



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

Newsletter n. 66

15 January 2018

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 Parliament study of 19.12.2017 "*The implications of the United Kingdom's withdrawal from the European Union for the Area of Freedom, Security and Justice*";
- the European Parliament Resolution of 13.12.2017 on the Annual Report on Human Rights and Democracy in the World 2016 and the European Union's policy on the matter;
- the European Parliament Resolution of 13.12.2017 on the state of play of negotiations with the United Kingdom;
- the European Parliament Resolution of 12.12.2017 on the EU Citizenship Report 2017: Strengthening Citizens' Rights in a Union of Democratic Change;
- the European Parliament Resolution of 30.11.2017 on implementation of the European Disability Strategy;
- the study of the European Parliament of 7.12.2017 "*Mapping the Cost of Non-Europe, 2014-19 – Fourth edition*";
- the European Union Agency for Fundamental Rights' second survey (FRA) of 6.12.2017 on minorities and discriminations in the European Union (EU-MIDIS II).

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

of the **Parliamentary Assembly**:

- the Resolution 2195 and the Recommendation 2117 of 24.11.2017, "Child-friendly age assessment for unaccompanied migrant children";
- the Resolution 2194 of 24.11.2017, "Cross-border parental responsibility conflicts";
- the Resolution 2193 of 24.11.2017, "The relations of the Council of Europe with Kazakhstan".

We would like to highlight also that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has concluded an Exchange of Letters with the International Criminal Court (ICC) in The Hague to monitor the treatment of persons sentenced by the Court. The Exchange of letters entered into force on 9 November 2017.

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

- 20.12.2017, C-158/16, *Vega González*, on national legislation providing for special leave to be granted, in case of election to public office, only to established civil servants, to the exclusion of non-established civil servants, on the principle of non-discrimination and employment conditions;
- 20.12.2017, C-276/16, *Prequ' Italia*, on the right of the addressee of an amended tax assessment to be heard;
- 20.12.2017, C-322/16, *Global Starnet*, on online operation of gaming, freedom to provide services, freedom of establishment, freedom to conduct a business;
- 20.12.2017, C-419/16, *Simma Federspiel*, on the remuneration of trainee specialist doctors, freedom of establishment and freedom of movement for workers;
- 20.12.2017, C-372/16, *Sahyouni*, on the recognition of a private divorce obtained before a religious court in a third country;
- 20.12.2017, C-434/15, *Asociación Profesional Elite Taxi*, on an intermediation service to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons, who wish to make urban journeys, and on freedom to provide services;
- 20.12.2017, C-434/16, *Nowak*, on the extent of the data subject's rights to access and rectification;
- 20.12.2017, C-442/16, *Gusa*, on the retention of the status of self-employed person and on the right of residence of a national of a Member State, who is no longer working for reasons independent from his will;
- 20.12.2017, C-521/15, *Spain v. Council*, on the right of defence and on the right to good administration;
- 14.12.2017, C-243/16, *Miravitlles Ciurana and others*, on the right to bring, before the same court, an action against the company and its director, as a person having joint and several liability for the company's debts;
- 13.12.2017, C-403/16, *El Hassani*, on the right of the applicant to bring an appeal against the decision to refuse a visa;
- 7.12.2017, C-189/16, *Zaniewicz-Dybeck*, on social security for migrant workers;
- 7.12.2017, C-598/15, *Banco Santander*, on a mortgage loan agreement and consumers' protection;
- 7.12.2017, C-636/16, *López Pastuzano*, on the decision to expel a third-Country long-term resident;
- 5.12.2017, C-42/17, *M.A.S. and M.B.*, on the obligation to disapply any provisions of national legislation laying down limitation periods liable to prevent the application of effective and discouraging criminal sanctions in a number of serious cases of fraud affecting the financial interests of the Union;
- 29.11.2017, C-265/16, *VCAST*, on the provision of a cloud computing service for the remote video recording of copies of works protected by copyright, without the consent of the author concerned and on intellectual property;
- 29.11.2017, C-214/16, *King*, on annual leave allowance;
- 23.11.2017, joint cases C-427/16 and C-428/16, *CHEZ Elektro Bulgaria AD and FrontEx International EAD*, on the setting of minimum fee amounts by a lawyers' professional organisation and freedom to provide services;
- 14.11.2017, C-165/16, *Lounes*, on the right of residence in a Member State of a third-country national, who is a family member of a Union citizen with dual nationality;

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

- 5.12.2017, C-451/16, *MB*, on the illegitimacy of the refusal to award a State retirement pension to a transgender person, who has undergone male-to-female gender reassignment surgery;
- 30.11.2017, C-426/16, *Liga van Moskeën en Islamitische Organisaties Provincie Antwerpen and others*, on ritual slaughtering, freedom of religion and health care;
- 14.11.2017, C-498/16, *Schrems*, on the use of Facebook accounts, the concept of consumer and the protection of privacy and personal data.

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

- 19.12.2017, *Öğrü and others v. Turkey* (n. 60087/10, 12461/11 and 48219/11), according to which the administrative fines imposed on the applicants for participating in demonstrations amounted to a violation of their rights to freedom of expression, because of the lack of procedural guarantees;
- 19.12.2017, *Ramda v. France* (n. 78477/11), according to which the dual conviction of one of the applicants over 1995 Paris terrorist attacks and special bench Assize Court reasoning comply with the European Convention;
- 19.12.2017, Grand Chamber Judgment, *Lopes de Sousa Fernandes v. Portugal* (n. 56080/13), according to which, in the case of the death of a patient following post-operation negligence, there had been a violation of article 2 of the European Convention as to the right to life, under its procedural head;
- 19.12.2017, *Krsmanović v. Serbia* (n. 19796/14), according to which article 3 of the Convention was violated for the lack of effective investigation into the applicant's allegation of inhuman and degrading treatment suffered during his detention;
- 19.12.2017, *Khayrullina v. Russia* (n. 29729/09), according to which articles 2 and 5§1 and §5 of the Convention were violated, in the case of a man who died following ill-treatment, three months after having been detained in order to be interrogated by the police, as a witness in an investigation for homicide;
- 14.12.2017, *Orlandi and others v. Italy* (n. 26431/12), according to which the Italian non-recognition of same sex marriages violated the right of six couples, who married abroad (the Court recalled the case *Oliari and others v. Italy* of 21.07.2015);
- 12.12.2017, *Zadumov v. Russia* (n. 2257/12), according to which the absence of a crucial witness meant that the conviction was unfair;
- 7.12.2017, *S.F. and others v. Bulgaria* (n. 8138/16), according to which the conditions of temporary detention of the applicants, migrants who attempted to cross Bulgaria to arrive in Western Europe (and were later granted international protection in Switzerland), amounted to degrading treatments;
- 5.12.2017, *Hamidović v. Bosnia Herzegovina* (n. 57792/15), according to which the conviction of contempt of court of the applicant, who refused to remove his skullcap (symbol of the belonging to his religious community) during the hearing, amounted to a violation of his right to manifest his religion;
- 5.12.2017, *Frisk and Jensen v. Denmark* (n. 19657/12), which deems legitimate the conviction of defamation of two journalists, following a program broadcast in 2008 criticizing the treatment of cancer at Copenhagen University Hospital;
- 28.11.2017, *N. v. Romania* (n. 59152/08), in which the applicant complains for his long psychiatric detention without a sufficient assessment of the level of danger presented by himself and that no procedural safeguards were in place as regards the review of the lawfulness of his detention: the Court found the violation of the Convention and established that the State must grant procedural guarantees against any arbitrary psychiatric detention;
- 28.11.2017, *Dorneanu v. Romania* (n. 55089/13), which found the violation of article 3 of the Convention, because of the detention conditions of a prisoner, who suffered of cancer at a final stage;
- 28.11.2017, *Antović and Mirković v. Montenegro* (n. 70838/13), on the violation of article 8 of the Convention, because of the camera surveillance of the lecture halls;
- 28.11.2017, *Merabishvili v. Georgia* (n. 72508/13), on the temporary continued detention of a leader of the major opposition party with the aim of gathering information on other facts from the those he was charged for;
- 23.11.2017, *Grba v. Croatia* (n. 47074/12), which found that the right to a fair trial was violated in relation to the conviction following an operation conducted by undercover agents;
- 21.11.2017, *Tarman v. Turkey* (n. 63903/10), on the absence of a reasonable balance between the guarantee of the right to freedom of expression and the right to the protection of a person's reputation;
- 16.11.2017, *Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia* (n. 3532/07), on the violation

of article 11 of the Convention following the national authorities' refusal to register a religious association;

- 16.11.2017, *Boukrourou and others v. France* (n. 30059/15), according to which the Convention was violated in the case of the death of a man, who suffered from psychiatric problems, during a police questioning;
- 16.11.2017, *Ceesay v. Austria* (n. 72126/14), on the treatment of a prisoner during his hunger strike, deemed not in violation of the Convention;
- 14.11.2017, *Işikirik v. Turkey* (n. 41226/09), according to which article 11 of the Convention was violated in a case concerning the belonging to an allegedly illegal association;
- 14.11.2017, *Kunić and others v. Bosnia and Herzegovina* (n. 68955/12) and *Spahić and others vs Bosnia Herzegovina* (n. 20514/15), according to which the State was to secure enforcement of domestic judgments;
- 7.11.2017, *Cherednichenko and others v. Russia* (n. 35082/13), according to which the absence, at domestic level, of a uniform system that would make it possible to establish in an objective manner the date from which the full text of the decision was available to the parties to the dispute, amounted to a violation of article 6§1 of the Convention;
- 7.11.2017, *Sukhanov and others v. Russia* (n. 56251/12), on the refusal to examine the application, because of the absence of the applicants;
- 7.11.2017, *Dudchenko v. Russia* (n. 37717/05), *Zubkov and others v. Russia* (n. 29431/05), *Akhlyustin v. Russia* (n. 21200/05), *Moskalev v. Russia* (n. 44045/05) and *Kostantin Moskalev v. Russia* (n. 59589/10), on the violation of article 8 of the Convention, because of the adopted secret surveillance measures and the lack of adequate judicial guarantees;
- 7.11.2017, *Egill Einarsson v. Iceland* (n. 24703/15), which established that article 8 of the Convention was violated by the national court's decision according to which, in this specific case, the blogger was not defamed by rape accusation published on Instagram.

On 11.12.2017, for the first time the Court applied the *en manquement* procedure, following a decision of 2014 against Azerbaijan concerning M. Mammadov, politician of the opposition party. It is the first time the Court deals with such procedure, introduced in 2010, which allows the Committee of Ministers, which oversees the enforcement of judgments, to take action before the Court in order to establish whether the State violated its duties, refusing to comply with a decision of the Court. On 5.12.2017, the Committee of Ministers decided to start this procedure following the persistent refusal by the State's authorities to release M. Mammadov, after the ascertainment of the violation of the Convention.

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

- the order of the United States District Court Northern District of California of 21.12.2017, which suspended the execution of the federal regulations "Religious Exemption and Moral Exemption interim final rules 2017", aiming at extending the exemptions, for religious reasons, to the applicability of the norms of the "Affordable Care Act" on the inclusion of contraceptives in the health insurance provided for by the employer;
- the orders of the United States District Court Western District of Washington at Seattle of 11.12.2017 and of the United States District Court for the District of Maryland of 21.11.2017 and the decision of the United States District Court for the District of Columbia of 30.10.2017, which judge on claims aiming at blocking the execution of the Presidential Memorandum of 25 August 2017, which re-established the prohibition for transgender to serve in the army;
- the two orders of the Supreme Court of the United States of 4.12.2017, which suspended the effectiveness, pending the Court of Appeal's decision in such matter, of the order of the United States District Court for the District of Hawaii and of the decision of the United States District Court District of Maryland of 17.10.2017, with which such Courts blocked the execution of section 2 (with some exceptions) of the Proclamation No. 9645 entitled "Enhancing Vetting Capabilities and Processes for

- Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats”, signed by President Trump on 24 September 2017, in order to suspend or limit the entry into the United States of nationals coming from 8 Countries;
- the decision of the *United States District Court for the Western District of Texas Austin Division* of 22.11.2017, which found the constitutional illegitimacy of the norms of the Texas Senate Bill 8, Section 6, where they introduced an additional medical procedure for abortion through the “dilatation and evacuation” method (D&E);
 - the decision of the *Tribunal Oral en lo Criminal Federal 5* (Argentina) of 29.11.2017, which condemned 48 of the 54 accused for crimes against humanity committed in the clandestine detention centre *Escuela de Mecánica de la Armada de Argentina (ESMA)* during the military dictatorship between 1976 and 1983;
 - the decision of the *International Criminal Tribunal for the former Yugoslavia* of 29.11.2017, case *Prosecutor v. Jadranko Prlić and others*, which, in second instance, confirmed almost all the convictions issued in first instance against the applicants for crimes against humanity, violations of the laws and customs of war and grave breaches of the Geneva Conventions; and the decision of 22.11.2017, case *Prosecutor v. Ratko Mladić*, which sentenced the defendant, former commander of the Serb Republic of Bosnia and Herzegovina, to life imprisonment for genocide, crimes against humanity and war crimes;
 - the order of the *United States Court of Appeals for the District of Columbia Circuit* of 24.10.2017, which recognized the right to abortion of a foreign non accompanied minor; _
 - the decision of the *Inter-American Court of Human Rights* of 31.8.2017, case *Vereda La Esperanza vs. Colombia*, which sentenced the State for the forced disappearance of 12 persons and the arbitrary killing of another one, which took place in the district of El Carmen de Viboral between 21 June and 27 December 1996 and were carried out by the paramilitary group *Autodefensas del Magdalena Medio (ACMM)*, with the help of public forces; and another decision of 31.8.2017, case *Lagos Del Campo vs. Perú*, which sentenced the State for the violation of the right to freedom of thought and expression, the right to work security (*derecho a la estabilidad laboral*), to freedom of association and to an effective remedy, in relation to the unlawful dismissal of Alfredo Lagos del Campo, after his interview, as shop steward, published on the newspaper “La Razon” and concerning alleged irregularities in the elections of the *Comité Electoral* of the company he worked for.

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

- **Austria:** the decision of the *Verfassungsgerichtshof* (Constitutional Court) of 4.12.2017, which, in the light of the principle of equality and non-discrimination and also recalling the ECHR and the Court of Strasbourg’s jurisprudence, repealed the norms which provided for different treatments for heterosexual and homosexual couples with regard to marriages and civil unions;
- **Belgium:** the decision of the *Cour constitutionnelle* n. 135/2017 of 30.11.2017, which judges on the constitutional legitimacy of the law of 10 August 2015, aiming at raising the legal age for old-age pension, the requirements for the anticipated pension and the minimum age for the survivor’s pension, in the light of the norms of Directive 79/7/EC, the EU Charter of Fundamental Rights, the European Social Charter and the First Additional Protocol to the ECHR, and recalling the jurisprudence of the Court of Justice; and the decision n. 131/2017 of 23.11.2017, in the matter of adoption, which applies article 8 of the ECHR and the jurisprudence of the Court of Strasbourg;
- **Bosnia and Herzegovina:** the decision of the *Ustavni sud* (Constitutional Court) of 30.11.2017, which stated that the absolute prohibition for police officers to grow a beard when wearing the uniform, as established by the *Rulebook on Wearing Uniforms*, is in breach of the right to the respect for private life and to freedom of religion, as provided for by articles 8 and 9 of the ECHR; and the decision of 28.9.2017, on the alleged violation of the right to an effective remedy and right of property in relation to

the extra-judicial settlement of a controversy on retrieval of property, which cites the jurisprudence of the Court of Strasbourg;

- **Croatia:** the decision of the *Ustavni sud* (Constitutional Court) of 13.12.2016, on the violation of the right to a fair trial in a proceeding concerning the application of unfair terms in credit agreements for consumers, which recalls the jurisprudence of the Court of Justice; and the decision of 6.12.2016, according to which the Court of first instance violated the right of the applicant to a fair trial for not having explained the reasons of the refusal of the request of preliminary referral to the Court of Justice;
- **Czech Republic:** the decision of the *Ustavní soud* (Constitutional Court) of 15.8.2017, which, also applying the EU legislation relevant in such matter, recognized the violation of article 5 of the ECHR in the decision of the court of first instance, which ordered the precautionary detention of the applicant, in order to assess the request of extradition issued by the Russian authorities, since he had the right to international protection in Austria; and the decision of 29.6.2017, on the violation of the child's best interest and of the right to the respect for family life, in virtue of the partial recognition of a foreign decision on the parental authority of a same-sex couple over the child obtained through a surrogate mother, which recalls the jurisprudence of the Court of Strasbourg;
- **France:** the decision of the *Cour de cassation* n. 2484/2017 of 22.11.2017, which applies the principles established by the Court of Justice in the matter of legitimacy of a company's regulation prohibiting the Islamic veil, reversing the appeal decision, which admitted the applicant's claim; and the decision of the *Conseil d'État* of 8.11.2017, which excludes *Scientology*, also in the light of the norms of the ECHR, from the access to administrative documents for public order reasons and protection of privacy;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 13.11.2017, on the risk of the violation of human rights following the extradition of the accused, who is subjected to an unlawful proceeding in his State of origin (Russia); the decision of 7.11.2017, on the violation, by the German Government, of the (EU) regulation n. 575/2013 of the European Parliament and of the Council of 26 June 2013, on prudential requirements for credit institutions and investment firms and amending Regulation (EU) n. 648/2012; and the decision of 12.10.2017, which, in procedural and proof matters, recalls the jurisprudence of the Court of Justice; and the order of 10.10.2017, which, also recalling the jurisprudence of the Court of Justice, stated the constitutional illegitimacy of the law on civil status (*Personenstandsgesetz* – PStG), where it did not provide for a third option beside the "male" and "female" genre; and the decision of the *Landessozialgericht Berlin-Brandenburg* (Berlin-Brandenburg Social Court) of 30.1.2017, in the matters of leave, which recalls EU legislation;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 19.12.2017, in the matter of fair trial, pursuant to article 6 of the ECHR and article 47 of the Charter of fundamental rights, and of the jurisdiction of British courts on the request of compensation following a damage occurred outside the English territory; and the decision of 6.12.2017, in the matter of procedural guarantees in trials for discrimination; the decision of the *England and Wales Court of Appeal* of 20.12.2017, in which the Court recognizes the right of a transgender father to visit regularly his children, although the children and the mother belong to a Jewish orthodox community, underlining that a religious belief cannot be an obstacle to the father and minors' right to family life; the decision of 28.11.2017, in which the Court confirms that in the matter of compensation following the death of the partner, the same rights must be granted to cohabiting couples, married couples and civil partners; and the decision of 13.10.2017, in which the Court establishes that is discriminatory the organization, by a religious school, of classes on the basis of the students' gender; the decision of the *England and Wales High Court* of 14.12.2017, in which the Court finds discriminatory the practice of the police to question more often foreign homeless persons, in order to verify that their stay is not violating their right to freedom of movement within the Member States; and another decision of 14.12.2017, which recognizes the right to compensation to Iraqi nationals, who have been victims of violent crimes committed by British soldiers serving in the territory of that State;
- **Ireland:** the decision of the *Court of Appeal* of 27.10.2017, on family rights deriving from the Constitution of the State and from article 8 of the ECHR and on their

assessment by the authorities, when deciding on the requests of permits of stay and residence by foreign nationals legally married to Irish citizens; and the decision of 25.10.2017, on the concept of stateless person, as provided for by the "Qualification Directive", in relation to the recognition of subsidiary protection; the decision of the High Court of 21.11.2017, which judges on a case concerning the permit to build a new track of Dublin airport, recalling the European legislation – in particular the Directive on the environmental impact assessment and the "Habitats Directive" – the norms of the ECHR and the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision of 2.11.2017, which, also applying the jurisprudence of the courts of Strasbourg and Luxembourg, requested more information on the future detention conditions of the applicant, in order to give execution to the European arrest warrant issued by the British authorities; the decision of 24.10.2017, in the matters of social assistance and freedom of movement, which recalls the norms of Directive 2004/38/EC and the (EC) regulation n. 883/2004 and the jurisprudence of the Court of Justice; the decision of 10.10.2017, on the right to be heard within the proceedings regarding the requests for subsidiary protection, in the light of the European legislation and the jurisprudence of the Court of Justice relevant in such matters; the decision of 3.5.2017, which found the incompatibility of the Mental Health Act 2001 with article 5(4) of the ECHR, where it allows the renewal of the detention in a psychiatric hospital for a period of 12 months, with no possibility to appeal against the legitimacy of such order; and the decision of 24.3.2017, which judges on the renewal of the request of the permit of residence of a Nigerian national, father of an Irish citizen, in the light of the jurisprudence of the Court of Justice;

- **Italy:** the decision of the Corte costituzionale n. 272/2017 of 18.12.2017, in the matter of appeal against the recognition of the minor child for lack of truth (in the event of surrogacy carried out abroad) which, recalling the jurisprudence of the Court of Strasbourg and the New York Convention on the rights of the child, excludes that the national legal system does not consider the minor's interest; the decision n. 269/2017 of 14.12.2017, which establishes the principle, according to which the court could not disregard national norms in contrast with the EU Charter of Human Rights, instead it should raise a question of constitutional legitimacy; the decision n. 263/2017 of 13.12.2017, which, in the matter of review of precautionary measures not in a public hearing, examines the jurisprudence of the Court of Strasbourg, excluding its violation; the decision n. 262/2017 of 13.12.2017, which, on the matter of domestic jurisdiction (of Italian constitutional bodies), recalls the jurisprudence of the Court of Strasbourg; and the decision n. 250/2017 of 1.12.2017, which, in pension matters, excludes the violation of article 6 of the ECHR and article 1 of Protocol n. 1, in the light of the jurisprudence of the Court of Strasbourg; the decision of the Corte di cassazione the decision n. 26338/2017 of 7.11.2017, in the matter of excessive formalisms, in the light of the jurisprudence of the Court of Strasbourg; the order n. 26221/2017 of 13.10.2017, which raises a question of constitutional legitimacy of a national law, which subjects the request of compensation for delay of the proceeding to the demonstration of having asked for the anticipation of the trial, deemed in breach of the jurisprudence of the Court of Strasbourg; the decision n. 49242/2017 of 18.5.2017, which disregards, in relation to article 19(2) of the EU Charter of Rights, a national norm on the expulsion of a migrant for public security reasons, without having first decided on his request for subsidiary protection; and the decision n. 53610/2017 of 10.4.2017, in the matter of violation of article 7 of the ECHR, raised with a request of review in relation to an associative crime; the decision of the Consiglio di Stato of 3.11.2017, which deems Bulgaria an "unsafe Country" with regard to the transfer of an afghan refugee, recalling the jurisprudence of the Court of Justice, EU legislation and article 4 of the EU Charter of Rights; the decision of the Corte di appello di Genova of 29.9.2017, which, in the light of the decision of the Court of Justice of 21.6.2017 following a preliminary referral, deems discriminatory the Italian law which subjects the public benefit for "large families" to the permit of residence; and the decision of the Tribunale di Sulmona of 2.11.2017, which sentences the Federal Republic of Germany to compensation in favour of the relatives of the victims and the town hall of Roccaraso for the massacre of

- Pietrarsieri, committed by the German army during the second world war, recalling the international Conventions and the ECHR, as well as the debate on such issue;
- **Luxembourg:** the decision of the *Court of Cassation* of 7.12.2017, which makes a reference for a preliminary ruling to the Court of Justice with regard to the applicability of article 15 of the Lugano Convention of 2007, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to credit agreements not included in Directive 2008/48/EC;
 - **Portugal:** the decision of the *Tribunal Constitucional* n. 841/2017 of 13.12.2017, in the matter of expropriation for public utility, which recalls the norms of the ECHR and the EU Charter of Fundamental Rights;
 - **Spain:** the decision of the *Tribunal Supremo* of 24.11.2017, on the unfairness of a term of minimum rate in a mortgage loan, which applies the EU legislation and the jurisprudence of the Court of Justice relevant in such matter; the decision of 15.11.2017, which reversed the decision of the Court of first instance, partially annulling a "multicurrency" mortgage loan, because in contrast with the principle of transparency provided for, among others, by article 4(2) of Directive 93/13/EC on unfair terms in consumer contracts; and the decision of 27.10.2017, which rejects a claim lodged against a sentence for apology of terrorism, recalling the Convention of the Council of Europe of 2005 on Prevention of Terrorism and the jurisprudence of the Court of Strasbourg; and the order of 25.10.2017, on the non-provision, by the national legislation, of an allowance for the termination of certain types of time contracts – in the specific case, the contract of "interinidad" (fixed-term contract for the temporary replacement of a person) – in the light of the decision of the Court of Justice in the case *de Diego Porras* (C-596/14), which makes a new reference for a preliminary ruling to the European Court with regard to the interpretation of clause n. 4 of the Framework Agreement on fixed-term work annexed to Directive 1999/70/EC;
 - **The Netherlands:** the decision of the *Hoge Raad* (Supreme Court) of 10.11.2017, which makes a reference for a preliminary ruling to the Court of Justice with regard to the interpretation of article 47 of the EU Charter of Fundamental Rights together with the norms of (EC) Regulation n. 1225/2009 on protection against dumped imports from countries not members of the European Community.

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

Articles:

[Étienne Balibar](#) "The construction of the public enemy" (*Article published on the newspaper "Il Manifesto" of 2 December 2017 – Our thanks to "Il Manifesto" for sharing the article*)

[Roberto Conti](#) "Court of Cassation following the decision of the Constitutional Court n. 269/2017. Some considerations, after a second reading"

[Michele De Luca](#) "Subordination and autonomy after the recent reorganization of typologies"

[Michele De Luca](#) "Proceedings before the Supreme Court on points of law concerning errors in procedure: minimum notes on (some) synthetic issues (from report to decision)"

[Vincenzo De Michele](#) "Protection of State short-term employees in Europe and in Italy, waiting for "Godot""

[Catarina Santos Botelho](#) "Aspirational constitutionalism, social rights prolixity and judicial activism: trilogy or trinity?"

Notes and comments:

[Sergio Galleano](#) "The Court of Cassation on the school. Symptom of criticalities with the European legislation?"

[Elena Falletti](#) "The case *Charlie Gard* and limits of administration of not (yet) experimented therapies"

[Lorenzo Fassina](#) "The rising protection contract under the magnifying glass of the European Committee of social rights and of the Italian Constitutional Court: a possible dialogue thanks to Cgil?"

[Emma Rizzato](#) "Summary proceedings again under the magnifying glass of the European Court of Human Rights. The decision in the case *Fornataro v. Italy* (19 October 2017)"

[Giulia Testa](#) "On the recognition of the right to die in a decent and free way: some considerations on the side of a consolidated jurisprudence"

Reports:

[Marco Inglese](#) "The European Citizens' Initiative: an effective tool to boost democratic participation in the EU?"

[Guido Raimondi](#) "Human rights, peace instrument and engagement for peace"

[Roberto Rivero](#) "On the right to bring an action against collective discriminations based on nationality"

[Antonio Ruggeri](#) "Principle of solidarity at the testing bench of the phenomenon of migration"

[Frances Webber](#) "Brexit, refugees and the hostile environment"

Documents:

The two Opinions adopted by the Venice Commission concerning Poland "[On the Act on the Public Prosecutor's Office as amended](#)" and "[On the Draft Act amending the Act on the National Council of the Judiciary, on the Draft Act amending the Act on the Supreme Court and on the Act on the Organisation of Ordinary Courts](#)", of 11 December 2017

[Report of the French Parliament](#) on the Democratic Conventions for the refounding of Europe, of 7 December 2017

[Report of the House of Lord](#) "Brexit: deal or no deal", of 7 December 2017

[Letter by the Argentinean jurist Eugenio Raúl Zaffaroni to the Human Rights Secretary](#), Claudio Abrujo, which reports some violations of human rights and in particular Argentina's pretension to define the boundaries of the Inter-American Court's jurisdiction, of 1 December 2017