



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

Newsletter n. 62

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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 European Council (Art. 50) guidelines of 29.04.2017 for Brexit negotiations;
- the European Parliament resolution of 6.04.2017 on the adequacy of the protection afforded by the EU-US Privacy Shield;
- the European Parliament resolution of 5.04.2017 on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union;
- the study of the European Parliament of 27.3.2017 "*UK withdrawal from the European Union: Legal and procedural issues*";
- the European Parliament resolution of 14.03.2017 on equality between women and men in the European Union in 2014-2015;
- the Report of the European Union Agency for Fundamental Rights of 1.03.2017 "*Together in the EU. Promoting the participation of migrants and their descendants*".

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

of the **Parliamentary Assembly**:

- the Recommendation 2102 of 28.4.2017, "Technological convergence, artificial intelligence and human rights";
- the Resolution 2164 of 27.4.2017, "Possible ways to improve the funding of emergency refugee situations";
- the Resolution 2163 and the Recommendation 2101 of 27.4.2017, "The protection of the rights of parents and children belonging to religious minorities";
- the Resolution 2162 of 27.4.2017, "Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University";
- the Resolution 2161 of 26.4.2017, "Abusive use of the Interpol system: the need for more stringent legal safeguards";
- the Resolution 2159 of 26.4.2017, "Protecting refugee women and girls from gender-based violence";
- the Resolution 2158 of 25.4.2017, "Fighting income inequality as a means of fostering social cohesion and economic development";
- the Resolution 2156 of 25.4.2017, "The functioning of democratic institutions in Turkey";
- the Resolution 2155 of 10.3.2017, "The political rights of persons with disabilities: a democratic issue";

- the Resolution 2154 of 10.3.2017, "Securing access of detainees to lawyers";

and of the **Committee of Ministers**:

- the Resolution CM/ResChS(2017)6 of 5.4.2017 on the implementation of the European Social Charter during the period 2010-2013 (Conclusions 2015), provisions related to the thematic group "Children, families, migrants".

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

- 11.5.2017, C-302/16, *Krijgsman*, on the obligation for the air carrier to pay compensation to the passenger if it is not able to demonstrate it had informed him of the cancellation of the flight more than two weeks before the scheduled departure time;
- 10.5.2017, C-133/15, *Chavez-Vilchez and others*, on the right to stay in the EU of a third Country national, as parent of a minor with a European citizenship;
- 4.5.2017, C-13/16, *Rīgas satiksme*, on the lawfulness of the communication of personal data to a third party in order to allow him to lodge a claim for compensation before a civil court;
- 26.04.2017, C-527/15, *Stichting Brein*, on the sale of a multimedia player, which enables films that are available illegally on the internet to be viewed easily and for free on a television screen and the violation of copyright;
- 6.04.2017, C-336/15, *Unionen*, on the preservation of the employees' rights in the event of transfers of undertakings;
- 6.04.2017, C-668/15, *Jyske Finans*, on the compatibility with EU law of a Credit institution's practice requiring persons applying for a loan to purchase a car, who have produced a driving licence indicating a country of birth other than a Member State of the European Union or of the European Free Trade Association as a form of identification, to provide additional proof of identity in the form of a copy of a passport or residence permit;
- 5.04.2017, joined cases C-217/15 and C-350/15, *Orsi and others*, on the non application of the *ne bis in idem* principle in case of the national law providing for an administrative penalty and a criminal penalty for the same offence, relating to non-payment of VAT;
- 4.04.2017, C-544/15, *Fahimian*, on the refusal to grant the claimant a visa for the purpose of study on grounds of public security reasons;
- 29.03.2017, C-652/15, *Tekdemir*, on the national law which provides for the requirement for nationals of third Countries under 16 years old to hold a residence permit and on its non-proportionality when one of the parents is a Turkish worker legally residing in such Member State;
- 22.03.2017, joined cases C-124/16, C-188/16, C-213/16, *Ianos Tranca and others*, on the right to be informed about the charge in criminal proceedings;
- 15.03.2017, C-536/15, *Tele2 (Netherlands) and others*, on the protection of subscribers' personal data;
- 15.03.2017, C-3/16, *Aquino*, on the concept of court of last instance and on the conditions for the reference for a preliminary ruling to the Court of Justice;
- 14.03.2017, C-158/14, *A and others*, on specific restrictive measures directed against certain persons and entities with a view to combating terrorism;

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

- 30.03.2017, C-111/16, *Giorgio Fedenato and others*, on the conditions for the adoption of emergency measures in matters of food safety in order to prevent risks for human health.

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

- 27.04.2017, *Asatryan v. Armenia* (n. 3571/09), on the principle of fairness in the criminal proceeding with regard to the impossibility to hear the witnesses, who had been heard in a previous phase of the trial and whom the applicant had not the opportunity to challenge in any phase of the proceeding;
- 27.04.2017, *Di Sante v. Italy* (n. 32143/10), on the limitation period for claiming compensation, provided for by "Law Pinto", in violation of the right to a fair trial within a reasonable time;
- 27.04.2017, *Sommer v. Germany* (n. 73607/13), on the inspection of a lawyer's bank account, which breached his right to professional confidentiality and private life;
- 25.04.2017, *Rezmiveş and others v. Romania* (n. 61467/12, 39516/13, 48231/13 and 68191/13), on detention conditions in Romania, deemed in breach of the Convention and due to structural deficiencies of the system: the Court held that the State must adopt general measures in order to solve the problem of overcrowding and improve the bad conditions of detention;
- 13.04.2017, *Tagayeva and others v. Russia* (n. 26562/07, 14755/08, 49339/08, 49380/08, 51313/08, 21294/11 and 37096/11), on the violation of article 2 of the Convention and on the measures necessary to avoid in future similar mistakes, in consideration of the behaviour of Russian authorities in the case of the hostages of Beslan during the terrorist attack in 2004;
- 6.04.2017, *Aneva and others v. Bulgaria* (n. 66997/13, 77760/14 and 50240/15), on the impossibility for the applicants to have contact with their child, despite the existence of a court judgment granting the parent custody or visiting rights;
- 6.04.2017, *A.P., Garçon and Nicot v. France* (n. 79885/12, 52471/13 and 52596/13), on the obligation to undergo sterilization or treatment involving a very high probability of sterility, in order to change the entries of birth certificates, in violation of the applicants' right to the respect of private life;
- 6.04.2017, *Klein and others v. Germany* (n. 10138/11, 16687/11, 25359/11 and 28919/11), on the question of taxes imposed by German churches: the Court held that individuals can ask not to be members of the church and therefore they are not obliged to pay taxes imposed by it;
- 4.04.2017, *Milislavjević v. Serbia* (n. 50123/06), on freedom of expression and the disproportionate Serbian authorities' reaction to an article written about a well-known human rights activist;
- 4.04.2017, *Güzelyurtlu and others v. Cyprus and Turkey* (n. 36925/07), on the lack of cooperation between Cyprus and Turkey, which resulted in an ineffective investigation in a murder case;
- 4.04.2017, *Matanović v. Croatia* (n. 2742/12), on the principle of fairness in criminal proceedings;
- 30.03.2017, *Chowdury and others v. Greece* (n. 21884/15), on migrants subjected to forced labour and to human beings trafficking, who were not adequately protected by the Greek Government;
- 30.03.2017, Grand Chamber Judgment, *Nagmetov v. Russia* (n. 35589/08), according to which serious violations of the Convention may justify an award of just satisfaction, even in the absence of a properly made claim;
- 28.03.2017, *Fernandes de Oliveira v. Portugal* (n. 78103/14), according to which the suicide of a person suffering from mental disorders, who was admitted to a public psychiatric hospital to undergo a treatment, after he had attempted to commit suicide, amounts to a violation of the Convention;
- 28.03.2017, *Volchkova and Mironov v. Russia* (n. 45668/05 and 2292/06), according to which the authorities failed to prove a compelling public interest when expropriating a property for a private investment project;
- 28.03.2017, *Z.A. and others v. Russia* (n. 61411/15, 61420/15, 61427/15 and 3028/16), on the detention of asylum claimants in the transit zone of the airport of Moscow, deemed unlawful, inhuman and degrading;
- 28.03.2017, *Škorjanec v. Croatia* (n. 25536/14), on the failure of an adequate investigation on an alleged anti-Roma hate crime;

- 23.03.2017, *Wolter and Sarfert v. Germany* (n. 59752/13 and 66277/13), on non-discrimination, in particular with regard to the recognition as heir of a son born out of wedlock;
- 23.03.2017, *Genov v. Bulgaria* (n. 40524/08), on freedom of association and religion;
- 23.03.2017, *Endrizzi v. Italy* (n. 71660/14), on the applicant's contact right in respect of his son, who had been living in Sicily with his mother;
- 21.03.2017, *Bujak v. Poland* (n. 686/12), on inadequate medical care in prison;
- 21.03.2017, *Michał Korgul v. Poland* (n. 36140/11), on the high-security measures to which the applicant had been subjected in the context of criminal proceedings, which were deemed disproportionate;
- 21.03.2017, *Kargashin and others v. Russia* (n. 66757/14, 73424/14, 5138/15, 5678/15, 8055/15, 9234/15 and 11460/15) and *Mozharov and others v. Russia* (n. 16401/12, 67528/14, 74106/14, 77730/14, 77733/14, 77916/14, 6141/15, 8376/15, 9166/15 and 12321/15), on inhuman detention conditions, in which 17 applicants had been held for periods ranging from 10 months to nine years;
- 21.03.2017, *Mitrović v. Serbia* (n. 52142/12), on the unlawful imprisonment of a man following his conviction by an unrecognized breakaway Balkan Republic;
- 16.03.2017, *Louli-Georgopoulou v. Greece* (n. 22756/09), on the excessive formalism on the part of the Athens Court of Appeal, which had declared inadmissible an application to join some proceedings as a civil party seeking damages on the grounds that the word "heir" was missing from the record of hearing at first instance;
- 16.03.2017, *Modestou v. Greece* (n. 51693/13), on the warrant to search a private and business address without a relevant and sufficient justification, which amounts to a violation of the Convention;
- 16.03.2017, *Olafsson v. Iceland* (n. 58493/13), on the conviction of defamation for a web editor, which violated his freedom of expression;
- 14.03.2017, *Ilias and Ahmed v. Hungary* (n. 47287/15), on the detention for 23 days in a transit zone;
- 7.03.2017, *V.K. v. Russia* (n. 68059/13), on the inhuman treatments inflicted to a 4 years child in the primary school by some of his teachers;
- 7.03.2017, *Cerovšek and Božičnik v. Slovenia* (n. 68939/12 and 68949/12), on the fairness of the proceedings, which had been undermined by the fact that the grounds for the applicants' convictions had been provided by judges who had not participated in the trial;
- 7.03.2017, *R.L. and others v. Denmark* (n. 52629/11), on the non-recognition of the paternity of a biological father in the best interest of the child;
- 7.03.2017, *Polyakova and others v. Russia* (n. 35090/09), on the fact that the authorities did not consider the impact on the prisoner and his relatives of his transfer to a prison far away from the family;
- 7.03.2017, *Döner and others v. Turkey* (n. 29994/02), on the arrest and the trial against the parents of Kurdish children, who submitted petitions requesting that their children be taught in Kurdish;
- 2.03.2017, *Talpis v. Italy* (n. 41237/14), on the lack of an adequate and quick assessment of the risk deriving from domestic violence;

and the decision:

- 13.04.2017, inadmissibility decision, *Janssen Cilag S.A.S. v. France* (n. 33931/12), on the search and seizure operations carried out at a company's premises.

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

- the decision of the *Corte Suprema de Justicia de la Nación* (Argentina) of 03.05.2017, which admitted the claim lodged by Luis Muiña, sentenced in 2011 to 13 years' imprisonment for crimes against humanity, deciding to apply the more favourable norms of article 7 of law 24.390 – which came into force in 1994 until 2001 – concerning the calculation of the sanction;

- the order of the United States District Court Northern District of California of 25.04.2017, which stopped the execution of Section 9(a) of the Executive Order n. 13.768 "Enhancing Public Safety in the Interior of the United States", signed by President Trump on 25 January 2017, according to which those "sanctuary jurisdictions" which refuse to comply with the norms of 8 U.S. Code § 1373 - "Communication between government agencies and the Immigration and Naturalization Service" - will not be eligible to receive Federal grants;
- the decision of the Nebraska Supreme Court of 07.04.2017, which confirmed the previous decision of the District Court, which had ordered the Department of Health and Human Services (DHHS) to stop discriminatory customs, adopted against couples of the same sex, in order to assess the requests for adoption or foster care;
- the decision of the United States District Court for the Eastern District of Virginia of 24.03.2017, according to which President Trump did not go beyond his powers (as delegated by the Congress or deriving from the Constitution) by adopting the Executive Order n. 13.780 "Protecting the Nation from Foreign Terrorist Entry into the United States" of 6 March 2017, in substitution of the previous Executive Order n. 13.769 already subjected to judicial proceedings: the Court rejected the claimants' request to stay its application; the United States District Court District of Maryland, with decision of 16.03.2017, and the United States District Court for the District of Hawaii, with the order of 15.03.2017, have, instead, temporarily suspended the execution of some sections (respectively section 2(c) - Court of Maryland - and sections 2 and 6 - Court of Hawaii) of such measure; the United States District Court for the Western District of Wisconsin, with the order of 10.03.2017, suspended the execution of the same norms, but only with regard to the claimant and to the requests of asylum for his relatives;
- the order of the United States District Court for the Northern District of Florida Tallahassee Division of 23.03.2017, which ordered the State to include the name of the spouse (survivor) of the same sex also in the death certificates issued before the decision of the Supreme Court in the case *Obergefell v. Hodges*;
- the decision on sentence of the Trial Chamber VII of the International Criminal Court of 22.03.2017, case *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, which sentenced the accused persons to sanctions between six months and two and a half years' imprisonment for crimes against the justice system;
- the decision of the High Court of Uttarakhand at Nainital (India) of 20.03.2017, which recognized the rivers Ganges and Yamuna as legal persons/living entities, with all the corresponding rights, duties and responsibilities of a living person, in order to preserve and protect them;
- the order of the United States Court of Appeals for the District of Columbia Circuit of 18.03.2017, which rejected the emergency motion proposed by the Indian tribes *Standing Rock Sioux* and *Cheyenne River Sioux*, aiming at stopping the flow of petroleum through the *Dakota Access* pipeline; with the order of 14.03.2017, the United States District Court for the District of Columbia adopted a similar decision;
- the decision of the United States Court of Appeals for the Ninth Circuit of 07.03.2017, which, confirming the decision of the Court of first instance, recognized a "reserved right" to use the groundwater of the Agua Caliente Indian Reserve in favour of the tribe of native Americans *Agua Caliente Band of Cahuilla Indians*;
- the decision of the United States District Court for the Western District of Pennsylvania of 27.02.2017, which admitted the claim lodged by three transgender students to prevent the application of the *Resolution 2*, adopted by the school board of the Pine-Richland (Pa.) High School, which imposed on students the use of unisex bathrooms or common bathrooms according to their "biological sex";
- the decision of the President of the United Nations Mechanism for International Criminal Tribunals, judge Theodor Meron, of 15.02.2017 (published on 06.03.2017), case *Prosecutor v. Augustin Ngirabatware*, which stated the non-conformity of Turkey to the order issued on 31 January 2017, with which the Court ordered the release and the end of all proceedings against the judge of the Mechanism, Aydin Sefa Akay, arrested and detained in the State following the failed coup d'état of July 2016, and decided to refer the question to the United Nations Security Council. With a letter of 09.03.2017,

President Meron officially notified the Security Council of the circumstance that Turkey did not apply the obligations deriving from the Statute of the Mechanism (Article 28: *Cooperation and Judicial Assistance*);

- the decision of the *Inter-American Court of Human Rights* of 15.02.2017, case *Vásquez Durand y otros vs. Ecuador*, which found the State responsible of the violation of the rights to life, to personal integrity, freedom and to an effective remedy, with regard to the forced disappearance of the Peruvian national Jorge Vásquez Durand, which took place in 1995 during the Alto Cenepa War.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 32/2017 of 09.03.2017, which rejects the claim for annulment lodged against the law of 16 December 2015, which regulates the communication of information concerning bank accounts, pursuant to, among others, the norms of Directive 2014/107/EU; the decision n. 29/2017 of 23.02.2017, which judges on the constitutional legitimacy of articles 568, 602, 608, 1050 and 1073 of the Judicial Code, in the matter of responsibility of the State for an error committed by the last instance court, and on their compatibility with the principle of independence and impartiality of the court, recalling the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 28/2017 of 23.02.2017, in the matter of family reunification and right to stay of the spouse of a Belgian or other Member State national, which recalls the norms of Directive 2004/38/EC; and the decision n. 27/2017 of 23.02.2017, which rejects the claim lodged against article 60 of the law of 30 July 2013, which abrogated article 44 of the Code on VAT, where it exempted from such tax the services provided by lawyers during their normal activity, applying article 47 of the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg, in particular the decision in the case *Ordre des barreaux francophones et germanophones and others* (C-543/14);
- **Czech Republic:** the decision of the *Ústavní soud* (Constitutional Court) of 20.12.2016, on the relation between freedom of expression and information and the right to the respect for private life and to the protection of personal data, which states the constitutional legitimacy of article 37(6) of Law n. 499/2004 Coll., on Archiving and Records Management, according to it as it was into force until 30 June 2009, recalling EU law in such matter, the norms of the EU Charter of Fundamental Rights and of the ECHR and the jurisprudence of the Court of Strasbourg; and the decision of 05.09.2016, on the specific limits to the freedom of speech of judges related to their post, in the light of the jurisprudence of the Court of Strasbourg;
- **France:** the decision of the *Cour de cassation* n. 445/2017 of 29.03.2017, which, in a case of radio broadcast on the dangers of Internet, excludes the violation of article 10 of the ECHR; the decision n. 492/2017 of 15.03.2017, which, in the matter of guarantees against the dismissal of a person non authorized to the exercise of a certain professional activity in France, recalls Directive 92/85/EU; the decision n. 335/2017 of 7.03.2017, which, in the matter of compulsory additional security and of the exclusion of individuals of other States, recalls the jurisprudence of the Court of Justice; and the decision n. 249/2017 of 1.03.2017, which, in the case of presentation of a book on financial scandals as a conversation with a financial group, examines the jurisprudence of the Court of Strasbourg on article 10 of the ECHR;
- **Germany:** the decision of the *Bundesverfassungsgericht* (German Federal Constitutional Court) of 11.3.2017, which deems illegitimate the public demonstrations in Germany of the Ministers of the Turkish Government and recalls the ECHR; and the decision of the *Bundesgerichtshof* (Federal Court of Justice) of 30.3.2017, which recalls the European Union Charter of Fundamental Rights in the matter of protection of personal data in a case of violation of copyright;
- **Great Britain:** the decision of the *England and Wales Court of Appeal* of 12.4.2017 in the matter of euthanasia and assisted suicide: the Court of Appeal overturns the decision of first instance, which denied Mr Conway, affected by a muscular

neurodegenerative disease, the possibility to appeal against the compatibility with the ECHR norms of the Suicide Act's norms, which prohibit euthanasia, in the light of the previous decision of 2014 in the case Nicklinson in which the Supreme Court established that only the Parliament could legislate in details in such matter; although there has not been such amendment, the court of second instance deems necessary to assess the compatibility between national norms and the ECHR and that the case of Mr. Conway is sufficiently detailed and precise to be judged; and the decision of the *Investigatory Powers Tribunal* of 17.10.2016, according to which the system of acquisition, use, retention, disclosure, storage and deletion of a massive quantity of personal data ("Bulk Personal Datasets") carried out by three security and intelligence agencies (GCHQ, the Security Service (MI5), and the Secret Intelligence Service (MI6)), as well as the transfer of a massive quantity of communication data ("Bulk Communications Data") to two of them – GCHQ and MI5 –, authorized by the Secretaries of State for Internal and Foreign Affairs, according to section 94 of the Telecommunications Act 1984, are in contrast with article 8 of the ECHR until the public "avowal" of their existence, which took place respectively in March 2015 and November 2015;

- **Ireland:** the decision of the *Court of Appeal* of 24.02.2017, which pronounces itself on the request for the payment, thorough the Social Insurance Fund, of a debt towards the employer following an illegitimate dismissal, recognizing the responsibility of the State for the wrong implementation of Directive 2008/94/EC on the protection of employees in the event of insolvency of their employer; the decision of the *High Court* of 03.03.2017, on the claim lodged by a Rumanian national against the decision of the Minister for Social Protection rejecting the request for some social allowances (Supplementary Welfare Allowance – "SWA", Jobseekers' Allowance and Child Benefit): the Court confirms the authorities' decision, analysing EU law and the jurisprudence of the Court of Justice in such matter; the decision of 20.02.2017, on the compatibility with EU law of orders of expulsion issued against non-EU nationals, who claim the right to stay in the State in virtue of the Treaties of the Union, following the alleged abuse of right (marriage of convenience); the decision of 16.02.2017, in the matter of subsidiary protection and child benefits, which recalls EU law and the European Union Charter of Fundamental Rights; and the decision of 23.01.2017, which pronounces itself in favour of the extradition of an Albanian national from the United Kingdom to Albania, also recalling the norms of the ECHR and the jurisprudence of the Court of Strasbourg: the consent of the Court had been requested in virtue of a previous execution of a European arrest warrant, adopted against the aforesaid individual by the Irish authorities on request of the Scottish ones;
- **Italy:** the decision of the *Corte costituzionale* n. 68/2017 of 7.4.2017, on the abolition of the administrative penalty after the decriminalization of the related crime, which examines such issue in the light of article 7 of the ECHR; and the decision n. 43/2017 of 24.2.2017, on the definition as "criminal sanction" of a sanction, which examines the jurisprudence of the Court of Strasbourg; the decision of the *Corte di cassazione* n. 14237/2017 of 23.3.2017, on the possibility for a State to appeal against a measure of extradition, which recalls many UN acts and studies; and the preliminary referral order n. 6101/2017 of 9.3.2017, on the possible violation of Directive 2006/54/EC and of article 21 of the EU Charter of Rights by national law, which, with regard to workers of the show business (dancers), establishes in a different way for men and women the possibility to work longer than the normal limit of the retirement age; the decree of the *Tribunale di Palermo* of 28.3.2017, which, in the matter of personal prevention measures, examines the compatibility of the imposed measures with the jurisprudence of the Court of Strasbourg; the decree of the *Tribunale di Milano* of 7.3.2017, which, with regard to personal prevention measures, examines their compatibility also in the light of the decision of the Court of Strasbourg in the case *De Tommaso v. Italy*; and the order of 22.2.2017, which deemed discriminatory, also in the light of Directive 2000/43/EC, to have repeatedly indicated asylum claimants as clandestine, condemning the *Lega Nord* to compensation;
- **Luxembourg:** the decision of the *Cour de cassation* of 09.02.2017, in the matter of divorce and separation, which examines the decision of the Court of Appeal, in the light,

among others, of Regulation (EU) n. 1259/2010, of article 234 TFEU and article 14 of the ECHR;

- **Norway:** the decision of the *Oslo tingrett* (District Court of Oslo) of 20.04.2016, which partially admitted the claim lodged by Anders Behring Breivik, pursuant to articles 3 and 8 of the ECHR, recognizing the violation of article 3, in consideration of the detention conditions of the claimant;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 86/2017 of 16.02.2017, in the matter of legal aid, which states the constitutional legitimacy of article 7(3) of Law 34/2004, where it excluded profit juridical persons from legal protection without considering their actual economic situation, recalling the ECHR and the EU Charter of Fundamental Rights;
- **Romania:** the decision of the *Curtea Constituțională* (Constitutional Court) of 08.02.2017, which solved, in favour of the Government, the conflict of competence between institutions of the State due to the adoption of the Order of Government Emergency n. 13/2017, which modified and integrated Law n. 286/2009 on the Criminal Code and Law n. 135/2010 on the Criminal Procedure Code, recalling Directive (EU) 2016/343 in the dissenting opinion;
- **Spain:** the order of the *Tribunal Constitucional* of 28.02.2017, which examines the request of a prisoner to be transferred to a prison nearer to his family, in the light of article 8 of the ECHR, as interpreted by the jurisprudence of the Court of Strasbourg; and five orders of 27.02.2017, which confirms the previous decisions of the *Audiencia Nacional*, which rejected the claims lodged against some Resolutions of the Ministry of the Interior and had denied the compensation requested (according to Law 29/2011 of *Reconocimiento y Protección Integral a las Víctimas del Terrorismo*) by the relatives of some men died in terrorist attacks, but deemed to be ETA members, applying the jurisprudence of the Court of Strasbourg; the order of the *Tribunal Supremo* of 04.04.2017, which rejected the claim for the review of a previous decision of the same Court after the decision of the Court of Justice in the case *Gutiérrez Naranjo*; the decision of 09.03.2017, on the control of the transparency of the minimum interest rate clause in a mortgage loan, which recalls Directive 93/13/EC and the jurisprudence of the Court of Justice; and the decision of 24.02.2017, which examines again its jurisprudence in the matter of unfair terms in contracts concluded with consumers, in the light of the decision of the Court of Justice in the case *Gutiérrez Naranjo*; and the decision of the *Audiencia Nacional* of 23.02.2017, which excluded the State automatic and objective patrimonial responsibility for compensation of pre-trial detention followed by acquittal or a dismissal decision, recalling the jurisprudence of the Court of Strasbourg.

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

Articles:

[Roberto Conti](#) "Multilevel protection and interaction between national legal system and supra-national sources"

[Michele De Luca](#) "State short term employees: between *Eurounitarian conditionality* and national prohibition of conversion"

[Barbara Grandi](#) "On Work and society"

[Luigi Ferrajoli](#) "Europe: the necessity of a constitutional refounding"

[Luca Nivarra](#) "Retroactivity of civil law"

[Stefania Scarponi](#) "Employment relationship and religious symbols: neutrality and prejudice in the Court of Justice case law on the Islamic veil"

Notes and comments:

[Roberto Conti](#) "Violence against vulnerable individuals, between (secondary) obligation of protection and prohibition of gender discrimination; ECHR 2 March, *Talpis v. Italy*-ric.n.41237/2014"

[Luigi Marini](#) "Trump and the Judges: the United States between politics and Constitution"

[Giuseppe Tesaurò](#) "Sixty years from the Treaties of Rome: what we owe to EU case law"

Reports:

[Sergio Mattarella](#) "Speech on the 60th anniversary of the Treaty of Rome of 25.3.2017 at the Quirinale"

[Sergio Mattarella](#) "Speech on the 60th anniversary of the Treaty of Rome of 25.3.2017 at the Chamber of Deputies"

[Francesca Spina](#) "Discriminatory dismissal"

Documents:

[Annual Report \(2017\)](#) of the Observatory on the respect for fundamental rights in Europe, published on 2 May 2017

[Report by the House of Commons](#) "The Government's negotiating objectives: the White Paper", of 29 March 2017

[Report by the French Senate](#) "Reviving Europe: Rediscovering the spirit of Rome", of 17 March 2017

[Work by the European Trade Union Institute \(ETUI\)](#) "Benchmarking working Europe 2017", of 13 March 2017

[Report by the European Foundation for the Improvement of Living and Working Conditions \(Eurofond\)](#) "Income inequalities and employment patterns in Europe before and after the Great Recession", of 13 March 2017

[Report by the House of Lords](#) "Brexit: UK-EU movement of people", of 6 March 2017

[Report by the House of Commons](#) "The Government's negotiating objectives: the rights of UK and EU citizens", of 1 March 2017