeping of the requested person in detention, in the event of European arrest warrant;
- 16.07.2015, C-580/13, *Coty Germany*, on the right to information in the context of proceedings for the infringement of an intellectual property right;
- 16.07.2015, C-612/13 P, *ClientEarth v. European Commission*, on the right to have access to documents and protection of the environment;
- 16.07.2015, C-615/13 P, *ClientEarth and PAN Europe v. EFSA*, on the right to have access to documents and protection of personal data;
- 16.07.2015, C-653/13, *European Commission v. Italy*, on the protection of the environment and the failure to correctly fulfil the directive on waste in Campania (Italy);

- 9.07.2015, C-87/14, *European Commission v. Ireland*, on the organization of working time, minimum daily and weekly rest periods and the average working time for each 7 day period;
- 9.07.2015, C-153/14, *K and A*, on family reunification of third-country nationals, subordinated to a civic integration exam;
- 9.07.2015, C-177/14, *Regojo Dans*, on the principle of non-discrimination and the refusal to grant a three-yearly length-of-service increment to fixed-term workers;
- 9.07.2015, C-229/14, *Balkaya*, on the concept of "worker";
- 2.07.2015, C-497/12, *Gullotta and Farmacia di Gullotta Davide & C.*, on freedom of establishment and the principle of non-discrimination;
- 1.07.2015, C-461/13, *Bund für Umwelt und Naturschutz Deutschland*, on the protection of the environment and the obligations provided for by the water framework directive.

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

- 1.09.2015, *Khlaifia and others v. Italy* (n. 16483/12), on the unlawful detention of Tunisian migrants in degrading conditions on the island of Lampedusa in Italy pending collective expulsion;
- 27.08.2015, Grand Chamber judgment, *Parrillo v. Italy* (n. 46470/11), on the prohibition to donate to the scientific research the embryos obtained through assisted fertilization, which would not violate the fundamental right to the respect for private life;
- 30.07.2015, *Ferreira Santos Pardal v. Portugal* (n. 30123/10), on the Supreme Court's divergent interpretation on the admissibility of a legal action for civil liability against the State: the rejection of the action by the Court was in contrast with its consolidated jurisprudence in such matter;
- 23.07.2015, *Bataliny v. Russia* (n. 10060/07), on a not allowed psychiatric treatment, which included scientific researches;
- 21.07.2015, *G.S. v. Georgia* (n. 2361/13), on the proceeding of repatriation of a minor to Ukraine, which had an excessive length and did not take into consideration the child's best interest;
- 21.07.2015, *Oliari and others v. Italy* (n. 18766/11 and 36030/11), according to which Italy will have to introduce the possibility for homosexual couples to obtain the legal recognition of their relation;
- 21.07.2015, *Neagoie v. Romania* (n. 23319/08), according to which the statement of the court's Romanian spokesman, before the court's decision, on the guilt of the applicant, violated the right to the presumption of innocence;
- 21.07.2015, *R.S. v. Poland* (n. 63777/09), on the lack of consideration of a father's parental rights, in a case of abduction of minors;
- 21.07.2015, *Cingilli Holding A.Ş. and Cingilloğlu v. Turkey* (n. 31833/06 and 37538/06) on the unlawful control and sale of a private bank;
- 16.07.2015, *Nazarenko v. Russia* (n. 39438/13), on the inflexibility of Russian family law, which provides for the complete exclusion of a non biological father from the child's life, in the event of the ascertainment of the natural and non-biological relation;
- 16.07.2015, *Gazsó v. Hungary* (n. 48322/12), which is the pilot judgment against Hungary on the excessive length of civil proceedings;
- 16.07.2015, *Ghedir and others v. France* (n. 20579/12), on the lack of satisfactory and convincing explanations on the origins of permanent injuries following the arrest by agents of the National Company of Railway Transport;
- 16.07.2015, *Kuttner v. Austria* (n. 7997/08), on the legitimacy of the applicant's detention in a psychiatric institute: the proceeding could not lead neither to his release nor to other kind of detention;
- 9.07.2015, *Martzaklis and others v. Greece* (n. 20378/13), on the material and health conditions in which an HIV positive person was kept in the Greek hospital of Korydallos, deemed degrading and discriminatory;
- 7.07.2015, *Rutkowski and others v. Poland* (n. 72287/10, 13927/11 and 46187/11), which is a pilot judgment against Poland: the State will have to adopt adequate meas-

ures in order to deal with the problem of the length of proceedings and compensate the victims in a satisfactory way;

- 7.07.2015, *V.M. and others v. Belgium* (n. 60125/11), on the degrading treatment suffered by the members of a family seeking asylum, and in particular by a newborn baby and a disabled child, who were expelled from a holding camp and left for three weeks with no means of subsistence and no help;

and the decision:

- 16.07.2015, Inadmissibility decision, *Nicklinson and Lamb v. the United Kingdom* (n. 2478/15 and 1787/15), on the ban on assisted suicide and voluntary euthanasia in the United Kingdom.

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

- the decision of the *United States Court of Appeals for the Ninth Circuit* of 03.09.2015, which reversed the decision by the Board of Immigration Appeals, admitting the claim lodged by a Mexican national, pursuant to article 3 of the Convention against Torture (principle of non-refoulement), considering the concrete risk, in the event of repatriation, of being subjected to torture because of her condition of transgender;
- the decision of the *United States Court of Appeals for the District of Columbia Circuit* of 28.08.2015, which rejected the claimants' request to consider the data collection program of the National Security Agency in contrast with the Fourth Amendment to the United States Constitution, in virtue of the lack of proof that such activity was carried out to their prejudice: the Court of Appeal reversed the former decision of the District Court, which prevented the Government from collecting the claimants' telephone data;
- the decision of the *Superior Court for the State of Alaska* of 27.08.2015, which stated the constitutional illegitimacy of some national norms, which limited the cases of access to *Medicaid* health cover in relation to abortion;
- the order of the *United States Court of Appeals for the Sixth Circuit* of 26.08.2015, which ordered to the Rowan County (Kentucky) Clerk to issue same-sex marriage licenses, in the light of the decision by the US Supreme Court in the case *Obergefell v. Hodges*; _
- the decision of the *Connecticut Supreme Court* of 25.08.2015, which stated the contrast of the death penalty with the Constitution of the State: according to the Court, the application of the death penalty to those who had been sentenced before 25th of April 2015 (when such penalty was completely abolished pursuant to the Public Act No. 12-5) would violate the constitutional ban on cruel and unusual punishments;
- the decision of the *United States Court of Appeals for the Eighth Circuit* of 22.07.2015, which confirmed the decision of the Court of first instance on the constitutional illegitimacy of the House Bill 1456 of Nord Dakota, according to which abortion was not allowed from the moment it was possible to detect the foetus heart beat;
- The decision of the *Corte Suprema de Justicia de la Nación (Argentina)* of 07.07.2015, which authorised the withdrawal of artificial nutrition and hydration and of all medical treatments in relation to a patient in a persistent vegetative state, also recalling the jurisprudence of the Court of Strasbourg;
- the decision of the *High Court of Kenya* of 30.04.2015, according to which the right to freedom of association and the principle of non-discrimination provided for by the State Constitution were violated by the denial to register a non government association aiming at the protection and promotion of homosexuals and lesbians' rights, following the Non-Governmental Organizations Co-ordination Board's refusal of its name, as proposed by the claimant.

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

- **Belgium:** the decision of the *Cour Constitutionnelle* n. 108/2015 of 16.07.2015, which stated the constitutional legitimacy of articles from 25 to 28, 31 and 50 of the law of 14 February 2014, on the proceeding before the Court of Cassation in criminal matters, with particular regard to the term to lodge a claim and the lawyer's qualifications, recalling the jurisprudence of the Court of Strasbourg; the decision n. 103/2015 of 16.07.2015, which judges on the constitutional legitimacy of the norms of the law of 20 January 2014, which amends the jurisdiction, proceeding and organization of the Council of State, recalling EU law and the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 98/2015 of 25.06.2015, which rejected the claim lodged against the law of 26 December 2013, which introduces a joint statute for workers and employees with regard to some aspects of the employment relationship, as well as new norms in the matter of dismissal, recalling the norms of the European Social Charter and the jurisprudence of the Court of Strasbourg; and the decision n. 94/2015 of 25.06.2015, which judges in the matter of adoption, in the light of the norms of the ECHR and the jurisprudence of the Court of Strasbourg;
- **Czech Republic:** the decision of the *Ústavní soud* of 19.05.2015, which stated the constitutional legitimacy of the 5% electoral threshold provided for by article 47 of law n. 62/2003 on the European Parliament Elections;
- **France:** the decision of the *Cour de cassation* the decision n. 3647/2015 of 08.7.2015, which, in the matter of telephone interceptions, examines the violation of the norms of the ECHR and excludes the reference for a preliminary ruling to the Court of Justice, deeming the norms of the EU Charter of Rights non applicable; n. 620/2015 of 03.7.2015, which, in the matter of refusal to register a foreign birth certificate for contrast with the French public order, excludes the violation of articles 3 and 8 of the ECHR; and the decision n. 986/2015 of 18.06.2015, which, in the matter of right to a social security regime, examines articles 12 and 34 of the EU Charter of Rights and excludes the reference for a preliminary ruling to the Court of Justice;
- **Germany:** the decision of the *Bundesgerichtshof* (Federal Court of Justice) of 12.3.2015, on the obligation to translate the acts of the proceeding in a language comprehensible to an Afghan national, which recalls article 5 of the ECHR; and the decision of 26.2.2015, which sentences a human being trafficker, accused of having illegally brought refugees into Germany, which examines Union law; the decision of the *Verwaltungsgericht Aachen* (Administrative Court of Aachen) of 16.7.2015, in the matter of age discrimination, which recalls Union directives; the decision of the *Verwaltungsgericht Gelsenkirchen* (Administrative Court of Gelsenkirchen) of 08.5.2015, according to which the asylum seeker in the German Federal Republic has no right to the asylum, in the event of the acceptance of the request of subsidiary protection in a safe third country (European Union Member State, in this case Bulgaria); and the decision of the *Verwaltungsgericht Regensburg* (Administrative Court of Regensburg) of 10.4.2015, which recalls article 3 of the ECHR in the matter of immigration;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 29.07.2015, which, also recalling the jurisprudence of the Court of Strasbourg, deemed illegitimate the extension of the period of solitary confinement imposed to the claimants, according to article 45(2) of the Prison Rules 1999, because it had not been authorized by the competent body; another decision of 29.07.2015, which, in the case of a national from Zambia with a temporary permit of stay, stated the incompatibility of the requirement of the establishment in the State, as provided for by the norm on access to university loans, with the right to education, pursuant to article 2 of the First Additional Protocol to the ECHR; the decision of 08.07.2015, according to which the suspension of the Disability Living Allowance, which had been paid in favour of a disabled child, following the hospitalization for more than 84 days (pursuant to the norms in such matter), violated the rights provided for by article 14 of the ECHR; the decision of 01.07.2015, on the alleged violation of the rights provided for by article 8 of the ECHR, as interpreted by the Court of Strasbourg, following the publication, as requested by the police, of images of a minor involved in public disorders; and the decision of 24.06.2015, on the compatibility of the founding decision of the Quality Assurance Scheme for Advocates with the Regulation 14 of the Provision of Services Regulations

2009, which implements Directive 2006/123/EC, in the light of the European Union principle of proportionality, as developed by the jurisprudence of the Court of Justice; the decision of the England and Wales Court of Appeal of 30.07.2015, on the extra-territorial application of the norms of the ECHR to the activities of the army during a non-international armed conflict (in this specific case, during the NATO mission in Afghanistan) and the relation between such norms and humanitarian international law: in the present case, the Court found the responsibility of the State, according to article 5 of the Convention, for the unlawful detention of the claimant, which exceeded the 96 hours and violated the procedural guarantees, provided for by article 5(4); the decision of 21.07.2015, on the possible differences between the jurisprudence of the Court of Justice and the jurisprudence of the Corte of Strasbourg on the disclosure requested in order to guarantee a fair trial, when national safety is involved; and the decision of 30.06.2015, on the obligation for the authorities to carry out real investigations in the event of violations of article 3 of the ECHR, committed by individuals, in the light of the jurisprudence of the Court of Strasbourg; the decisions of the England and Wales High Court of 07.08.2015, according to which imposing notification requirements on the defendant, pursuant to the Counter-Terrorism Act 2008, would amount to a violation of the rights provided for by article 8 of the ECHR, considering his mental health condition; the decision of 17.07.2015, which deemed Section 1 of the Data Retention and Investigatory Powers Act 2014 (DRIPA) in contrast with EU law, in the light of the decision of the Court of Justice within the joined cases C-293/12 and C-594/12 *Digital Rights Ireland Ltd. vs Minister for Communications, Marine and Natural Resources and others and Kärntner Landesregierung and others*; and the decision of the Scottish Court of Session, Outer House of 21.07.2015, on the violation of the right to the respect for the correspondence of a prisoner, according to article 8 of the ECHR, which also recalls the jurisprudence of the Court of Strasbourg;

- **Ireland:** the decision of the Supreme Court of 23.06.2015, on the scope and correct transposition in the national legal system of the concept of “public authority”, as provided for by directive 2003/4/EC, which applies the jurisprudence of the Court of Justice; and another decision of 23.06.2015, on the constitutional legitimacy and compatibility with the ECHR norms of article 3 (1) and (11) of the Immigration Act 1999, where it gives the Minister the possibility to issue expulsion orders with indefinite duration; the decision of the High Court of 28.07.2015, in the matter of asylum and risk of persecution for religious reasons, which recalls the norms of the ECHR, EU law and the jurisprudence of the Court of Justice; the decision of 16.07.2015, on the right of residence of a Nigerian national, mother of a Union citizen, in the light of EU law and the jurisprudence of the Court of Justice; the decision of 07.07.2015, which pronounces itself in the matter of medical personal data protection, recalling EU law and the jurisprudence of the Court of Justice; the decision of 25.06.2015, on the relation between the journalistic secret (protection of the sources) and procedural demands, which recalls the EU Charter of Fundamental Rights and the jurisprudence of the Court of Strasbourg; the decision of 17.06.2015, which admitted a claim lodged against an expulsion order, in virtue of the wrong assessment on the possible impact such measure may have on the rights provided for by article 8 of the ECHR; and the decision of 21.05.2015, on the balance between the right to privacy with regard to the relation customer/bank and the right to freedom of expression and information, which recalls the jurisprudence of the Court of Strasbourg;
- **Italy:** the decision of the Corte costituzionale n. 178/2015 of 23.7.2015, which, in the matter of legitimacy of the paralysis of the right to collective bargaining in the public sector, recalls article 28 of the EU Charter of Rights, the ILO Conventions and the jurisprudence of the Court of Strasbourg; the decision n. 157/2015 of 15.07.2015, which, in the matter of compensation for the violation of the principle of fair trial, examines the alleged violation of article 6 of the ECHR; the decision n. 146/2015 of 9.7.2015, which, in the matter of rights of natural children and retroactive effectiveness of a law of authentic interpretation in civil matters, examines the jurisprudence of the Court of Strasbourg; and the decision n. 70/2015 of 30.4.2015, which, in the matter of retroactivity of civil law, examines the jurisprudence of the Court of Strasbourg; the decision of the Corte di cassazione n. 16265/2015 of 31.7.2015, which, in the matter of

dismissal and applicability of the new Italian law, establishes that it can be applied to the new dismissals and recalls articles 6 of the ECHR and 47 of the EU Charter of Rights; the decision n. 32980/2015 of 27.7.2015, which, in the matter of European arrest warrant, deems irrelevant that the request may be transmitted through the Minister, in the light of the framework decision 2208/909/JHA; the decision n. 15138/2015 of 20.7.2015, which, in the matter of right to change sex, excludes the necessity of a radical surgery, recalling the ECHR jurisprudence; and the preliminary referral order n. 15096/2015 of 17.7.2015, which, in the matter of the right to privacy and "right to be forgotten on the internet", examines EU law, the jurisprudence of the Court of Justice and recalls article 52 of the EU Charter of Rights; the decision of the *Corte di appello di Napoli* of 8.7.2015, which deems legitimate the registration in the births, marriages and deaths register of a same-sex marriage celebrated abroad, recalling the jurisprudence of the Court of Strasbourg, article 18 of the EU Treaty and article 21 of the EU Charter of Rights and moreover offering a compared reconstruction on several European and non-European countries; and the order of the *Tribunale di Roma* of 20.7.2015, which, in the matter of family reunification, recalls the Convention of New York;

- **Latvia:** the decision of the *Satversmes Tiesa* of 05.02.2015, which stated the constitutional legitimacy of the Law on Elections of the Republic City Council and Municipality Council, where it prohibits electoral associations to propose candidates in town halls with more than 5.000 residents, recalling the jurisprudence of the Court of Strasbourg;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 403/2015 of 27.08.2015, which states the constitutional illegitimacy of article 78(2) of Law n. 426/XII, on the access to data concerning telecommunications by officers of the information services, applying the ECHR norms and the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 392/2015 of 12.08.2015, on the legitimacy of articles 7, 8 and 9 of law n. 5/2002, on measures against organized crime, with particular regard to the loss of goods deriving from crimes, in the light of the guarantees of fair trial, which recalls EU law and the jurisprudence of the Court of Strasbourg; and the decision n. 363/2015 of 09.07.2015, which stated the constitutional legitimacy of article 13(2) of the *Regime da Responsabilidade Civil Extracontratual do Estado e demais Entidades Públicas*, pursuant to law n. 67/2007 and concerning the request of compensation for judicial mistake, also recalling the jurisprudence of the Court of Justice;
- **Spain:** the decision of the *Tribunal Constitucional* n. 177/2015 of 22.07.2015, on the alleged violation of the right to freedom of expression and freedom of thought, in the light of the jurisprudence of the Court of Strasbourg; the decision n. 155/2015 of 09.07.2015, on the compatibility of the conditions of access to post-secondary education, for of age foreigners, with the right to education, which recalls the jurisprudence of the Court of Strasbourg; n. 110/2015 of 28.05.2015, which pronounces itself in the matter of part-time employment and calculation of contributions, recalling the jurisprudence of the Courts of Strasbourg and Luxembourg; and the decision n. 99/2015 of 25.05.2015, on the alleged violation of the right to an effective judicial remedy within an administrative proceeding concerning a promotion in the public sector, in the light of European Union law and the jurisprudence of the Court of Justice; and the decision of the *Tribunal Supremo* of 18.06.2015, which pronounces itself on the suspension of the biological mother's visits to her son, also recalling the EU Charter of Fundamental Rights.

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

Articles:

Pasquale De Sena, Massimo Starita "Between state of necessity and (unlawful) economic intervention: the third "bail out" of Greece"

Jan Drahoukoupil "The outsourcing challenge: organizing workers across fragmented production networks"

Elena Falletti "Considerations on the possible causes of the juridical-institutional short-circuit following the Stamina case"

Bela Galgóczi & Janine Leschke "Free movement of labour in Europe: a solution for better labour allocation?"

Martin Richer "Union 2.0: trade unionism in the internet era (first part)"

Martin Richer "Union 2.0: trade unionism in the internet era (second part)"

Notes and comments:

Giuseppe Bronzini "Guaranteed basic income between radical escapes and allowances against poverty"

Antonio Cluny "« The independence of the European Public Prosecutor, from Medel's declaration, in January 1993, to the Charter of Rome of December 2014"

Vincenzo De Michele "Constitution and EU rights: the necessary rearrangement of the legislation on employment and state school, introduced by the Renzi Government"

Sergio Galleano "The Jobs act and its inapplicability to the public sector. I.e. the paradox according to which the norms in the matter of public sector are more in accordance with European Union law than the ones on the private sector"

Cécile Jolly "Movement of Europeans during the crisis"

Gina Turatto ""Swiss pensions" on the background of the strains between the Constitutional Court and the European Court of Human Rights and the intervention of the Court of Cassation"

Andrea Venegoni "The impact of EU law on criminal investigations on EU fraud"

Daniela Verrina "Interpretations in the matter of measures to compensate the inhumanity of the sanction"

Documents:

Study for the European Parliament of August 2015 "Enhancing the common European asylum system and alternatives to Dublin"

The Declaration on the rights in the Internet by (after a consultation with the civil society) a Commission appointed by the Italian Parliament, divulgated in July 2015

The Declaration of the Greek Commission for human rights "on the impact of the continuing austerity measures on human rights", of 15 July 2015