



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

Newsletter n. 61

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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 Commission White Paper on the Future of Europe of 01.03.2017;
- the Resolution of the European Parliament of 16.02.2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union;
- the Resolution of the European Parliament of 16.02.2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty;
- the Resolution of the European Parliament of 19.01.2017 on a European Pillar of Social Rights;
- the Resolution of the European Parliament of 25.10.2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights.

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

- 14.03.2017, C-157/15, *G4S Secure Solutions* and C-188/15 *Bougnaoui and ADDH*, in the matter of discriminations on grounds of religion or personal beliefs in the workplace and working conditions;
- 9.03.2017, C-342/15, *Piringer*, on the legitimacy of a national legislation requiring that the authenticity of the signature on a request for entry in the land register must be certified by a notary and therefore does not allow lawyers to draft formal documents for creating or transferring interests in land in Member States, which apply such norm;
- 9.03.2017, C-398/15, *Manni*, on the protection of individuals with regard to the processing of personal data;
- 9.03.2017, C-406/15, *Milkova*, on equal treatment in the matter of employment and working conditions and enhanced protection in the event of dismissal of employees with disabilities;
- 7.03.2017, C-638/16 PPU, *X and X*, in the matter of issue of a visa, where a risk of infringement of Article 4 and/or Article 18 of the European Union Charter of Fundamental Rights is established;
- 2.03.2017, C-496/15, *Eschenbrenner*, in the matter of freedom of movement for workers in the European Union;
- 16.02.2017, C-641/15, *Verwertungsgesellschaft Rundfunk*, on intellectual property in case of communication of broadcasts by TV sets installed in hotel rooms;

- 16.02.2017, C-578/16 PPU, *C. K. and others*, on the transfer of an asylum claimant and the prohibition of inhuman and degrading treatments;
- 16.02.2017, C-503/15, *Margarit Panicello*, on the preliminary ruling to the Court of Justice and the concept of national court entitled to refer a request for a preliminary ruling to the Court;
- 15.02.2017, C-499/15, *W and V*, on the jurisdiction of the courts of the father's Member State of residence to vary a decision that has become final which they adopted earlier concerning the residence of the child, maintenance obligations and contact arrangements;
- 9.02.2017, C-560/14, *M*, on the application for subsidiary protection by third-Country nationals and stateless persons, on the right to be heard and to call and cross-examine witnesses;
- 8.02.2017, C-562/15, *Carrefour Hypermarchés*, on comparative advertising and consumer protection;
- 1.02.2017, C-392/15, *Commission v. Hungary*, on the nationality requirement for access to the notarial profession and the failure of Hungary to fulfill obligations;
- 1.02.2017, C-430/15, *Tolley*, on social security;
- 26.01.2017, C-421/14, *Banco Primus*, on contracts concluded between sellers or suppliers and consumers;
- 31.01.2017, C-573/14, *Lounani*, on the refusal of the qualification of refugee on the grounds of the claimant's participation in a terrorist organization;
- 25.01.2017, C-582/15, *van Vemde*, on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty;
- 25.01.2017, C-640/15, *Vilkas*, on the execution of a European arrest warrant in the event of resistance of the requested person to his surrender;

Opinion 3/15 of 14.02.2017, according to which the EU, acting on its own, may conclude an international agreement, which can affect the directive on copyright or modify its scope;

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

- 7.02.2017, C-638/16 PPU, *X and X*, on the issue of a visa on humanitarian grounds; and for the **General Court** the decision:
- 3.02.2017, T-646/13, *Minority SafePack - one million signatures for diversity in Europe v. Commission*, on the Commission's refusal of registration of the European citizens' initiative entitled "Minority SafePack – one million signatures for diversity in Europe";
- 25.01.2017, T-255/15, *Almaz-Antey Air and Space Defence v. Council*, on the freezing of a Russian company's funds.

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

- 23.02.2017, Grand Chamber Judgment, *De Tommaso v. Italy* (n. 43395/09), on prevention measures limiting the freedom of movement for a person considered to be a danger to society: the Court found that the imposition, pursuant to Italian law, of the preventive measure of "special supervision" had not been sufficiently foreseeable and had not been accompanied by adequate safeguards against the various possible abuses, in violation of the right to freedom of movement;
- 21.02.2017, *Rubio Dosamantes v. Spain* (n. 20996/10), according to which remarks made on television about a singer's alleged sexual orientation and private life amounted to violation of the right to private life;
- 21.02.2017, *Orlovskaya Iskra v. Russia* (n. 42911/08), on the illegitimate restriction of a newspaper's freedom to impart information during the election campaign;

- 14.02.2017, *Hokkeling v. the Netherlands* (n. 30749/10), on the complete rehearing of a case held in the accused person's absence, in violation of his rights;
- 14.02.2017, *S.K. v. Russia* (n. 52722/15), according to which the proposed deportation to Syria, regardless the risk of ill-treatment, and the lack of an effective remedy within the administrative proceeding and the proceeding on temporary asylum are in breach of the Convention;
- 14.02.2017, *Allanazarova v. Russia* (n. 46721/15), according to which the lack of suspending effects of the application in the matter of extradition and the lack of a serious exam of the risk of inhuman or degrading treatments are in breach of the Convention;
- 9.02.2017, *Selmani and others v. the former Yugoslav Republic of Macedonia* (n. 67259/14), according to which the absence of an oral hearing in a proceeding before the Constitutional Court is in breach of the Convention;
- 9.02.2017, *Messana v. Italy* (n. 26128/04), on the violation of the right to the respect for the property of owners of land unlawfully occupied by the Government outside the standard expropriation procedure;
- 9.02.2017, *Mitzinger v. Germany* (n. 29762/10), according to which excluding children from inheritance rights, if they were born out of wedlock, before a certain cut-off point, was discriminatory;
- 7.02.2017, *İrfan Güzel v. Turkey* (n. 35285/08), according to which the lack of response to concerns raised by the accused person about the legality of a phonetapping measure violates the Convention;
- 7.02.2017, *Lashmankin and others v. Russia* (n. 57818/09), according to which local authorities violated the right to freedom of assembly by imposing restrictions on the location, time or manner of conduct of such peaceful assemblies;
- 31.01.2017, *Kalnėnienė v. Belgium* (n. 40233/07), according to which the authorities infringed the applicant's right to the respect for her home by conducting a search without a warrant, but they did not breach her right to a fair trial;
- 26.01.2017, *Ivanova and Ivashova v. Russia* (n. 797/14 and 67755/14), on the alleged violation of the applicants' right of access to a court, since their appeals had been declared inadmissible as out of time in what the applicants considered to be an erroneous application of the procedural rules;
- 24.01.2017, Grand Chamber Judgment, *Khamtokhu and Aksenchik v. Russia* (n. 60367/08), according to which Russian legislation on life sentencing is not discriminatory;
- 24.01.2017, *Koprivnikar v. Slovenia* (n. 67503/13), according to which the imposition of an overall thirty-year prison sentence on the applicant was in breach of the principle of *nulla poena sine lege*;
- 24.01.2017, Grand Chamber Judgment, *Paradiso and Campanelli v. Italy* (n. 25358/12), according to which the authorities did not violate the Convention by deciding to remove the child and to place him under guardianship on the ground that he had no biological relationship with the applicants and that the applicants had been in an unlawful situation;
- 19.01.2017, *Kapsis and Danikas v. Greece* (n. 52137/12), according to which domestic courts violated the right to freedom of expression, by ordering two journalists to pay damages for describing in an article in the newspaper an actress, who had been appointed to the subsidies advisory board of the Ministry of Culture's Theatre Department, as "completely unknown";
- 19.01.2017, *Ivan Todorov v. Bulgaria* (n. 71545/11), on the applicant's complaint that he had not had a judicial remedy by which to challenge the lawfulness of his detention;
- 17.01.2017, Grand Chamber Judgment, *Hutchinson v. the United Kingdom* (n. 57592/08), according to which the imposition of a life sentence is not in breach of the Convention: however, to be compatible with the Convention there has to be both a prospect of release for the prisoner and a possibility of review of the sentence;

- 17.01.2017, *J. and others v. Austria* (n. 58216/12), on the legitimacy of the public prosecutor's decision to close the investigation on the violation of norms concerning human trafficking committed abroad by foreigners;
- 17.01.2017, *Habran and Dalem v. Belgium* (n. 43000/11 and 49380/11), according to which the Belgian authorities did not breach the right to a fair trial, by not allowing the defence the access to documents concerning discussions at the end of which the "informers" accepted to witness against the accused persons;
- 17.01.2017, *Király and Dömötör v. Hungary* (n. 10851/13), according to which Hungarian authorities violated the obligation to protect private life, because of the lack of an adequate punishment of racist demonstrations against Roma people;
- 17.01.2017, *Jankovskis v. Lithuania* (n. 21575/08), on the illegitimacy of the restrictions imposed to a prisoner, which prevented him from going online to apply for a law course;
- 17.01.2017, *A.H. and others v. Russia* (n. 6033/13), according to which the law which bans American nationals from adopting a Russian child leads to unlawful discrimination and violation to the right to private life;
- 12.01.2017, *Abuhmaid v. Ukraine* (n. 31183/13), according to which the uncertainty of the applicant's stay and status as immigrant in Ukraine does not amount to violation of the Convention, since foreigners and stateless persons can lodge applications in such sense;
- 10.01.2017, *Babiarz v. Poland* (n. 1955/10), on the Polish authorities' refusal to grant the applicant a divorce; he complained he couldn't marry his new partner: according to the Court, Polish law, not allowing a divorce if it has been requested by the party, who was at fault for the marital breakdown and if the other spouse refuses to consent, does not violate the Convention;
- 10.01.2017, *Kacper Nowakowski v. Poland* (n. 32407/13), on the lack of adequate measures to facilitate the contact between a deaf and mute father and his son: the Court found the violation of the right to the respect for family life;
- 10.01.2017, *Osmanoğlu and Kocabaş v. Switzerland* (n. 29086/12), on the legitimacy of a fine imposed to the parents, who refused, on grounds of religious beliefs, to send their daughters to mixed swimming lessons, which were compulsory at primary school;

and the decision:

- 5.01.2017, inadmissibility decision, *Bodet v. Belgium* (n. 78480/13), on the lack of impartiality of the assize court jury with regard to its statements in an interview on a newspaper after the accused person's conviction.

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

- the decision of the *United States Court of Appeals for the Sixth Circuit* of 15.02.2017, according to which the practice adopted by the Board of Commissioners in Jackson County (Michigan) of beginning its monthly meetings with a prayer violated the Establishment Clause (Freedom of religion) of the First Amendment to the Constitution of the United States;
- the decision of the *United States District Court for the District of South Carolina Columbia Division* of 15.02.2017, according to which the exclusion from the birth certificate of the name of the same-sex spouse violated the Fourteenth Amendment to the Constitution of the United States, having regard to the different treatment granted to opposite-sex married couples;
- the order of the *United States Court of Appeals for the Ninth Circuit* of 09.02.2017, which rejected the American Government's motion for an emergency stay, while the appeal on the merits is pending, of the district court's temporary restraining order issued by the *United States District Court Western District of Washington at Seattle* on 03.02.2017, with which such Court temporarily blocked the enforcement of the

Executive Order 13769 "Protecting the Nation From Foreign Terrorist Entry Into the United States", subscribed by President Trump on 27 January 2017 and aiming at temporarily or indefinitely (with regard to Syrian refugees) suspending the entry of individuals from seven Countries (Iraq, Iran, Libya, Somalia, Sudan, Syria, and Yemen) and suspending for 120 days the Refugee Admissions Program; upon resumption of the Refugee Program, section 5(b) of the Executive Order directs the Secretary of State to prioritize refugee claims based on religious persecution, where a refugee's religion is the minority religion in the country of his or her nationality: similar decisions have been adopted by the United States District Court for the Eastern District of Virginia Alexandria Division with the decision of 13.02.2017, by the United States District Court for the Eastern District of Michigan Southern Division, which, with the order of 02.02.2017, ruled the non-enforcement of the Executive Order to permanent lawful residents of the United States, by the United States District Court Central District of California with the order of 31.01.2017, and by the United States District Court Eastern District of New York which, with the order of 28.01.2017, prohibited the removal of individuals who had already been authorized to entry into the United States; and the decision of the United States Court of Appeals for the Ninth Circuit of 07.02.2017, according to which immigrants, subjected to the expedited removal proceeding, pursuant to 8 U.S.C. § 1225, for having illegally entered into the territory of the United States, do not have the right to legal aid;

- the order of the Appeals Chamber of the United Nations Mechanism for International Criminal Tribunals of 31.01.2017, case *Prosecutor v. Augustin Ngirabatware*, which ordered the release and the end of all the proceedings lodged against the judge of the Mechanism Aydin Sefa Akay, arrested and detained in Turkey after the failed coup d'Etat of July 2016;
- the decision of the Inter-American Court of Human Rights of 01.12.2016, case *Andrade Salmón vs. Bolivia*, which judges on the legitimacy of the proceeding lodged against María Nina Lupe del Rosario Andrade Salmón, as Councillor, then President of the Municipal Council and then Mayor of La Paz, with regard to alleged illegal facts connected to the administration of State funds, also recalling the jurisprudence of the Court of Strasbourg; the decision of 30.11.2016, case *I.V. vs. Bolivia*, which sentenced the State for the violation of the right to personal integrity, freedom, dignity, to the respect for private and family life, to access to information, to build a family and to an effective remedy with regard to the case of I.V., who underwent tubectomy without being previously informed and in absence of any emergency: according to the Court, the sterilization was done without the woman's consent; another decision of 30.11.2016, case *Miembros de la aldea Chichupac y comunidades vecinas of Municipio de Rabinal vs. Guatemala*, which condemned the State for the crime of forced disappearance committed against Maya people of the *Municipio de Rabinal* during 1981-1984, in compliance with the "National Security Doctrine"; the decision of 29.11.2016, case *Valencia Hinojosa y otra vs. Ecuador*, on the lack of independence and impartiality of the special judicial authority (*jurisdicción penal policial*) in force at the time of facts and which decided in the proceeding on the death of a police agent, in violation of the Convention; the decision of 29.11.2016, case *Gómez Murillo y otros vs. Costa Rica*, which confirmed the friendly composition ("Acuerdo de arreglo amistoso") subscribed by the parties to end the dispute on the prohibition of carrying out in vitro fertilization, in force in the State since the year 2000 following the decision of the Supreme Court of Justice: with the decision of 28 November 2012, case *Artavia Murillo y otros vs. Costa Rica*, the Inter-American Court had already condemned the State with regard to the same issue for the violation of the Convention; and the decision of 22.11.2016, case *Yarce y otra vs. Colombia*, which condemned the State for the violation of human rights (illegal and arbitrary detention, forced displacement) committed, since 2002, against five activists for human rights in *Comuna 13* in the city of Medellín.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 24/2017 of 16.02.2017, on the legitimacy of article 325/7, paragraph 1(5) of the civil code, on the recognition of comaternity in cases of medically assisted procreation, in the light of the norms of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 19/2017 of 16.02.2017, which finds the constitutional legitimacy of the norms of the Teaching Code, where they provide for, with regard to Brussels-Capital Region, a priority quota of enrolment to secondary school for those students, whose parents (or at least one of them) has level B.2 knowledge of the Flemish language, also recalling EU law; the decision n. 12/2017 of 09.02.2017, on the compatibility of article 43 of the criminal code, in the matter of seizure of goods used to commit a crime, with article 1 of the First Additional Protocol to the ECHR; and the decision n. 9/2017 of 25.01.2017, on the legitimacy of the norms on the integration allowance (*allocation d'insertion*) for foreign workers, pursuant to article 7(14)(4) of the Law of 28 December 1944, which recalls the jurisprudence of the Court of Strasbourg and the norms of the relevant ILO Conventions in such matter;
- **Bosnia and Herzegovina:** the decision of the *Ustavni sud* (Constitutional Court) of 01.12.2016, on the legitimacy of the norms of the Electoral Law in the matter of elections of the members of the House of peoples of Bosnia and Herzegovina, also in the light of the opinion expressed by the Commission of Venice as *Amicus Curiae*; and another decision of 01.12.2016, which recognized the violation of the right to freedom, according to article 5 of the ECHR;
- **France:** the decision of the *Cour de cassation* n. 104/2017 of 1.2.2017, which, with regard to a case of incitement to racial hatred, recalls article 10 of the ECHR, as interpreted by the Court of Strasbourg; the decision n. 5994/2017 of 10.1.2017, which, in the matter of house search, finds the violation of articles 6 and 8 of the ECHR; the decision n. 1410/2016 of 14.12.2016, which, in the matter of recognition of professional activity (lawyers), recalls the Treaty on the Functioning of the European Union and the jurisprudence of the Court of Justice; and the decision n. 1414/2016 of 14.12.2016, in the matter of consumer rights in relation to compensation for the purchase of a computer, which recalls the Court of Justice's guideline;
- **Germany:** the decision of the *Bundesverfassungsgericht* (German Federal Constitutional Court) of 17.1.2017, which excludes the dissolution of a far-right political party (NPD), recalling the norms of the European Treaties and the jurisprudence of the two European Courts; and the decision of 23.1.2017, which deemed the sentence against a German supporter in Spain not in breach of the ECHR, nor of the EU Charter of Rights; the decision of the *Verwaltungsgericht Sigmaringen* (Administrative Court of Sigmaringen) of 31.1.2017, which rejects the claim of Syrian refugees, recalling European sources; and the decision of the *Verwaltungsgericht Köln* (Administrative Court of Cologne) of 6.12.2016, which rejects the claim of Kosovar refugees, recalling European sources;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 22.2.2017, in which the Court deems compatible with the right to family life the provision, introduced in 2012, of the minimum income in order to obtain the family reunification for the partner or the foreign spouse of a foreign national already residing in the United Kingdom, recognizing to the Secretary of State a considerable discretionary power in the establishment of the amount of such income; another decision of 22.2.2017, in which the Court deems compatible with the right to family life the doctrine of "insurmountable obstacles", according to which the Secretary of State may refuse, unless there are "insurmountable" reasons, a permit of stay to the foreign partner of an English national, when their relationship started before and the foreign partner was not regularly residing in the United Kingdom; the decision of 1.2.2017, on limits to the discretionary power of the police, when it establishes whether to authorize a demonstration and the other fundamental rights which must be taken into consideration

in such decision; the decision of 24.1.2017, on the UK Parliament's prerogatives with regard to the activating of article 50 TEU: according to the Court, the Government cannot start the withdrawal from the EU without the vote of the Parliament; the decision of 17.1.2017, in which the Court establishes that foreign nationals, complaining for the violation of rights committed by the English army in Iraq, cannot lodge claims against the English Government before United Kingdom courts, in the light of the Crown act of state doctrine, which protects the Government prerogative of acts committed by the State as military actions abroad; the claim for compensation against the English Government for the consequences of such actions may only be lodged through diplomatic channels or one's own Government; the decision of the *England and Wales High Court* of 30.1.2017, in which the Court deems compatible with the right to private and family life the order to vaccinate a minor, even against his mother's will, since it was indispensable to protect the child's health; and the decision of the *Outer House Court of Session* of 3.2.2017, in the matter of right to asylum and prohibition of inhuman and degrading treatments, within the Dublin III Regulation;

- **Hungary:** the decision of the *Magyar Köztársaság Alkotmánybírósága* (Constitutional Court) of 30.11.2016, on the constitutional control of decisions taken at a unional level: the Court, pronouncing itself on the enforcement of (EU) Decision 2015/1601 of the Council of 22 September 2015, establishing provisional measures in the area of international protection for the benefit of Italy and Greece, stated that, within its competence, it can assess whether the State joined exercise of powers, according to article E(2) of the Constitution (participation to the European Union), can violate human dignity or other fundamental rights, the sovereignty of Hungary or its identity based on the historical constitution of the Country;
- **Ireland:** the decision of the *Supreme Court* of 18.01.2017, on the right to access and to be assisted by a lawyer during the police interrogation, which recalls the jurisprudence of the Court of Strasbourg; the decision of the *Court of Appeal* of 06.02.2017, which states the compulsory nature of the decisions of the Court of Justice, issued in accordance with article 267 of the TFEU, also when the Court pronounced itself on a question which had not been raised in the request for the preliminary ruling: the present case concerns the decision *Danqua v. Minister for Justice and Equality* (C495/15); and the decision of 12.12.2016, which rejected a claim against the execution of the United States' request of extradition, in virtue of the possible violation of the right to the presumption of innocence in the phase of the establishment of the sanction, also applying the jurisprudence of the Court of Strasbourg; the decision of the *High Court* of 23.01.2017, which pronounces itself on an *habeas corpus* claim in the proceeding for the execution of a European arrest warrant, recalling EU law and the jurisprudence of the Court of Strasbourg; the decision of 17.01.2017, which stated the constitutional legitimacy of "habitual residence", pursuant to the *Social Welfare Consolidation Act 2005*, as requirement to have access to child benefits, recalling EU legislation relevant in such matter, EU Charter of Fundamental Rights and the jurisprudence of the Court of Strasbourg; and another decision of 17.01.2017, on the standard of proof required for the assessment of an asylum claim and/or subsidiary protection, which offers a comparative reconstruction of national and international jurisprudence, as well as case law of the Courts of Strasbourg and Luxembourg and the guidelines of the UNHCR;
- **Italy:** the order of the *Corte costituzionale* n. 24/2017 of 26.1.2017, which makes a reference for a preliminary ruling with regard to the decision of the Court of Justice in the case *Taricco*; and the decision n. 286/2016 of 21.12.2016, which states the constitutional illegitimacy of some norms, where they do not allow the parents, even with their consent, to give their children also the mother's surname or to give such surname to the adopted child, recalling article 14 of the ECHR and the guideline of the Court of Strasbourg; the decision of the *Corte di cassazione* n. 1307/2017 of 19.1.2017, which, in the matter of procedural terms, recalls the jurisprudence of the Court of Human Rights; the order n. 395/2017 of 10.1.2017, which examines the norms of the reform on the Cassation civil proceeding, deeming them legitimate, also in the light of

the Court of Human Rights' guideline, departing from the principle of publicity of hearings; the order n. 27074/2016 of 28.12.2016, which, in the matter of principle of fair trial and limits to the retroactivity of civil law, raises the question of constitutional legitimacy, recalling the jurisprudence of the Court of Human Rights; the order n. 26936/2016 of 23.12.2016, which examines, in the light of the jurisprudence of the Court of Human Rights, the specific norms on the Cassation civil proceeding (and their particular formalism); and the order n. 25767/2016 of 12.10.2016, on the duty to inform (in their language) the applicants for international protection on the procedure to follow for the application, which recalls the ECHR and the EU Directives in such matter; the order of the *Corte di appello di Trento* of 23.2.2017, which recognizes the effectiveness, in the legal system, of a foreign measure recognizing the double paternity in relation to children born through medically assisted fertilization, recalling the decision n. 19599/2016 of the Court of Cassation and the jurisprudence of the Court of Strasbourg; the decision of the *Corte di appello di Roma* of 19.1.2017, on the impossibility to extradite a Turkish national towards Turkey, which recalls the ECHR; the decision of the *Corte di appello di Torino* of 17.1.2017, which deems discriminatory the denial of registration of a magazine on grounds of the fact that the director was a foreigner, recalling EU law; the order of the *Tribunale di Bari* of 11.12.2016, which deems discriminatory, in the light of EU law, the denial of maternity allowance to non EU nationals, because without permit of stay; the order of the *Tribunale di Bergamo* of 9.8.2016, which deems discriminatory the denial of the baby bonus to non EU nationals without permit of stay, in the light of the directives in such matter; and the decree of the *Tribunale per i minorenni di Firenze* (Juvenile Court of Florence) of 7.3.2017, which orders the registration in Italy of a child adoption by a homosexual couple: the measure, adopted abroad, was deemed not in breach of the public order, also in the light of international law, the ECHR and the EU Charter of Rights;

- **Latvia:** the decision of the *Satversmes Tiesa* (Constitutional Court) of 12.05.2016, which, also recalling EU law in such matter and the jurisprudence of the Court of Strasbourg, stated the constitutional illegitimacy of the Law on Development and Use of the National DNA Database, where it did not provide for adequate measures in order to remove biological and DNA traces of persons suspected of a crime after the revocation of the such status;
- **Luxembourg:** the decision of the *Cour de cassation* of 12.01.2017, which pronounces itself on the denial of a parental leave allowance and a family benefit, in the light of the EU Regulation n. 883/2004 on the coordination of social security systems;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 41/2017 of 09.02.2017, which rejected the claim lodged on the violations of the constitutional norms in the matter of competences of the autonomous regions against article 3(14) of law n. 159-D/2015 aiming at the elimination, from 2017, of the additional tax on natural persons' income, also recalling the memorandum subscribed with the European Union, the International Monetary Fund and the European Central Bank and the Stability and Growth Pact;
- **Spain:** the order of the *Tribunal Constitucional* of 14.02.2017, which quashed the Resolution 306/XI of 6 October 2016 of the Parliament of Catalonia, which asked the Government of the autonomous community to celebrate, within September 2017, a binding referendum on independence, recalling the jurisprudence of the Court of Strasbourg; the decision of 30.01.2017, in the matter of legal assistance during detention, which applies Directive 2012/13/EU on the right to information in criminal proceedings and the jurisprudence of the Court of Justice; the decision of 19.01.2017, which quashed the decision issued by the Supreme Court in a proceeding on compensation for unlawful detention following acquittal, recalling the jurisprudence of the Court of Strasbourg; and the decision of 16.01.2017, which found discrimination on grounds of sex in the case of a female worker, whose right of precedence – consisting in some amendments to her part-time contract – during maternity leave, was violated, recalling EU legislation relevant in such matter and the jurisprudence of the Court of Strasbourg; the order of the *Tribunal Supremo* of 08.02.2017, in the matter of unfairness of an advance cancellation clause included in a mortgage loan contract with a

consumer, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of article 6.1 of Directive 93/13/EC; the decision of 10.01.2017, which finds sex discrimination (absence from work for maternity reasons) in the firm's establishment of a varying salary, also in the light of EU law and the jurisprudence of the Court of Justice; and the decision of 15.12.2016, which confirmed the conviction issued by the National Court against the claimant for the crime of incitement to terrorism, also recalling the jurisprudence of the Court of Strasbourg.

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

Articles:

[Daniel Buhr, Claudia Christ, Rolf Frankenberger, Marie-Christine Fregin, Josef Schmid and Markus Trämer](#) "On the Way to Welfare 4.0? Digitalisation of the Welfare State in Labour Market, Health Care and Innovation Policy: A European Comparison"
[Luigi Cavallaro](#) "Social rights as counter-limits. Preliminary notes"

[Vincenzo Sciarabba](#) "Protection of Fundamental Rights in the Constitution, the European Convention of Human Rights, the European Court of Fundamental Rights"

Notes and comments:

[Francesca Cancellaro](#) "Migrants, Italy convicted by the ECHR for unlawful treatments"

[Nicola Countouris, Aristeia Koukiadaki](#) "Greek Glass Half-Full: The CJEU And Europe's 'Highly Competitive Social Market' Economy"

[Francesco Menditto](#) "ECHR and personal prevention measures"

[Guido Montani](#) "Suicide of Europeism and the destiny of the European Union"

[Valeria Piccone](#) "Equal treatment and principle of non-discrimination in the integrated legal system"

[Alice Pisapia](#) "ECHR, Case Avotinis v. Latvia"

[Eleanor Spaventa](#) "Evidence on the rights of EU citizens in the UK and UK citizens in the EU post Brexit – Scottish National Parliament – 15th December 2016"

Reports:

[Carmelo Celentano](#) "Profiles of constitutional and EU legitimacy of the new legislation on employment relationship"

[Şerife Ceren Uysal](#) "The right of the defence in Turkey before and after the State of Emergency"

[David Cerri](#) "Violation of human rights in Europe: the case of Turkey"

[Roberto Cosio](#) "Anti-discriminatory right in the European Union legal system"

[Mario Draghi](#) "Security through unity: making integration work for Europe"

[Francesca Fieconi](#) "Organization of justice – a preliminary survey over the Italian judicial system"

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