



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 Recommendation of the European Commission of 21.12.2016 regarding the rule of law in Poland;
- the Resolution of the European Parliament of 14.12.2016 on the Annual Report on human rights and democracy in the world and the European Union's policy on the matter 2015;
- the Resolution of the European Parliament of 13.12.2016 on the situation of fundamental rights in the European Union in 2015;
- the Opinion 4/2016 of the EU Agency for Fundamental Rights of 23.11.2016 on the impact on children of the proposal for a revised Dublin regulation, COM 2016 (270);
- the study of the European Parliament of 22.11.2016 "*The Implementation of the Charter of Fundamental Rights in the EU institutional framework*";
- the study of the European Parliament of 18.11.2016 "*Knowledge and Know-how: the Role of Self-Defence in the Prevention of Violence against Women*";
- the study of the European Parliament of 17.11.2016 "*Towards a European Public Prosecutor's Office (EPPO)*";
- the study of the European Parliament of 23.05.2016 "*Turkey: How the Pre-Accession Funds Have Been Spent, Managed, Controlled and the Monitoring System?*".

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

of the **Parliamentary Assembly**:

- the Resolution 2140 of 25.11.2016, "The exploration and exploitation of non-conventional hydrocarbons in Europe";
- the Resolution 2139 of 25.11.2016, "Ensuring access to health care for all children in Europe";
- the Resolution 2138 of 25.11.2016, "The situation in Aleppo".

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

- 11.1.2017, C-289/15, *Grundza*, on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty;

- 21.12.2016, C-119/15, *Biuro podróży Partner*, on consumer protection and *erga omnes* effects of unfair terms entered in a public register and on effective remedies for a seller or supplier, who used a term held to be equivalent to a term in the register, not having participated to the proceedings in which that term had been declared unfair;
- 21.12.2016, joined cases C-154/15, C-307/15 and C-308/15, *Gutiérrez Naranjo*, on unfair terms in consumer contracts;
- 21.12.2016, C-201/15, *AGET Iraklis*, on national legislation conferring upon an administrative authority the power to oppose collective redundancies after assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, the protection of workers and of occupation, on one side, and freedom of establishment and freedom to conduct a business, on the other;
- 21.12.2016, joined cases C-203/15 and C-698/15, *Tele2 Sverige*, on the prohibition of general and indiscriminate retention of traffic and location data, on privacy and personal data protection;
- 21.12.2016, C-444/15, *Associazione Italia Nostra Onlus*, on the protection of the environment;
- 21.12.2016, joined cases C-508/15 and C-509/15, *Ucar*, on the right of residence of family members of a Turkish worker duly registered as belonging to the labour force of a Member State;
- 21.12.2016, C-539/15, *Bowman*, on the extension of the period of advancement from the first to the second step in the salary scale and on indirect unequal treatment on grounds of age;
- 15.12.2016, joined cases C-401/15, C-402/15 and C-403/15, *Depesme and Kerrou*, on the financial aid to the child of a frontier worker, even in case he is the son of the registered spouse or partner;
- 14.12.2016, C-238/15, *Branganca Linares Verruga and others*, on the financial aid for higher education studies to students not residing in the territory of the Member State, if at least one of their parents has been employed in that Member State for a continuous period of at least five years, and on the principle of non-discrimination;
- 08.12.2016, C-127/15, *Verein für Konsumenteninformation*, on consumer protection and consumer credits and debt recovery companies;
- 07.12.2016, C-686/15, *Vodoopskrba i odvodnja*, on the calculation of the cost of services connected with water use and the amount due from the consumer;
- 01.12.2016, C-395/15, *Daouidi*, on the dismissal of a worker, who is temporarily unable to work for an indeterminate period of time, and on the prohibition of discrimination and unjustified dismissal;
- 24.11.2016, joined cases C-408/15 P and C-409/15 P, *Ackermann Saatzucht and others v. Parliament and Council*, on freedom of research and on the regulation (EU) n. 511/2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union;
- 24.11.2016, C-443/15, *Parris*, on the payment of the survivor's benefit to the civil partner, subjected to the condition that the partnership had been contracted before the 60th birthday of the member of the scheme, on non-discrimination on grounds of age and sexual orientation;
- 24.11.2016, C-454/15, *Webb-Sämann*, on the protection of the employees in the event of insolvency of their employer and on social security;
- 23.11.2016, C-177/15, *Nelsons*, on consumer protection, in the event of products marketed as medicinal products before 1st January 2005 and as foodstuffs after that date;
- 23.11.2016, C-442/14, *Bayer CropScience and Stichting De Bijenstichting*, on the concept of "information relating to emissions into the environment", on access to documents and protection of the environment;
- 23.11.2016, C-673/13 P, *Commission / Stichting Greenpeace Nederland and PAN Europe*, on the concept of "information relating to emissions into the environment", on access to documents and protection of the environment;
- 17.11.2016, C-216/15, *Betriebsrat der Ruhrlandklinik*, on the application of the Directive on temporary agency work, in the event of nursing staff, who do not have a contract of employment and is assigned to a health care institution by a not-for-profit association;

- 16.11.2016, C-301/15, *Soulier and Doke*, on the national legislation giving a collecting society rights to the reproduction and communication, in a digital form, to the public of out-of-print books, published in France before 1st January 2001;
- 16.11.2016, C-316/15, *Hemming*, on freedom to provide services;
- 15.11.2016, C-258/15, *Salaberria Sorondo*, on the recruitment of police officers of the Autonomous Community of the Basque Country restricted to candidates under 35 years of age and on non-discrimination on grounds of age;
- 15.11.2016, C-268/15, *Ullens de Schooten*, on the non-contractual liability of a Member State for damages caused to individuals by violations to freedom of establishment and the right to provide services, since all the elements are confined within a single Member State;
- 10.11.2016, C-174/15, *Vereniging Openbare Bibliotheken*, on the lending of a digital copy of a book by a public library and on copyright and related rights;
- 09.11.2016, C-42/15, *Home Credit Slovakia*, on consumer protection and the compulsory information that must be included in consumer credit agreements, pursuant to Directive 2008/48/EC;
- 08.11.2016, C-554/14, *Ognyanov*, on the interpretation of a national rule of the executing State, providing for the reduction of a custodial sentence on account of work carried out by the sentenced person while detained in the State issuing the decision and on the legal effects of EU framework decisions;

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

- 21.12.2016, C-213/15 P, *Commission v. Breyer*, on the right of a third party to access to external judicial documents, such as pleadings submitted by the parties, in cases that have already been closed, but also, to a more limited extent, in still pending cases;
- 10.11.2016, C-568/15, *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main*, on consumer protection and the cost of a call to an after-sales telephone number;

and for the **General Court** the decision:

- 15.12.2016, T-177/13, *TestBioTech and others v. Commission*, on the authorization to place on the market products containing genetically modified soybeans, on health care, the protection of the environment and consumers;
- 30.11.2016, T-720/14, *Rotenberg v. Council*, on the freezing of funds.

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

- 20.12.2016, *M.P. v. Finland* (n. 36487/12), on the violation of freedom of expression, following the mother's conviction of defamation for voicing concerns about the possible sexual abuse of her daughter;
- 20.12.2016, *Shioshvili and others v. Russia* (n. 19356/07), of violation of articles 3 and 13 of the Convention and articles 2 and 4 of Protocol 4 to the Convention for the expulsion of a Georgian pregnant woman with her four children;
- 15.12.2016, Grand Chamber judgment, *Khlaifia and others v. Italy* (n. 16483/12), on the detention of clandestine migrants: the case concerns the detention in the reception centre in the island of Lampedusa and on some ships moored in Palermo harbor and the expulsion to Tunisia, of irregular migrants who had landed on the Italian coast in 2011 during the events linked to the "Arab Spring"; the Court held that the applicants' deprivation of freedom had no clear or comprehensible legal basis, therefore it violated the right to security and did not aim to the protection of the individual from arbitrariness; the decree of expulsion issued by the Italian authorities didn't highlight the legal reasons of the applicants' detention, nor it had been promptly communicated to them; the Italian legal system didn't offer the possibility to lodge a claim in order to obtain a decision on the lawfulness of the detention; the Court, however, held that the detention conditions in the reception centre in Lampedusa and on the ships moored in Palermo harbor did not amount to inhuman and degrading treatments; and it was not violated the prohibition of collective expulsions: the applicants had been identified twice

and their nationality had been established, so they had a real possibility to oppose the expulsion; moreover, the lack of automatic suspensive effect of the application against the decree of expulsion did not amount to a violation of article 13 of the Convention, since the applicants didn't outline any risk of such violation;

- 15.12.2016, *Ignatov v. Ukraine* (n. 40583/15), on the pre-trial detention procedure, deemed not compliant with the Convention: the Court applied a general measure and invited the State to take urgent action to bring its domestic criminal legislation into line with article 5 of the Convention;
- 13.12.2016, Grand Chamber judgment, *Bélané Nagy v. Hungary* (n. 53080/13), on the disproportionate refusal to grant an invalidity pension, which was considered in breach of the right to protection of property;
- 13.12.2016, *Paposhvili v. Belgium* (n. 41738/10), according to which the Belgian authorities did not examine correctly the health situation of the applicant, who was affected by a serious illness, when they expelled him to Georgia, as well as the impact of such measure on his family life;
- 13.12.2016, *Kolomenskiy v. Russia* (n. 27297/07), on pre-trial detention, detention conditions and the trial against the applicant;
- 13.12.2016, *Eylem Kaya v. Turkey* (n. 26623/07), on the prison authorities' systematic monitoring of a prisoner's correspondence with her lawyer, with no sufficient guarantees against abuses, deemed disproportionate to the aim;
- 13.12.2016, *Kasparov and others v. Russia (n° 2)* (n. 51988/07), on the arrest of Garri Kasparov and another activist during a protest rally and their ensuing detention, which discouraged the participation in opposition politics;
- 8.12.2016, *L.D. and P.K. v. Bulgaria* (n. 7949/11 and 45522/13), on the inability for two men claiming to be biological fathers to have their paternity established: according to the Court, their right to the respect for private life was breached;
- 8.12.2016, *Simić v. Bosnia Herzegovina* (n. 75255/10), on the removal from office as a judge of the Constitutional Court of Bosnia Herzegovina, deemed fair and not in breach of his freedom of expression;
- 6.12.2016, *Kanalas v. Romania* (n. 20323/14), on the rejection by the prison administration of the applicant's request for leave in order to attend to his mother's funeral, deemed unjustified: the Court found the violation of articles 8 and 3 of the Convention;
- 6.12.2016, *Sarihan v. Turkey* (n. 55907/08), on non-violation of the right to life, since Turkish authorities took all necessary measures to protect people from the danger of a mined area;
- 1.12.2016, *Gerasimenko and others v. Russia* (n. 5821/10 and 65523/12), on the violation of the right to life;
- 29.11.2016, *Paroisse Gréco-Catholique Lupeni and others v. Romania* (n. 76943/11), on the violation of the right to security and the prohibition of discrimination in a case concerning the restitution of places of worship;
- 29.11.2016, Grand Chamber judgment, *Lhermitte v. Belgium* (n. 34238/09), on the non-violation of the rules of fair trial, because, despite the lack of reasons in the decision, the applicant was able to understand the reasons of her conviction;
- 29.11.2016, *Saliba v. Malta* (n. 24221/13), on the failure of domestic authorities to thoroughly assess evidence in civil proceedings;
- 24.11.2016, *Muradyan v. Armenia* (n. 11275/07), according to which the Armenian authorities are responsible for the lack of effectiveness of the investigation on the death of the applicant's son in the (unrecognized) Nagorno-Karabakh Republic;
- 22.11.2016, *Kaos GL v. Turkey* (n. 4982/07), on the seizure of all the copies of a magazine published by an association promoting LGBT rights in Turkey, which breached their right to freedom of expression;
- 22.11.2016, *Grebneva and Alisimchik v. Russia* (n. 8918/05), on the criminal conviction of some journalists for the publication of a satirical article, deemed highly defamatory: the Court found that the applicants' freedom of expression was violated;
- 22.11.2016, *Kerman v. Turkey* (n. 35132/05), on the lack of independence of the military court and the violation of the applicant's right to freedom and security, to an effective remedy and to obtain a speedy decision on the lawfulness of his detention;

- 17.11.2016, *Karapetyan and others v. Armenia* (n. 59001/08), on the dismissal of Armenian civil servants, who had been critical of the Government: the Court found that their right to freedom of expression had not been violated;
- 17.11.2016, *Mercan v. Turkey* (n. 56511/16), on the application against the pre-trial detention of a judge, who was dismissed from office, following the attempted coup d'état of 15.07.2016: the application was declared inadmissible for failure to exhaust all the domestic remedies;
- 15.11.2016, Grand Chamber judgment, *Dubská and Krejzová v. Czech Republic* (n. 28859/11 and 28473/12), on the non-violation of article 8 of the Convention: the Court established that the States had a wide margin of appreciation in regulating the issue of whether or not to allow home births: the case concerned the prohibition under Czech law on midwives assisting home births;
- 15.11.2016, Grand Chamber judgment, *A and B v. Norway* (n. 24130/11 and n. 29758/11), on the principle of the *ne bis in idem*, which would have not been infringed by an integrated dual process, administrative and criminal, in a case of fiscal fraud involving a combination of different penalties;
- 10.11.2016, *Kiril Zlatkov Nikolov v. France* (n. 70474/11 and 68038/12), on the waiting period before appearing before an investigating judge of an arrested person: in this specific case, the waiting period of almost 4 days (3 days, 23 hours and 11 minutes) did not breach the Convention and the right to freedom and security;
- 8.11.2016, *Naku v. Lithuania and Sweden* (n. 26126/07), on diplomatic immunity in labour relations, invoked by Sweden in a civil claim for the unlawful dismissal lodged by an employee of the Swedish embassy before the Lithuanian courts;
- 8.11.2016, *Pönkä v. Estonia* (n. 64160/11), on the unjustified refusal to hear the claimant in a civil proceeding against him: the Court found the violation of the right to a fair trial;
- 8.11.2016, Grand Chamber judgment, *Magyar Helsinki Bizottság v. Hungary* (n. 18030/11), on the authorities' refusal to provide an NGO, conducting a survey, with the names of public defenders and the number of their respective appointments, deemed in contrast with the right to access to information and to freedom of expression;
- 8.11.2016, *Figueiredo Teixeira v. Andorra* (n. 72384/14), according to which the storage and communication to the judicial authority of data from telephone calls made by the applicant were not in breach of the Convention;
- 8.11.2016, *Yabloko Russian United Democratic Party and others v. Russia* (n. 18860/07), on the violation of the right to free elections;
- 27.10.2016, *Kanaginis v. Greece* (n. 27662/09), on the violation of the right to property: the applicant complained that the sum, which he was required to reimburse in order to recover possession of his property, was not reasonably proportionate to the sum, which he had received in respect of compensation for the expropriation;
- 27.10.2016, *Shukurov v. Azerbaijan* (n. 37614/11), on electoral irregularities in Azerbaijan, which were not effectively addressed by either the country's electoral commissions, or the domestic courts;

and the decisions:

- 15.12.2016, inadmissibility decision, *Bıdık v. Turkey* (n. 45222/15), on the termination of the applicant's employment as head teacher, following the entry into force of a law: the application was declared inadmissible for failure to exhaust all domestic remedies;
- 8.12.2016, inadmissibility decision, *Zihni v. Turkey* (n. 59061/16), on the dismissal of a teacher from his duties by a legislative decree issued by the Council of Ministers in the context of the state of emergency introduced after the attempted coup d'état of 15 July 2016: the application was declared inadmissible for failure to exhaust all domestic remedies;
- 17.11.2016, decision to strike the application out of its lists of cases, *Anastasov and others v. Slovenia* (n. 65020/13), concerning 212 applicants belonged to a group of people known as the "erased", i.e. former nationals of the Socialist Federal Republic of Yugoslavia ("the SFRY") with permanent residence in Slovenia, whose names were deleted from Slovenia's Register of Permanent Residents, following the dissolution of

the SFRY, Slovenia's declaration of independence and passing of the "independence legislation" in 1991; in a previous pilot judgment (in the Grand Chamber case *Kurić and others v. Slovenia*, n. 26828/06) of June 2012 the European Court of Human Rights ordered Slovenia to set up a domestic compensation scheme.

On 8.11.2016 the Court examined the situation of the applications concerning the detention conditions in Hungary and decided to extend such assessment until 31.08.2017, also in the light of the pilot decision of 10.02.2015 (*Varga and others v. Hungary*, n. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13), and of the domestic program organized by the Hungarian Government to solve the problem.

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

- the decision of the *Supreme Court of the State of Oklahoma* of 13.12.2016, which stated the constitutional illegitimacy of the Senate Bill No. 1848, where it required abortion facilities to have at least one physician on premises, who also had hospital admission privileges within 30 miles of the facility, on any day an abortion was performed: such norms placed an undue burden on women's access to abortion;
- the decision of the *Supreme Court of Arkansas* of 08.12.2016, which reversed the former decision of the District Court which stated the constitutional illegitimacy, in the light of the decision of the Supreme Court in the case *Obergefell v. Hodges*, of the State law, where it denied the possibility of including in the son's birth certificate the name of the same sex spouse as the biological parent;
- the order of the *United States District Court for the Western District of Pennsylvania* of 04.11.2016, according to which the norms of the Title VII of the Civil Rights Act of 1964 on the prohibition of sex discrimination in the working place can be also applied to sex orientation;
- the decision of the *Inter-American Court of Human Rights* of 21.10.2016, case *causa Pollo Rivera y otros vs. Perú*, which found the State responsible for the violation of the right to freedom, personal integrity and to an effective remedy with regard to the arrest, detention and criminal proceedings against Luis Williams Pollo Rivera for the crimes of treason and terrorism; the decision of 20.10.2016, case *Trabajadores de la Hacienda Brasil Verde vs. Brasil*, which sentenced the State for the lack of adequate measures for the prevention and punishment of the violations of human rights committed against workers of the Brasil Verde farm, in the State of Pará: the Court deemed, also following the analysis of the law and the international jurisprudence, such violations as slavery, trafficking in human beings and forced labour; the decision of 01.09.2016, case *Herrera Espinoza y otros vs. Ecuador*, on the violation of the right to personal freedom, personal integrity and to an effective remedy in relation to an investigation, and following criminal proceeding, for international traffic in drugs; and the decision of 31.08.2016, case *Flor Freire vs. Ecuador*, which sentenced the State for the violation of the principles of equality and non-discrimination and the violation of the right to honour and to an effective remedy, following the discharge of lieutenant Homero Flor Freire, in execution of the punishment provided for by the Regulation of Military Discipline of 1998 for "homosexual behaviour".

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 162/2016 of 14.12.2016, on the compatibility of the norms of the Civil Code in the matter of attribution of the surname to the child with the right to the respect for private and family life and the principle of equality and non-discrimination, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 161/2016 of 14.12.2016, which pronounces itself in the matter of paternity dispute, in the light of articles 8 and 14 of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 152/2016 of 01.12.2016,

which states the compatibility of the law of 28 April 2015, aiming at establishing the maximum limit for the increase of the cost of labour (*marge maximale pour l'évolution du coût salarial*) for the years 2015 and 2016, with the freedom of association and the right to collective bargaining, as established in the Constitution of the State, the ECHR, the European Social Charter, the EU Charter of Fundamental Rights and the relevant ILO Conventions; and the decision n. 143/2016 of 17.11.2016, on legal representation of legal persons and the norms on legal aid, which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg;

- **France:** the decision of the *Cour de cassation* n. 1849/2016 of 16.12.2016, which, in the matter of non-examined claims, states that article 6 of the ECHR was not violated; the decision n. 631/2016 of 16.12.2016, which examines the violation of article 10 of the ECHR with regard to an article published on "Le Monde" on the alleged non impartiality of two judges in a judicial case; the decision n. 5769/2016 of 7.12.2016, which, in the matter of confiscation, recalls the Court of Strasbourg's guideline on article 1 of Protocol 1 to the ECHR; and the decision n. 630/2016 of 18.11.2016, in the matter of responsibility of the State for the violation of the right of the Union and in particular of the principle of retroactivity of the more lenient punishment, which examines the jurisprudence of the Court of Justice on such matter (decisions in the cases *Berlusconi* and *Kobler*) and recalls the UN Covenant on civil and political rights;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 22.11.2016, in the matter of telecommunications, which states the discretionary power of the administrative judge with regard to the application of Union law; and the decision of 18.10.2016, on the use of the veil, which recalls the ECHR and Union policies against discrimination;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 14.12.2016, on the respect for the *lex mitior* principle, according to article 7 of the ECHR; the decision of 16.11.2016, on the balance between the right to private and family life of a foreign criminal and the power of the Secretariat of State to deport him, in the light of the concept of the compelling state interest; and the decision of 9.11.2016, on the appeal of the Secretariat of State, which deemed discriminatory the application of prearranged standards for the access to social benefits, on account of the dimension of the house the individuals lived in, with regard to some disabled persons as well as to a woman victim of gender violence: the Court found admissible the appeal of the Secretariat of State and does not consider violated the public sector equality duty, because the decision to limit the access to the benefits does not seem unreasonable; the decision of the *England and Wales Court of Appeal* of 17.11.2016, in which the Court grants the recourse lodged by two witnesses of the first instance proceeding, who complained that the assessment of their behaviour, made by the first instance judge in the appealed decision, was in violation of their right to respect for the private life and that not allowing them to appeal would have infringed article 6 ECHR; the decision of the *England and Wales High Court* of 15.11.2016, on the balance between the right to privacy and the right to freedom of expression in the case of the victim of sexual harassment, who obtained the annulment of the order of anonymity provided for individuals suspected of such crime; of 10.11.2016, in which the Court admits – establishing the rules and criteria which will have to be respected by the relatives when the procedure will start – the request of a minor affected by cancer to be cryopreserved; and the decision of 8.11.2016, in which the Court does not deem discriminatory the practice of faith schools to keep separated males from females in every school activity, having assessed that the quality of teaching for both groups of students is equivalent; the decision of the *Northern Ireland Court of Appeal* of 24.10.2016, in which the Court confirms that the religious belief does not amount to a good reason to discriminate, on grounds of the sexual orientation, the customers of a pastry shop; and the decision of the *England and Wales Court of Protection* of 20.12.2016, in the matter of artificial feeding and hydration, in which the Court deems that the right to self-determination of the patient in the matter of prosecution of the treatment must prevail;
- **Ireland:** the decision of the *Supreme Court* of 13.12.2016, on the violation of the rights provided for by article 8 of the ECHR, following the claimants' eviction, based on

a measure, which became invalid after the amendment of the law in such matter; the decision of the Court of Appeal of 15.12.2016, on the obligation for the authorities to take into consideration the rights provided for by article 8 of the ECHR in the decisions on the renewal of the permit of stay, according to Section 4(7) of the *Immigration Act 2004*; and the decision of 21.11.2016, on the alleged violation of the rights provided for by article 5 of the ECHR in the event of the execution of a European arrest warrant, issued by the Swedish authorities, pursuant to the regulation on the detention on remand in such State; the decision of the High Court of 25.11.2016, on the right to residence of a Mauritanian national, parent of a Union citizen, in the light of the jurisprudence of the Court of Justice, and on the request to the authorities not to give execution to the expulsion order, issued pending the decision on the claim for the permit to stay in the State; and the decision of 28.10.2016, on the timing for the authorities to examine the claims for visa lodged by third-country relatives of Union nationals: the Court, in this specific case, found the violation of article 5(2) of Directive 2004/38/EC, also applying the jurisprudence of the Court of Justice;

- **Italy:** the decision of the Corte costituzionale n. 275/2016 of 16.12.2016, which, in the matter of services in favour of disabled persons, found the constitutional illegitimacy of a law of the Region of Abruzzo for having limited such services within the covering of the regional balance, also in relation to article 24 of the UN Convention on the rights of persons with disabilities; and the decision n. 276/2016 of 6.12.2016, which excludes the contrast of norms of the so called "law Severino" (law 6.11.2012 n. 190), with regard to suspension and the impossibility to propose as candidate, with article 7 of the ECHR, also examining the jurisprudence of the Court of Strasbourg; the decision of the Corte di cassazione n. 52819/2016 of 13.12.2016, which establishes the minimum space for each prisoner, excluding the extra space for the bed, recalling the jurisprudence of the Court of Strasbourg; the decision n. 25201/2016 of 7.12.2016, in the matter of dismissal for objective justified reasons, which recalls article 30 of the EU Charter of Rights; the decision n. 48696/2016 of 17.11.2016, which excludes the punishment of the registration in the births register as children, of babies born from a surrogated mother in Ukraine, recalling the jurisprudence of the Court of Human Rights and offering a comparative reconstruction of the law in such matter in several European and non-European Countries; the preliminary referral order n. 23232/2016 of 15.11.2016, on a question of *ne bis in idem*, which recalls article 50 of the EU Charter of Rights; the decision n. 22552/2016 of 7.11.2016, in the matter of reiteration of fixed-term contracts in the school sector, which examines the decision of the Court of Justice in the case *Mascolo* and the following decision of the Italian Constitutional Court in the framework of the relations between national and supra-national legal system, in the light of the jurisprudence of the Court of Luxembourg; and the decision n. 44584/2016 of 24.10.2016, which recalls the decision of the Court of Justice in the case *Taricco* in the matter of violations in the payment of VAT and debarment; the decision of the Consiglio di Stato of 13.10.2016, which, in the matter of payments for the permit of stay, deems the measure which increased them in contrast with EU law and the jurisprudence of the Court of Justice; the order of the Corte di appello di Brescia of 30.11.2016, which recognizes the "baby bonus" also in favour of non-EU workers, in the light of EU anti-discriminatory legislation; the order of the Tribunale di Milano of 5.12.2016, which, in the matter of "baby bonus", deems discriminatory the attitude of INPS (National Social Security Institute) regarding non-EU individuals, in the light of EU directives;
- **Portugal:** the decision of the Tribunal Constitucional n. 591/2016 of 09.11.2016, which stated the constitutional illegitimacy of article 7(3) of law n. 34/2004, where it excluded legal persons (i.e. business corporations) from legal aid, also applying article 47 of the EU Charter of Fundamental Rights, as interpreted by the Court of Justice;
- **Spain:** the decision of the Tribunal Constitucional n. 172/2016 of 17.10.2016, which found the violation of the right to an effective remedy, to a fair trial and to presumption of innocence in a proceeding concerning the crime of abuse of power, recalling the wide jurisprudence of the Court of Strasbourg; the decision n. 162/2016 of 03.10.2016, which pronounces itself in the matter of equal treatment between men and women with regard to working conditions and non-discrimination on grounds of sex, recalling

European law relevant in such matter and the jurisprudence of the Court of Justice; the decision n. 157/2016 of 22.09.2016, which, in the light of the jurisprudence of the Court of Justice, stated the constitutional illegitimacy of law decree n. 7/2014 of the Parliament of Catalonia, which provided for limitations to new shops, making an exception to the norms of the State law decree n. 1/2009, for contrast with freedom of establishment; the decision n. 148/2016 of 19.09.2016, which recognizes the violation of right to an effective remedy within a proceeding against an unfair contract term, quashing the previous decisions for contrast with European legislation relevant in such matter, as interpreted by the Court of Justice; and the decision n. 144/2016 of 19.09.2016, on the obligation for the authority to carry out adequate investigations following a report for torture: the Court quashed the previous dismissal decisions for the violation of the right to an effective remedy, also recalling the jurisprudence of the Court of Strasbourg;

- **The Netherlands:** the decision of the *Rechtbank Den Haag* (District Court of the Hague) of 09.12.2016, which, also recalling article 10 of the ECHR, declared Geert Wilders, leader of the "Party for Freedom" (PVV), guilty of inciting racial discrimination following some statements during a political meeting on 19 March 2014.

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

Articles:

[Enzo Cannizzaro](#) "Concurrent systems of protection of fundamental rights and constitutional limits"

[Michele De Luca](#) "*Fair compensation* for unlawful term on *privatized* contracts of the public sector"

Notes and comments:

[AA.VV.](#) "Search of information on the Countries of origin"

[Marco Bouchard](#) "Victims between European law and Italian charity"

[Franco De Stefano](#) "The reasoning of the decision on the merits and control of legitimacy: amended lack of reasoning, rules of evidentiary argument, presumption and inferences"

[Francesco Florit](#) "Veil, no veil"

[Azzurra Fodra](#) "When the protection of human fundamental rights can be considered effective"

[Sergio Galleano](#) "The order in the case *Popescu*: the European Court still on the importance of financial reasons in the protection against unfair terms in fixed-term contracts of the public sector"

[Luigi Marini](#) "Threats of terrorism, the international community, the United Nations"

[Domenique Mèda](#) "The future of work. The meaning and value of work in Europe"

[Elena Nadile](#) "New decision of the Court of Cassation after the decision in the case *Taricco*"

[Andrea Venegoni](#) "For a fiscal policy of the Union"

Reports:

[Marta Cartabia](#) "Europe today: bridges and walls"

[Mario Draghi](#) "The state and prospects of the euro area recovery"

[Elena Falletti](#) "Populism, technocracy and globalization of information: influence of social networks on public opinion during elections"

[Franco Ippolito](#) "New inequalities"

[Jean Paul Juncker](#) "For an ambitious Europe"

[Koen Lenaerts](#) "The Courts of Justice and the comparative law method"

[Giovanni Salvi](#) "New challenges for prosecution of Migrants Trafficking: from Mare Nostrum to EUNAVFORMED. The experiences of an Italian Prosecution Office"

Documents:

[Report by the House of Lords](#) "Brexit: acquired rights", of 14 December 2016

[Study of the European Council for Refugees and Exiles \(ECRE\)](#), published with the collaboration of several NGOs "The implementation of the hotspots in Italy and Greece", of 9 December 2016

[Report by the House of Commons](#) "Europol: opt-in Debate", of 29 November 2016

[Roadmap by Caritas](#) "Social justice and equality in Europe - is possible!", of 23 November 2016

[Study of the Jacques Delors Institute](#) "Does the Eurozone need a Parliament?", of 15 November 2016

[Report by the Freedom House](#) "Freedom on the Net 2016", of 14 November 2016

[Report by the House of Lords](#) "Brexit: parliamentary scrutiny", of 20 October 2016

[Report by the French Senate](#) "Agreement EU-Turkey of 18 March 2016: a fragile, ambiguous and partial answer to the migration issue", of 14 October 2016

[Report by the European Foundation for the Improvement of Living and Working Conditions \(Eurofond\)](#) "The gender employment gap: Challenges and solutions", of 11 October 2016

[Manifesto of Scale Up Europe](#) "for Change and Empowerment in the Digital Age", of 29 September 2016

[Annual Report by the UN Special Rapporteur for the rights to freedom of peaceful assembly and of association](#) "The exercise of the rights to freedom of peaceful assembly and of association in the workplace", of 14 September 2016

[Seminar organized by the French Court of Cassation](#) "Role of the judicial authority in the institutions", of 26 May 2016