



## OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

### **Newsletter n. 63**

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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](http://www.europeanrights.eu)

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

- the Council Decision of 15.05.2017 authorizing the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for an agreement setting out the arrangements for its withdrawal from the European Union and the negotiating Directives of 22.05.2017 of an agreement with the United Kingdom of Great Britain and Northern Ireland setting out the arrangements for its withdrawal from the European Union, attached to the Decision;
- the European Parliament study of 2.05.2017 *"The impact and consequences of Brexit on acquired rights of EU citizens living in the UK and British citizens living in the EU-27"*;
- the Special Report n. 06/2017 of the Court of Auditors of 25.04.2017 "EU response to the refugee crisis: the "hotspot" approach";
- the European Parliament study of 28.02.2017 *"Discrimination(s) as emerging from petitions received"*.

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

of the **Parliamentary Assembly**:

- the Resolution 2180 and the Recommendation 2112 of 30.6.2017, "The "Turin process": reinforcing social rights in Europe";
- the Resolution 2179 and the Recommendation 2111 of 29.6.2017, "Political influence over independent media and journalists";
- the Resolution 2178 and the Recommendation 2110 of 29.6.2017, "The implementation of judgments of the European Court of Human Rights";
- the Resolution 2177 of 29.6.2017, "Putting an end to sexual violence and harassment of women in public space";
- the Resolution 2176 of 28.6.2017, "Integration of refugees in times of critical pressure: learning from recent experience and examples of best practice";
- the Resolution 2175 and the Recommendation 2109 of 29.6.2017, "Migration as an opportunity for European development";
- the Resolution 2174 of 28.6.2017, "Human rights implications of the European response to transit migration across the Mediterranean";

- the Resolution 2173 and the Recommendation 2108 of 28.6.2017, "A comprehensive humanitarian and political response to the migration and refugee crisis and the continuing flows into Europe";

and of the **Committee of Ministers**:

- the Resolution CM/ResChS(2017)7 of 14.6.2017 on the Complaint No. 106/2014 by the Finnish Society of Social Rights v. Finland;
- the Resolution CM/Rec(2017)5 of 14.6.2017 on standards for e-voting;
- the Resolution CM/Rec(2017)4 of 31.5.2017 on youth work.

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

- 13.07.2017, C-89/16, *Szoja*, on social security of a migrant worker who pursues an activity as an employed person and an activity as a self-employed person in two different Member States;
- 13.07.2017, C-129/16, *Túrkevei Tejtermelő Kft.*, on liability to pay compensation for the environmental damage;
- 13.07.2017, C-133/16, *Ferenschild*, on the limitation period for action by the consumer in the event of liability of the seller;
- 13.07.2017, C-193/16, *E*, on the expulsion of a EU citizen from the territory of a Member State for reasons of public security;
- 13.07.2017, C-354/16, *Kleinsteuber*, on equal treatment of full-time and part-time workers;
- 29.06.2017, C-579/15, *Popławski*, on the execution of an European arrest warrant;
- 22.06.2017, C-20/16, *Bechtel*, on freedom of movement of workers and income received in a Member State other than the Member State of residence;
- 22.06.2017, C-49/16, *Unibet International*, on games of chance, freedom to provide services and principle of non-discrimination;
- 22.06.2017, C-126/16, *Federatie Nederlandse Vakvereniging and others*, on safeguarding of employees' rights in the event of transfers of undertakings;
- 21.06.2017, C-449/16, *Martinez Silva*, on social security in favour of third-country nationals holding single working permits;
- 21.06.2017, C-621/15, *W and others*, on health care and liability for defective products;
- 21.06.2017, C-9/16, *A*, on crossing internal borders within the Schengen Area and the possibility of checks;
- 15.06.2017, C-19/16 P, *Al-Faqih and others / Commission*, on specific restrictive measures against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban;
- 14.06.2017, C-75/16, *Menini and Rampanelli*, on National legislation providing for mandatory recourse to a mediation procedure and conditions for the admissibility of proceedings before the courts;
- 14.06.2017, C-610/15, *Stichting Brein*, on intellectual property and protection of copyright in case of online sharing platform;
- 14.06.2017, C-685/15, *Online Games and others*, on games of chance, freedom of establishment and freedom to provide services;
- 13.06.2017, C-591/15, *The Gibraltar Betting and Gaming Association Limited and The Queen*, on the non application of the principle of freedom to provide services between Gibraltar and the United Kingdom;
- 13.06.2017, C-258/14, *Florescu and others*, on National legislation prohibiting the combining of a public retirement pension with employment income from a professional activity carried out in a public institution, if the amount of the pension exceeds the amount of the national gross average salary on the basis of which the State social security budget was drawn up, and the respect for property;
- 8.06.2017, C-111/17 PPU, *OL*, on international child abduction;

- 8.06.2017, C-296/16 P, *Dextro Energy / Commission*, on claims relating to glucose and health care;
- 8.06.2017, C-541/15, *Freitag*, on the change of surname in the Member State of birth not carried out during a period of habitual residence by an individual having the nationality of both the Member State in which he resides and the Member State in which he was born;
- 1.06.2017, C-529/15, *Folk*, on the concept of environmental damage;
- 31.05.2017, C-420/15, *U*, on the obligation to register a vehicle belonging to a person resident in Belgium and intended to be used in Italy and freedom of movement of workers;
- 30.05.2017, C-45/15 P, *Safa Nicu Sepahan / Council*, on restrictive measures against the Islamic Republic of Iran;
- 18.05.2017, C-99/16, *Lahorgue*, on freedom to provide services and practice of the legal profession;
- 16.05.2017, C-682/15, *Berlioz Investment Fund*, on the request for information in the context of an exchange between tax administrations and the interpretation of articles 47 and 51 of the Charter of fundamental rights;

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

- 13.07.2017, C-194/16, *Bolagsupplysningen and Ilsjan*, on the competent jurisdiction over a claim for damages brought by a legal person whose rights have been violated by the online publication of incorrect information concerning it and by the failure to remove that content;
- 22.06.2017, C-413/15, *Farrell*, on the concept of “emanation of the State” in order to determine the liability of the Member State for not having adequately transposed a directive;
- 20.06.2017, C-670/16, *Mengesteab*, on time limits to appeal against the decision of a Member State to transfer a person claiming international protection in another State;
- 8.06.2017, C-214/16, *King*, on the right to paid annual leave;
- 8.06.2017, C-490/16 and C-646/16, *A.S. and Jafari*, on applications for international protection in the exceptional situation of the refugees crisis;
- 30.05.2017, C-165/16, *Lounes*, on the right to stay of a non-EU national, who is a relative of a EU citizen;

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

- 18.05.2017, T-410/16, *Makhlouf / Council*, on the restrictive measures adopted against Makholouf, on the right of the defence, the right to an effective remedy, the right to property and the presumption of innocence.

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

- 29.06.2017, *Lorefice v. Italy* (n. 63446/13), on the violation of the right to a fair trial of a person sentenced by the Court of Appeal without having heard the witnesses, on the basis of statements made in the first instance proceeding;
- 27.06.2017, Grand Chamber Judgment, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* (n. 931/13), according to which the prohibition to publish personal fiscal data, provided for by a Finnish law, does not amount to a violation of freedom of expression;
- 27.06.2017, Grand Chamber Judgment, *Medžlis Islamske Zajednice Brčko and others v. Bosnia-Herzegovina* (n. 17224/11), according to which there is no violation of the right to freedom of expression of four organizations convicted in a defamation proceeding for statements made in a private letter;
- 22.06.2017, *Barnea and Caldararu v. Italy* (n. 37931/15), according to which there is violation of the right to private and family life following the removal for seven years of a 28 months’ old child from the biological family on grounds of no valid reasons;

- 22.06.2017, *Bartesaghi, Gallo and others v. Italy* (n. 12131/13 and 43390/13), on the treatment suffered by the applicants during an “altermondialist” demonstration, considered as torture;
- 22.06.2017, *Aycaguer v. France* (n. 8806/12), according to which the sentence against the applicant for having refused to be included in the national computerised DNA database violates the right to the respect for private and family life;
- 20.06.2017, *Bogomolova v. Russia* (n. 13812/09), on the violation of the right to the respect for private and family life following the publication of a photograph of a mother and her child without their authorization;
- 20.06.2017, *Bayev and others v. Russia* (n. 67667/09, 44092/12 and 56717/12), on Russian legislation, which prohibits homosexual “propaganda”, deemed discriminatory and in contrast with freedom of expression;
- 19.06.2017, *Ali Çetin v. Turkey* (n. 30905/09), on the violation of the right to freedom of expression of a person convicted for having criticized a state official in a letter;
- 15.06.2017, *Metodiev and others v. Bulgaria* (n. 58088/08), on the refusal opposed by the authorities to register Ahmadiyya Muslim Community as a cultural association, in breach of the Convention;
- 8.06.2017, *National Turkish Union and Kungyun v. Bulgaria* (n. 4776/08), on the violation of the right to freedom of assembly and association for the refusal by the Bulgarian authorities to register an association promoting the rights of the Muslim minority;
- 6.06.2017, *Erdinç Kurt and others v. Turkey* (n. 50772/11), on the violation of the right to physical integrity for the inadequate judicial response following the request for compensation after the severe neurological damage suffered by a young patient with heart problems during two high-risk operations;
- 30.05.2017, *A.I. v. Switzerland* (n. 23378/15), according to which the expulsion to Sudan of the asylum seekers, who carried out a political activity abroad, was not in breach of the Convention;
- 30.05.2017, *Davydov and others v. Russia* (n. 75947/11), on the lack of adequate investigations by national authorities on the reports of serious election irregularities;
- 30.05.2017, *Trabajo Rueda v. Spain* (n. 32600/12), according to which granting police access to computer files containing child pornography material without prior judicial authorisation, in a non-emergency situation, violated the owner’s right to the respect for his private and family life;
- 23.05.2017, *Matiošaitis and others v. Lithuania* (n. 22662/13), on life sentence without commutation, which breaches the Convention;
- 23.05.2017, *Bălșan v. Romania* (n. 49645/09), on the violation of articles 3 and 14 of the Convention, because the authorities failed to adopt adequate measures to protect the applicant against domestic violence;
- 23.05.2017, *Çevikel v. Turkey* (n. 23121/15), on the excessive length of the proceeding to obtain compensation for damages allegedly caused by terrorist acts;
- 23.05.2017, *Van Wesenbeeck v. Belgium* (n. 67496/10 and 52936/12), on the confidentiality of the identity of undercover agents and their reports in a criminal proceeding, deemed not in breach of the Convention;
- 23.05.2017, *Paluda v. Slovakia* (n. 33392/12), on the inability of a judge to challenge in court a decision to suspend him from office pending the outcome of disciplinary proceedings against him;
- 23.05.2017, *Sarıgül v. Turkey* (n. 28691/05), on the lack of precision of the criteria on which the prison authorities based the seizure of a draft novel that the prisoner had written in prison;
- 18.05.2017, *Jóhannesson and others v. Iceland* (n. 22007/11), according to which there is violation of the *ne bis in idem* principle in two proceedings, a criminal and an administrative one, concerning the same facts and the same behaviour;
- 12.05.2017, Grand Chamber Judgment, *Simeonovi v. Bulgaria* (n. 21980/04), according to which the absence of legal assistance for the first three days of police custody did not irretrievably infringe the fairness of criminal proceedings;
- 4.05.2017, *Chap Ltd v. Armenia* (n. 15485/09), on the conviction to tax surcharges and fines on grounds of statements of absent witnesses;

- 2.05.2017, *Vasiliciuc v. Republic of Moldova* (n. 15944/11), on the lack of reasonable measures by the authorities to inform the applicant that there was a criminal proceeding against her and she had to appear before the investigating authorities.

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

- the decision of the *Supreme Court of the United States* of 26.06.2017, which partially admitted the appeal against the *United States Court of Appeals for the Ninth Circuit's* decision of 12.06.2017 and the *United States Court of Appeals for the Fourth Circuit's* decision of 25.05.2017, which confirmed the temporary non-execution of sections 2(c) (both Courts), 6(a) and 6 (b) (only the Court of Appeal for the fourth district) of the Executive order n. 13.780 "Protecting the Nation from Foreign Terrorist Entry into the United States", signed by President Trump on 6 March and providing for, respectively, the suspension for 90 days of the possibility to entry into the territory of the United States for citizens from 6 Countries, the suspension for 120 days of the possibility to entry for refugees and of the decisions on their requests for protection and the suspension of the entry of refugees – with regard to 2017 – over the limit of 50.000 units: the Supreme Court has, instead, stated its applicability, with the exclusion of those individuals, who have a credible claim of a bona fide relationship with a person or entity in the United States;
- the order of the *United States District Court Western District of Washington at Seattle* of 21.06.2017, which partially admitted and partially rejected the motion aiming at promoting the reject of the claim against the program called "CARRP" (Controlled Application Review and Resolution Program), adopted by the United States Citizenship and Immigration Service (USCIS);
- the decision of the *Supreme Court of Georgia* of 19.06.2017, which, rejecting a claim lodged against the House Bill 954, in the part which prohibits doctors, with some exceptions, to carry out abortions after the 20<sup>th</sup> week of pregnancy, established that the constitutional concept of sovereign immunity prohibits any legal action against the State without its consent;
- the decision of the *United Nations Human Rights Committee* of 12.06.2017, according to which Ireland violated articles 7 (prohibition of cruel, inhuman and degrading treatment), 17 (arbitrary interference with the right to privacy) and 26 (principle of equality and non-discrimination) of the International Covenant on Civil and Political Rights, in virtue of legal restrictions to abortion, which obliged a woman, whose foetus had a fatal malformation, to go to another State in order to interrupt the pregnancy;
- the decision of the *United States Court of Appeals for the Seventh Circuit* of 30.05.2017, which confirmed the decision of the district Court, which admitted the claim lodged by a transgender student against the Kenosha Unified School District, to oppose himself to the prohibition to use the male toilets;
- the decision of the *Constitutional Court Republic of China (Taiwan)* of 24.05.2017, which found the constitutional illegitimacy of the norms of Chapter 2 (Marriage), Part IV (Family), of the Civil Code, where they did not allow a permanent union of same-sex couples;
- the decision of the *United States Court of Appeals for the Fourth Circuit* of 23.05.2017, which partially annulled the decision of the first instance court, establishing the admissibility of the claim lodged by Wikimedia against the National Security Agency's (NSA) electronic surveillance program *Upstream*;
- the decision of the *Inter-American Court of Human Rights* of 25.03.2017, case *Acosta y otros vs. Nicaragua*, which recognized the responsibility of the State for the lack of adequate investigations on the homicide of Francisco García Valle, spouse of a human rights defender; and the decision of 16.02.2017, case *Favela Nova Brasilia vs. Brasil*, which sentenced the State for the lack of adequate investigations on the homicide of 26 persons and sexual abuse against three women by police agents during the raids of 18 October 1994 and 8 May 1995 in the favela of Nova Brasilia.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 64/2017 of 18.05.2017, which partially suspended article 114/1 of the law of 23 July 1926, concerning SNCB (National Company of Belgian Railways) and the Belgian railways' employees, as introduced by the law of 3 August 2016, where it excluded "approved" ("*agr  e*") trade unions from the right to participate to the procedure of forewarning and negotiation in the event of social conflict, in the light of the norms of the ECHR, the European Social Charter and the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg and of the European Committee of social rights; the decision n. 53/2017 of 11.05.2017, which rejects the claim lodged against article 97 of the law of 4 May 2016 with regard to the norms on the appointment of the councillors of the Court for the application of sentences, recalling the jurisprudence of the Court of Strasbourg; the decision n. 48/2017 of 27.04.2017, on the constitutional legitimacy of the law of 23 August 2015, which introduces in the judicial code article 1412 *quinquies* regulating the seizure of assets of a foreign Country or a supra-national or international organization, which recalls supra-national legislation and the jurisprudence of the Court of Strasbourg; and the decision n. 45/2017 of 27.04.2017, on the compatibility of the norms on the end of functions of the school inspector for the teaching of religion with the principle of equality and non-discrimination, which applies the norms of the ECHR;
- **Czech Republic:** the decision of the * stavn  soud* (Constitutional Court) of 14.02.2017, which stated the constitutional legitimacy of sections 82, 84 and 123 (5) of law 186/2016 Coll. ("*Gambling Act*"), on the block of websites offering illegal games of chance, recalling also EU legislation relevant in such matter and the jurisprudence of the Court of Justice; and the decision of 02.02.2017, which, also in the light of the norms of the Convention of Human Rights and biomedicine and of the jurisprudence of the Court of Strasbourg, reverted the decisions of the lower Courts, recognizing the lack of responsibility of the applicant for not having given medical assistance to the ill mother in accordance with her will;
- **France:** the decision of the *Cour de cassation* n. 748/2017 of 15.06.2017, which deems not in contrast with the principle of adversarial procedure, according to article 6 of the ECHR, the measures adopted by a guardian; the decision n. 674/2017 of 1.6.2017, in the matter of alleged fictitious marriage and therefore excluded from the protection provided for by articles 8 and 12 of the ECHR; and the decision n. 531/2107 of 4.5.2017, which, with regard to the request of amendment of sex, as indicated on the documents, rejected such request – even in the light of article 8 of the ECHR – because it is not provided for by a law and it falls under the lawmaker's discretionary power;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 8.5.2017, which states the right to asylum of a Syrian refugee, who opposed herself to the removal to Greece, recalling the jurisprudence of the Court of Strasbourg and EU law; the decision of the *Oberlandesgericht Karlsruhe* (Court of Appeal of Karlsruhe) of 21.4.2017, which, in the matter of extradition and effectiveness of the European arrest warrant, examines the possibility of a hearing in videoconference; and the decision of 22.3.2017, in the matter of execution of criminal measures in the Member States and effectiveness of the European arrest warrant;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 14.6.2017, in the matter of interruption of pregnancy for those English nationals who, residing in Northern Ireland, must pay for the surgery when they decide to go to England in those cases in which Irish law doesn't allow abortion; another decision of 14.6.2017, in which the Court states the contrast with the right to private and family life of the Nationality, Immigration and Asylum Act 2002, where it allows the Home Secretary to deport foreign criminals before the case is decided by the Court of Appeal; the decision of 10.5.2017, on the guarantees of fair trial in the matter of access to a home; the decision of 11.4.2017, in the matter of compensation following the circulation of private and confidential news by a newspaper, in the light of the norms of the ECHR (article 10) on freedom of the press; another decision of 11.4.2017, on the balance between the right to private and family life and the exercise of criminal action by the State

authorities; another decision of 11.4.2017, on the norms of the Mental Health Act 2003 limiting the possibility of having tobacco and cigarettes for prisoners hospitalized in public hospitals, in the light of articles 8 and 14 of the ECHR; the decision of 5.4.2017, on the compatibility of the norm of the Scottish Sexual Offences Act 2009 – which excludes that an individual, who had already been accused of a sexual offence, can, in another trial concerning a sexual offence, state that he thought the victim was older than 16 years old – with articles 6, 8 and 14 of the ECHR; another decision of 5.4.2017, on the concept of indirect discrimination and the connection between the criterion, which creates a particular disadvantage, and the inferior treatment of a protected group; the decision of 22.3.2017, on the limits, for the judicial power, to adopt an order which obliges social services to finance a particular social program, requested by the parents of a disabled person, on which the social services do not agree; and the decision of 1.3.2017, in which the Court admits the appeal of a parent, whose parental authority had been suspended by the competent Court on the basis of circumstantial evidence: such approach is inadequate and cannot justify the interference with the right to private and family life, as provided for by article 8 of the ECHR; the decision of the *England and Wales Court of Appeal* of 23.5.2017 in which the Court rejects the appeal of a couple of parents against the refusal of hospitals to adopt an emergency experimental protocol to improve the course of the degenerative disease, which affected their ten months' old son: since such therapy is just palliative, doctors can refuse it; the decision was confirmed on 8 June 2017 by the United Kingdom Supreme Court and then by the Court of Strasbourg where it had been lodged an urgent claim, deemed inadmissible; the decision of 16.5.2017, on the obligation, for the doctors taking care of a patient affected by the Huntington disease, to inform the pregnant daughter about her father's conditions, because of the hereditary nature of the syndrome; the decision of 3.5.2017, on the period of time the police can keep information concerning the past of rehabilitated criminals, in the light of article 8 of the ECHR, which is not compatible with the period of time established by national law; the decision of 10.4.2017, on the compatibility of spending cuts on Legal Aid services in cases concerning detained individuals and the norms on fair trial; and the decision of 7.3.2017, on the limits of the protection guaranteed by article 8 of the ECHR in the cases of eviction decided by the competent local authorities;

- **Ireland:** the decision of the *Supreme Court* of 30.05.2017, on the compatibility of the absolute prohibition to look for a job, according to section 9(4) of the Refugee Act 1996 (now included in Section 16(3)(b) of the International Protection Act 2015) with the right to work, as provided for by the Constitution of the State, which also recalls the norms of the EU Charter of Fundamental Rights; and the decision of 29.05.2017, on the violation of the right to privacy, as provided for by the Constitution of the State and by article 8 of the ECHR, as a consequence of the seizure grounded on a non-specific search warrant and lacking in any indication concerning the alleged crime or the suspected persons, which analyses the jurisprudence of the Court of Strasbourg relevant in such matter; the decision of the *High Court* of 04.05.2017, which made a reference for a preliminary ruling to the Court of Justice on the interpretation of the norms of Directive n. 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora, and n. 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment; the decision of 27.04.2017, which quashed, according to article 39.1 of Directive n. 2005/85/EC, as interpreted by the Supreme Court, the decision of the first instance court on grounds of the lack of consideration of the person's specific case, who claimed international protection; the decision of 24.04.2017, on the compatibility between an order of expulsion and article 8 of the ECHR, in the light of the jurisprudence of the Court of Strasbourg; and the decision of 14.03.2017, on the interpretation of article 3(2) of the Framework Decision n. 2002/584/JHA, on the European arrest warrant and the surrender procedures between Member States, in the light of the jurisprudence of the Court of Justice;
- **Italy:** the order of the *Corte costituzionale* n. 122/2017 of 26.5.2017, with regard to the (alleged) legitimacy of the prohibition to receive newspapers for the prisoners in regime of special supervision, which examines the jurisprudence of the Court of Strasbourg; the decision n. 123/2017 of 26.5.2017, which deems groundless the

question of constitutional legitimacy of some norms of the Italian legal system which do not provide for the review (pursuant to article 46 of the ECHR) of the administrative decisions become final, in relation to the decisions of the Court of Strasbourg, which found the violation of the rights guaranteed by the ECHR, even though it deems necessary the intervention of the lawmaker; the decision n. 111/2017 of 12.5.2017, which states the inadmissibility of the question of constitutional illegitimacy, based on the violation of some norms of the Treaty and articles 20 and 21 of the EU Charter of Rights, because of discrimination following the forced retirement of a State employee, since the judge, in the light of EU law, could disregard the national norm in contrast with EU law; the decision n. 109/2017 of 11.5.2017, which excludes the violation of the principle of *ne bis in idem* in a case of decriminalization of the crime (for not having paid the employees' national insurance contributions), but it provides for the application of an administrative sanction, examining the jurisprudence of the Court of Strasbourg on such matter; and the decision n. 83/2017 of 13.4.2017, on the interpretation according to which also "interned persons" have the right to compensation for damages suffered by prisoners for the violation of the norms of the ECHR, which examines the jurisprudence of the Court of Strasbourg; the decision of the *Corte di cassazione* n. 12911/2017 of 23.5.2017, in the matter of dismissal of a disabled person and the so called employment quota, which recalls the New York Convention, Directive n. 2000/78/EC and the jurisprudence of the Court of Justice; the decision n. 24084/2017 of 15.5.2017, on the possibility to punish the possession of a *Kirpan* knife, not justifiable in relation to one's religious faith, which examines the jurisprudence of the Court of Strasbourg; the decision n. 11165/2017 of 8.5.2017, in the matter of discrimination on grounds of nationality, for the exclusion of non-EU nationals from child benefits, which recalls Directive n. 2003/109/EC, article 21 of the EU Charter of Rights and the jurisprudence of the Court of Justice; the decision of the *Consiglio di Stato* (Council of State) of 3.5.2017, which refuses the transfer to Hungary of a claimant for asylum for the violation of (EU) Regulation n. 604/2013; the preliminary referral order of the *Corte di appello di Roma* of 15.5.2017, on the legitimacy of fixed-term contracts stipulated in Italy in the field of lyric and symphonic bodies; the order of the *Tribunale di Milano* of 12.5.2017, which deems discriminatory to deny the baby bonus to non EU nationals without permit of stay, recalling the jurisprudence of the Court of Justice; and the decision of 28.3.2017, which, examining the jurisprudence of the Court of Justice and the Court of Strasbourg, deems non-discriminatory the prohibition to enter some hospitals in Lombardy with a veil on the head;

- **Latvia:** the decision of the *Satversmes Tiesa* (Constitutional Court) of 08.03.2017, which stated the constitutional legitimacy of sections 356(2) and 360(1) of the Law on criminal proceeding, on the recognition, in the preliminary phase of the proceeding, of the criminal nature of the acquisition of the property and its following restitution to the owner, who had lost it as a consequence of a crime, also mentioning Directive n. 2012/29/EU;
- **Luxembourg:** the decision of the *Cour de cassation* of 27.04.2017, which rejected the claim lodged against the decision of the court of second instance for the violation of the right to a fair trial and the presumption of innocence, in the light of the norms of the ECHR, the EU Charter of Fundamental Rights and (EU) Directive 2016/343;
- **Norway:** the decision of the *Høyesterett/Høgsterett* (Supreme Court) of 08.06.2017, which rejected the claim lodged by Anders Behring Breivik against the decision of the Court of Appeal which, reversing the decision of the District Court of Oslo, rejected the liability of the State for the violation of articles 3 and 8 of the ECHR with regard to the claimant's detention conditions;
- **Poland:** the decision of the *Trybunał Konstytucyjny* (Constitutional Court) of 20.04.2017, in the matter of debarment, which states the constitutional legitimacy of article 101(2) of the Criminal Code, also in the light of the ECHR norms;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 266/2017 of 31.05.2017, which recognizes the right of legal persons to have access to legal aid, applying the norms of the ECHR and of the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg; and the decision n. 241/2017 of 10.05.2017, on the legitimacy of a summary decision (*decisão sumária*) adopted by the constitutional



court and concerning the constitutional legitimacy of article 75 of law 83-C/2013 (Financial Law for 2014), also in the light of the norms of the EU Charter of Fundamental Rights, the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers;

- **Slovenia:** the decision of the *Ustavno Sodišče* (Constitutional Court) of 19.10.2016, on the constitutional legitimacy of certain norms of the Banking Act and the Resolution and Compulsory Dissolution of Banks Act, on the extinction or conversion of admissible banks' liabilities, in the light of the decision of the Court of Justice in the case *Tadej Kotnik and Others v. Državni zbor Republike Slovenije* (C-526/14), following the reference for a preliminary ruling made by the same Slovenian Court with the order of 6 November 2014;
- **Spain:** the decision of the *Tribunal Constitucional* of 24.04.2017, on the judicial authority's obligation to carry out adequate investigations following the report for crimes of torture, which recalls the jurisprudence of the Court of Strasbourg; the decision of the *Tribunal Supremo* of 08.06.2017, on the unfairness of the minimum rate term included in a mortgage loan, which applies the EU legislation relevant in such matter and the jurisprudence of the Court of Strasbourg; the decision of 31.05.2017, which admitted the claim lodged against the Agreement of the Council of Ministers of 20 January 2017, which established the guidelines for the individuation of the three candidates for the election of the regular judge of the European Court of Human Rights, annulling the requirement of the maximum age fixed at 61 years old, for violation of the prohibition of age discrimination; the decision of 05.05.2017, which partially admits the claim lodged against the Royal Decree n. 413/2014, which regulates the production of electricity generation from renewable energy, cogeneration and waste and against the Ministerial Order n. IET/1045/2014, which fixes the retribution parameters for each type standard installation, recalling Union law relevant in such matter; the decision of 26.04.2017, on the relation between the right to honour of a person in charge of public assignments and freedom of expression and information, which recalls the jurisprudence of the Court of Strasbourg; and the decision of 04.04.2017, which deemed discriminatory the dismissal of a female worker, who was undergoing a fertility treatment, at the time when the egg cells had already been fertilized, but before they had been implanted in the woman's uterus, also recalling EU law and the jurisprudence of the Court of Justice;
- **Switzerland:** the decision of the *Tribunale amministrativo federale* (Federal Administrative Court) of 31.05.2017, which, also applying the jurisprudence of the Court of Strasbourg, quashed a decision of the *Secrétariat d'Etat aux migrations* (SEM) to transfer the claimant to Hungary, according to the Regulation (EU) n. 604/2013 (Regulation "Dublin III"), in the light of changes of facts and norms in such State in the matter of asylum, asking for a new supplementary examination of the situation in view of a new decision;
- **The Netherlands:** the decision of the *Gerechtshof Den Haag* (Court of Appeal of The Hague) of 27.06.2017, which recognized the partial responsibility of the State, with regard to the murder in Srebrenica of approximately 350 men on 13 July 1995, also recalling the norms of the ECHR.

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

#### **Articles:**

[Didier Blanc](#) "The influence of European Union law on the juridical recognition of disabled persons"

[Anne Sophie Brun-Wauthier, Géraldin Vial](#) "Rights of persons and of the family: the new face of the influence of the ECHR"

[Elena Falletti](#) "The Duty of Marital Fidelity and the Evolution of Italian Family Law in a Comparative Perspective"

[Ronan Bernard Menoret](#) "Handicap and social right"

[Fabien Marchadier](#) "The judge and the multiplication of fundamental rights"

[Vincenzo Sciarabba](#) "The European Public Prosecutor and enhanced cooperation: new perspectives?"

[Valerio Speciale](#) "Unjustified dismissal: *extrema ratio* or "normal" economic dismissal?"

[Romain Tinière](#) "Confused pluralism of fundamental rights in Europe: does salvation reside in equivalence?"

#### **Notes and comments:**

[Luca Baiada](#) "The German debt and a necessary meeting"

[Roberto Giovanni Conti](#) "The jurisdiction of ordinary courts and EU law"

[Roberto Rivero](#) "The thin line between legality and labour exploitation"

#### **Reports:**

[Mario Draghi](#) "Europe's renewed sense of purpose"

[Caterina Interlandi](#) "Compensation for inhuman detention in case of entire execution of the penalty"

[Giovanni Orlandini](#) "Transnational detachment and wage dumping in the European Union"

[Lucia Tria](#) "Alike in diversity or strangers to ourselves? Considerations on the prohibition of discrimination between norms and practices"

#### **Documents:**

[Report by the Union of European Federalists](#) "Towards a European Defence Union", of April 2017

[Report of the European Foundation for the Improvement of Living and Working Conditions \(Eurofond\)](#) "Social mobility in the EU", of 19 April 2017