



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

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Below are the main updates concerning case-law and acts relevant to the protection of fundamental rights, as published in the web site www.europeanrights.eu

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

- the Regulation 2018/1805/EU of the European Parliament and of the Council of 14.11.2018 on the mutual recognition of freezing orders and confiscation orders;
- the report by the European Union Agency for Fundamental Rights (FRA) of 1.11.2018 on anti-Semitism (2007-2017);
- the Directive 2018/1673/EU of the European Parliament and of the Council of 23.10.2018 on combating money laundering by criminal law;
- the European Parliament Resolution of 25.10.2018 on the rise in neo-fascist violence in Europe.

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

of the **Parliamentary Assembly**:

- the Resolution 2250 of 23.11.2018 "Encouraging the movement of international students across Europe";
- the Resolution 2249 of 23.11.2018 "The provision of palliative care in Europe";
- the Resolution 2248 of 23.11.2018 "Procedure for the election of judges to the European Court of Human Rights";
- the Resolution 2247 of 23.11.2018 "Protecting and promoting sign languages in Europe";

of the **Committee of Ministers**:

- the Recommendation CM/Rec(2018)12 of 12.12.2018 "Recommendation of the Committee of Ministers to member States on the promotion of good governance in sport";
- the Recommendation CM/Rec(2018)11 of 28.11.2018 "Recommendation of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe";
- the Recommendation CM/Rec(2018)10 of 14.11.2018 "Recommendation of the Committee of Ministers to member States on culture's contribution to strengthening the internet as an emancipatory force";
- the Recommendation CM/Rec(2018)9 of 14.11.2018 "Recommendation of the Committee of Ministers to member States on contributing to the implementation of the

European Landscape Convention of the Council of Europe: creation of public funds for landscape”.

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

- 19.12.2018, C-375/17, *Stanley International Betting and Stanleybet Malta*, on games of chance, freedom of establishment and freedom to provide services;
- 13.12.2018, C-385/17, *Hein*, on the right to paid annual leave even in case of a period of partial unemployment;
- 13.12.2018, joined cases C-412/17 and C-474/17, *Touring Tours und Travel*, on the incompatibility with EU law of German law requiring a coach travel operator on routes crossing the internal borders of the Schengen area to check passengers’ passports and residence permits and on freedom of movement;
- 10.12.2018, C-621/18, *Andy Wightman and others vs Secretary of State for Exiting the European Union*, on the right of unilateral revocation of the notification by a Member State of its intention to withdraw from the European Union, according to article 50 of the TEU;
- 6.12.2018, C-551/18 PPU, *IK*, on the European arrest warrant issued for the purposes of enforcing a custodial sentence;
- 6.12.2018, C-675/17, *Preindl*, on the automatic recognition of professional qualifications;
- 4.12.2018, C-378/17, *Minister for Justice and Equality and Commissioner of the Garda Síochána*, on the primacy of EU law on national law;
- 21.11.2018, C-245/17, *Viejobueno Ibáñez and de la Vara González*, on National law, permitting the termination of fixed-term employment contracts of teachers employed for the academic year at the end of the teaching period, where the reason for recruitment ceases to apply, on the principle of non-discrimination and on the right to the allowance for the missed paid annual leave;
- 21.11.2018, C-713/17, *Ayubi*, on the rights of refugees with a temporary right of residence;
- 20.11.2018, C-147/17, *Sindicatul Familia Constanța and others*, on the work performer by foster parents and on the organisation of working time;
- 14.11.2018, C-342/17, *Memoria and Dall’Antonia*, on Italian legislation prohibiting any profit-making activity relating to the safekeeping of cinerary urns and on freedom of establishment;
- 13.11.2018, C-310/17, *Levola Hengelo*, on copyright;

and for the **General Court** the judgments:

- 13.12.2018, joined cases T-339/16, T-352/16 and T-391/16, *Ville de Paris v. Commission*, on high oxides of nitrogen emissions and on the protection of health and of the environment;
- 26.11.2018, T-458/17, *Shindler and others v. Council*, on the request by British nationals residing in other EU Member States to annul the decision of the Council authorizing the opening of Brexit negotiations.

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

- 19.12.2018, Grand Chamber judgment, *Molla Sali v. Greece* (n. 20452/14), on the application by domestic courts of Islamic religious law (Sharia) to an inheritance dispute, contrary to the will of the testator, a Greek national belonging to the Muslim minority: the Court held that there had been a violation of the Convention;
- 18.12.2018, Grand Chamber judgment, *Murtazaliyeva v. Russia* (n. 36658/05), which held that there had been no violation of the right to a fair trial in a woman’s terrorism conviction, as regards the applicant allegedly being unable to view a videotape during her trial;

- 18.12.2018, *Khusnutdinov and X v. Russia* (n. 76598/12), according to which the decision by the domestic courts not to return the daughter to her father was not in breach of the Convention;
- 18.12.2018, *Saber and Boughassal v. Spain* (n. 76550/13 and 45938/14), on the expulsion of two Moroccan nationals, who had been convicted, without an adequate assessment of their situation, in violation of their right to the respect for private life;
- 13.12.2018, *Casa di Cura Valle Fiorita S.r.l. v. Italy* (n. 67944/13), on the authorities' complete and prolonged failure to act, following the occupation of the applicant's building, situated in Rome, by housing activists (movement for the fight for a house), without any legal title, starting from 2012: the Court held that there had been a violation of the Convention;
- 11.12.2018, Grand Chamber judgment, *Lekić v. Slovenia* (n. 36480/07), held that the legislation introduced in Slovenia in the '90s, according to which the courts had the power to strike-off companies from the court register on their own motion, was reasonable: under this procedure the managing directors and active members of the company could be liable for the payment of the company's debts;
- 11.12.2018, *Brisic v. Romania* (n. 26238/10), on the violation of the right to freedom of expression in the case of a chief prosecutor's dismissal for breaching the secrecy of a criminal investigation, when he made statements to the press;
- 11.12.2018, *Belli and Arquier-Martinez v. Switzerland* (n. 65550/13), on the non-violation of the right not to be discriminated, in combination with the right to the respect for private and family life, with regard to the obligation to reside in Switzerland in order to benefit of an invalidity allowance;
- 11.12.2018, *M.A. and others v. Lithuania* (n. 59793/17), on the impossibility for the applicants to lodge an asylum application on the Lithuanian boarder, which amounts to a violation of the Convention (articles 3 and 13);
- 11.12.2018, *Lakatošová and Lakatoš v. Slovakia* (n. 655/16), according to which the Slovakian authorities failed to investigate the possible racist motive in the shooting by an off-duty police officer at a Roma family's home, following which two persons were killed. The officer was given a reduced sentence of nine years' imprisonment: the Court held that the prohibition of discrimination had been violated;
- 6.12.2018, *Slomka v. Poland* (n. 68924/12), on the custodial penalty given to a man for protesting during a trial of communist-era generals: the Court held that there had been a violation of the Convention;
- 6.12.2018, *Haziye v. Azerbaijan* (n. 19842/15), on freedom of expression and the right to freedom and security, in the case of the detention of an Azerbaijani journalist and opposition activist, following an altercation in the street;
- 4.12.2018, Grand Chamber judgment, *Ilseher v. Germany* (n. 10211/12 and 27505/14), on the provisional preventive detention, which was deemed legitimate: such issue had already been at the attention of the Court in the cases against Germany, now the Grand Chamber finds that, in this specific case, there is no violation of the Convention;
- 4.12.2018, *Magyar Jeti Zrt v. Hungary* (n. 11257/16), in the matter of freedom of expression, with regard to the applicant company's conviction for having posted a hyperlink to an interview on YouTube, which was deemed to have a defamatory content;
- 27.11.2018, *Urat v. Turkey* (n. 53561/09 and 13952/11), on the reasons of the decisions concerning the disciplinary dismissal of some teachers (deemed to be involved with Hezbollah), despite the fact that they have never been convicted: in one case the Court held that there had been a violation of the presumption of innocence;
- 27.11.2018, *Popov and others v. Russia* (n. 44560/11), on the eviction of wives from a state owned dormitory, provided to their husbands, who work in the Treasury Security Service, after five years of stay;
- 27.11.2018, *Alekseyev and others v. Russia* (n. 14988/09), on the refusal to authorize LGBT rallies, on the lack of valid reasons for the refusal and on the general measures the State must adopt in case of refusal to authorize such public events;

- 20.11.2018, *Günana and others v. Turkey* (n. 70934/10 and others), on the illegitimacy of the seizure by the prison authorities of handwritten documents belonging to the applicants;
- 20.11.2018, *Toranzo Gomez v. Spain* (n. 26922/14), on the slander conviction of the applicant for publicly accusing police officers of "torture", despite the fact he had meant such word in a colloquial sense as excessive force;
- 20.11.2018, *Ognevenko v. Russia* (n. 44873/09), on the dismissal of a train driver, who went on strike, despite the general ban from striking imposed to certain categories of railway workers;
- 20.11.2018, *Selahattin Demirtaş v. Turkey (no. 2)* (n. 14305/17), on the case of an opposition politician, who had been arrested and kept in pre-trial detention for a long time, in order to limit the freedom of the political debate and without assessing the possibility of alternative measures;
- 15.11.2018, *V.D. v. Croatia (no. 2)* (n. 19421/15), according to which the supervision procedure pending before the Committee of Ministers does not prevent a new appeal in respect of new aspects of the same case that were not dealt with in the original decision;
- 15.11.2018, Grand Chamber judgment, *Navalnyy v. Russia* (n. 29580/12 and others), on the violation of the right to assembly, in particular in the case of a political activist, who was arrested and persecuted in several occasions, charged with an administrative offence of breaching the established procedure for conducting public events;
- 13.11.2018, *Zhang v. Ukraine* (n. 6970/15), on the illegitimacy of a Chinese student's murder conviction on the basis of contradictory and inconsistent prosecution witness testimony: the court accepted that evidence, at the same time refusing to admit testimony in favour of the applicant;
- 9.11.2018, Grand Chamber judgment, *Beuze v. Belgium* (n. 71409/10), on the illegitimacy of the Belgian law, which does not allow the communication with a lawyer during the criminal police interrogation and before the investigating judge in the initial part of the trial;
- 8.11.2018, *Narodni List d.d. v. Croatia* (n. 2782/12), on the case of a publisher sentenced to compensation for having published an article defaming a county court judge: the Court held the violation of the right to freedom of expression;
- 8.11.2018, *Hôpital local Saint-Pierre d'Oléron and others v. France* (n. 18096/12 and others), on the legitimacy of the legislature's intervention which clarified the content of a law within a pending procedure;
- 6.11.2018, *Milićević v. Montenegro* (n. 27821/16), on the lack of protection of the applicant, by the authorities, against a violent aggression carried out by a mental disabled individual, who had threatened him;
- 6.11.2018, *Burlyya and others v. Ukraine* (n. 3289/10), on the lack of protection, by the police, of a Roma village from a planned attack carried out by a crowd on grounds of racism;
- 6.11.2018, Grand Chamber judgment, *Ramos Nunes de Carvalho and Sá v. Portugal* (n. 55391/13), on the failure to secure the guarantees of a public hearing and on the insufficient review carried out by the Supreme Court of Justice of the disciplinary decisions of the High Council of the Judiciary;
- 6.11.2018, *Vicent Del Campo v. Spain* (n. 25527/13), on the decision which named the alleged harassment carried out by a teacher on a work colleague, within a proceeding she began against her employer, in which the applicant was not even a party: the Court held that there had been a violation of the right to the respect for private life;

and the decisions:

- 23.10.2018, inadmissibility decision, *Wanner v. Germany* (n. 26892/12), on the applicant's conviction for giving false testimony, who had already been sentenced for having refused to identify his accomplices;
- 16.10.2018, inadmissibility decision, *Dumpe v. Latvia* (n. 71506/13), on the obligation to pursue a civil law remedy in a case of alleged medical negligence.

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

- the decision of the *Supreme Court of Singapore* of 17.12.2018, which admitted the request of a homosexual parent to adopt his biological son, born in the United States via surrogacy, considering the balance between the interest of the minor and the public politics which condemned same sex families;
- the order of the *United States Court of Appeals for the Ninth Circuit* of 7.12.2018, which confirmed the decision of the *United States District Court Northern District of California*, issued with the order of 19.11.2018, with which such Court had temporarily suspended the execution of the joint interim final rule "Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims" of the Department of Justice and of the Department of National Security, and of the "Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States" of the President of the United States, both issued on 9 November 2018 and aiming at making the procedures for asylum impossible for immigrants arrived in the United States through the border with Mexico, except from the legal points of access;
- the decision of the *Inter-American Court of Human Rights* of 29.11.2018, case *Ordenes Guerra y otros vs. Chile*, on the violation of the right to access to justice, caused by the national norms on limitation periods concerning legal actions aiming at obtaining compensation for crimes against humanity; the decision of 28.11.2018, case *Mujeres víctimas de tortura sexual en Atenco vs. México*, on the liability of the State for the excessive use of force by State agents during a social demonstration and for the violence and tortures suffered by 11 women during their provisional arrest; another decision of 28.11.2018, case *Alvarado Espinoza y otros vs. México*, which recognizes the liability of the State for the forced disappearance of three persons in 2009 by State agents during the so-called "War on Drugs" started in 2006 in the Country; the decision of 27.11.2018, case *Trueba Arciniega y otros vs. México*, which confirmed the agreement (*acuerdo de solución amistosa*) subscribed by the parties, on the recognition of the international responsibility of Mexico for the violation of the right to life and to personal integrity with regard to the extra-judicial execution of Mirey Trueba Arciniega by members of the army; and the decision of 21.11.2018, case *Omeara Carrascal y otros vs. Colombia*, on the responsibility of the State in the attacks and subsequent death of three persons in virtue of the collaboration between State agents and illegal armed groups; the decision of 20.11.2018, case *Villamizar Durán y otros vs. Colombia*, which found the responsibility of the State for the extra-judicial executions of individuals committed in the '90s by State agents in the so-called practice of "false positives"; another decision of 20.11.2018, case *Isaza Uribe y otros vs. Colombia*, on the responsibility of the State for the forced disappearance of the trade unionist Isaza Uribe in 1987, carried out, according to the Court, by members of an organized paramilitary unit, with the approval of State agents; the decision of 26.9.2018, case *López Soto y otros vs. Venezuela*, which recognized the international responsibility of the State for the violation of the right to personal integrity, to the prohibition of torture or other inhuman and degrading treatments, to the prohibition of slavery, to the respect for private life, to equality before law and to an effective remedy, in face of serious deficiencies in the investigations and in the trial in a case of physical, verbal, psychological and sexual violence suffered by an eighteen years old girl, who had been segregated for 4 months by her aggressor; another decision of 26.9.2018, case *Escaleras Mejía y otros vs. Honduras*, which confirmed the agreement (*acuerdo de solución amistosa*) subscribed by the parties and concerning the recognition of the international responsibility of the State with regard to the murder of the environmentalist Carlos Escaleras Mejía; another decision of 26.9.2018, case *Terrones Silva y otros vs. Perú*, which found the State responsible for the forced disappearance of five persons between 1984 and 1992; the decision of 23.8.2018, case *Cuscul Pivaral y otros vs. Guatemala*, which deemed the right to health as autonomous right, deserving of protection in the system of the American Convention and found the violation of such right by the State for the lack of adequate medical treatments for 49

seropositive persons; and the advisory opinion of 30.5.2018, requested by the Republic of Ecuador, on “*La institución del asilo y su reconocimiento como derecho humano en el sistema interamericano de protección*”;

- the order of the *United States District Court Southern District of Mississippi* of 20.11.2018, which permanently blocked the State law in the matter of abortion (House Bill 1510), which prohibited the interruption of the pregnancy after the first 15 weeks, except from the case of medical emergency or serious anomaly of the foetus;
- the decision of the *Extraordinary Chambers in the Courts of Cambodia* of 16.11.2018, which sentenced Nuon Chea and Khieu Samphan, former high officers of the Red Khmer, for genocide, crimes against humanity and serious violations of the Geneva Convention of 1949 committed between 17 April 1975 and 6 January 1979 in the Democratic Kampuchea;
- the order of the *United States District Court for the District of Montana Great Falls Division* of 8.11.2018, which temporarily blocked the building of the oil pipeline Keystone XL, pending supplementary analyses, according to the National Environmental Policy Act and the Administrative Procedure Act, as integration to the environmental impact assessment of 2014.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 174/2018 of 6.12.2018, on the constitutional legitimacy of articles 2 and 7 of the law of 25 December 2016, on the search of data in a computer system subjected to seizure and undercover operations through internet, which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 153/2018 of 8.11.2018, in the matter of access, by the police, to electronic communication of personal data, also in the light of articles 6, 8 and 13 of the ECHR and 7, 8 and 47 of the EU Charter of Fundamental Rights; the decision n. 149/2018 of 8.11.2018, which makes a reference for a preliminary ruling to the Court of Justice on the compatibility of the national legislation establishing a tax on Stock Exchange operations, as introduced by articles 122 and 123 of the programmatic law of 25 December 2016, with the norms of the TFEU and of the Agreement on the European Economic Area in the matter of freedom to provide services and freedom of movement of capital; and the decision n. 141/2018 of 18.10.2018, which finds the constitutional legitimacy of article 39/82, paragraphs 1 and 4, of the law of 15 December 2018 on the entry in the territory, the stay, establishment and removal of foreigners, concerning the extremely urgent claims aiming at suspending administrative measures of removal or expulsion, also applying the norms of article 47 of the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Czech Republic:** the decision of the *Ústavní soud* (Constitutional Court) of 27.3.2018, which judges on the constitutional legitimacy of certain norms of Law n. 65/2017 on “Health Protection from the Harmful Effects of Addictive Substances”, also recalling the EU legislation and article 11 of the European Social Charter;
- **France:** the decision of the *Court of Cassation* n. 1088/2018 of 21.11.2018, on the case of the provisional arrest of an irregular Senegalese national, which examines the possible violation of article 5 of the ECHR and of the Union fundamental principle of the right of defence, also as regards the right to asylum; the decision n. 1646/2018 of 14.11.2018, on daily rests, which examines the compatibility of the French law of 2008 and the ILO Convention n. 106; the decision n. 639/2018 of 9.11.2018, which, in the matter of intellectual property and related economic rights, recalls the Court of Justice’s guideline; and the decision n. 2483/2018 of 7.11.2018, which examines the request of restitution of a confiscated good, in the light of the alleged violation of Protocol n. 1 to the ECHR and Directive 2014/42/EU;
- **Germany:** the order of the *Bundesgerichtshof* (Federal Court of Justice) of 10.10.2018, which, recalling the jurisprudence of the Court of Strasbourg, does not recognize the wife of the mother of the child as second parent, although the baby was born when the

German law on civil unions was in force, since the law “*Ehe für alle*” does not provide automatically the child with such parental relation; and the decision of the 13.09.2018, in the matter of translation of procedural documents in accordance with article 3, paragraph 2, of Directive 2010/64/EU and of the principle of fair trial, pursuant to article 6 of the ECHR (as well as to federal constitutional norms), according to which, if the judge does not deem the translation necessary, the person must lodge a claim ex article 267 of the TFEU;

- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 17.12.2018, in which the Court finds incompatible with the right to freedom, according to article 5 of the ECHR, the conditions provided for by the medical protocol for a person affected by mental disabilities and subjected to forced hospitalization; another decision of 17.12.2018, on discrimination on grounds of disability with regard to the criteria for the calculation of a disablement benefit; the decision of 13.12.2018, on the “UK Withdrawal from the EU (Legal Continuity) (Scotland) Bill” passed by the Scottish Parliament in April 2018: in the decision the Court states that the bill does not exceed the competences of the Scottish Parliament, not effecting issues of national exclusive competence; the decision of 28.11.2018, again in the matter of right to freedom of patients subjected to medical treatments and forced hospitalization, pursuant to the Mental Health Act 1983; another decision of 28.11.2018, which deems incompatible with the combined articles 14 and 5 of the ECHR, the conditions for the recognition of the provisional liberty in favour of several categories of criminals, deeming that, in this specific case, the situation of the claimant could not be distinguished from other claimants, to whom more favourable conditions had been granted; the decision of 27.11.2018, which does not allow the claim against the decision of the Court of Appeal denying euthanasia to a patient affected by neurodegenerative pathologies, which would impose invasive medical treatments in order to keep him alive: the Court states that there is not an unanimous consent on such issue at a European level and that every Member State can decide for itself, without any interference by the doctors; the decision of 14.11.2018, in the matter of right to immigration and conditions of settlement on the territory, in the light of the jurisprudence of the ECHR on article 8; the decision of the *England and Wales Court of Appeal* of 12.6.2018, on the compatibility with the prohibition of inhuman and degrading treatments of the expulsion of a Malawian national, subjected to life-saving medical treatments for chronic illnesses in Great Britain, which he could not have in his Country of origin; the decision of the *England and Wales High Court* of 8.11.2018, in which the Court finds that the spending cuts decided by the administration to the funds for the victims of sexual, labour and criminal exploitation, according to the Modern Slavery Act 2015, amount to the violation of the right to property, pursuant to article 1 of the Protocol to the ECHR, combined with the prohibition of discrimination, provided for by article 14 of the ECHR; and the decision of the *Upper Tribunal* of 8.8.2018, on the scope of the norms of the Equality Act on the conditions for the access to education for disabled students;
- **Hungary:** the decision of the *Magyar Köztársaság Alkotmánybírósága* (Constitutional Court) of 19.6.2018, which, following the claim lodged by a foreign national legally residing in the State and to whom the status of refugee had been granted because of the persecution he suffered, as a transsexual, in his Country of origin, found discriminatory the rules allowing only Hungarian citizens to change their name, also recalling the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Ireland:** the decision of the *Supreme Court* of 5.12.2018, on the validity of a building licence and the compatibility of the related permits with the norms of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, which deems inappropriate, in the specific circumstances, ordering the preliminary referral to the Court of Justice; the decision of the *High Court* of 7.12.2018, on the interpretation and correct transposition in the national legal system of the requirements provided for by article 3(2)(a) of Directive 2004/38/EC in order to obtain the permit of permanent residence for a non-EU relative of a European Union national; the decision of 6.12.2018, which analyses the legitimacy of the Communications (Retention of Data) Act 2011, in the part concerning the access and conservation of phone data by the authorities for the prevention, investigation or

persecution of serious crimes, in the light of the constitutional norms, of the EU Charter of Fundamental Rights and the ECHR and applying the consolidated jurisprudence of the Courts of Strasbourg and Luxembourg, in particular the decisions of the ECJ in the cases *Digital Rights Ireland* and *Tele2 Sverige*; the decisions of 28.11.2018 and of 19.11.2018, on the analysis of the possible violation of the claimant's right to a fair trial, in the event of handover to the Polish authorities, within the same proceeding which led the High Court to make a reference for a preliminary ruling to the Court of Justice on the possibility to carry out a European arrest warrant issued by a Member State, where there is the evidence of violations of the rule of law and in relation to which the Court answered with the decision in the case *Minister for Justice and Equality v. LM* (C-216/18 PPU); the decision of 6.11.2018, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of the concept of issuing judicial authority, according to article 6(1) of the Framework Decision 2002/584/JHA on the European arrest warrant and the procedure for the handover between Member States, with regard to the figure of the public prosecutor; the decision of 2.11.2018, which admits the surrender of the defendant to the British authorities, pursuant to a European arrest warrant, excluding the possible violation of the norms of article 3 of the ECHR; the decision of 24.10.2018, which, recalling article 8 of the ECHR, rejects the extradition of the defendant towards the United States, deeming such measure, in the specific case, a disproportioned interference with the right to the respect for private and family life; and the decision of 15.10.2018, which denies the status of refugee, requested by an Israeli national, for the risk of persecutions in her Country of origin, because of her conscientious objection to the compulsory military service, also recalling article 9(2)(e) of Directive 2011/95/EU ("Qualification Directive"), the norms of the EU Charter of Fundamental Rights and the jurisprudence of the Court of Justice;

- **Italy:** the decision of the *Corte costituzionale* n. 223/2018 of 5.12.2018, which judges on the norm on the confiscation of equivalent assets in case of decriminalisation of the crime in violation of article 7 of the ECHR; the decision n. 194/2018 of 8.11.2018, which ascertains the violation, by the new legislation in the matter of individual dismissals provided for by the "Jobs Act", of article 24 of the European Social Charter and deems article 30 of the EU Charter of Rights not applicable, because of the lack of relation between Union law and national law; the order n. 207/2018 of 16.11.2018, on the case "Cappato", which recalls the jurisprudence of the Court of Strasbourg in the matter of assisted suicide and provides for the suspension of the trial for one year in order to give the Parliament the possibility to rule on such matter; the decision of the *Corte di cassazione* n. 56163/2018 of 13.12.2018, on the national transposition of the decisions of the Court of Strasbourg, following the request of the brother of the person involved in the decision; the decision n. 50919/2018 of 8.11.2018, on the national transposition of the decisions of the European Court of Human Rights; and the decision n. 27692/2018 of 30.10.2018, which, in a case in which the Court of Human Rights had suspended the expulsion, finds the principle according to which the foreigner cannot be kept in a detention centre on grounds of public order; and the order of the *Tribunale di Milano* of 12.12.2018, which deems discriminatory the behaviour of the Town Hall of Lodi towards extra-EU nationals with regard to the different ways to ask for housing benefits, recalling article 14 of the ECHR and EU law;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 606/2018 of 14.11.2018, on the alleged violation of the principle of legality, which recalls article 7 of the ECHR and article 49 of the EU Charter of Fundamental Rights and the jurisprudence of the Court of Strasbourg; the decision n. 583/2018 of 8.11.2018, which confirms its own decision issued on 27.6.2018, where it found the constitutional illegitimacy of article 2(8) of Law n. 59/2015, on limitation periods – which cannot be interrupted and/or suspended – concerning requests of payment of credits deriving from employment and caused by the employer's insolvency, in the light of the norms of Directives 80/987/EEC and 2008/94/EC, as interpreted by the jurisprudence of the Court of Justice and also recalling the European Social Charter; the decision n. 521/2018 of 17.10.2018, on the legitimacy of the judicial presumption in criminal proceedings, in the light of the principle of presumption of innocence, which also recalls the jurisprudence of the Court of Strasbourg; the decision n. 488/2018 of 4.10.2018, which found the constitutional

illegitimacy of article 1817(1) of the Civil Code, where it provided for a term to initiate the paternity dispute (10 years from when the enquiring person comes of age or reaches emancipation), also recalling jurisprudence of the Court of Strasbourg; and the decision n. 470/2018 of 3.10.2018, on the compatibility of the norms in the matter of appeal against the decisions of the Bank of Portugal, in administrative proceedings of supervision on banks, with the right to an effective remedy, which recalls EU legislation;

- **Slovenia:** the order of the *Ustavno Sodišče* (Constitutional Court) of 17.5.2018, on the rejection of lists of candidates, because in violation of article 43 of the National Assembly Elections Act concerning the balance between men and women and the alleged violation of the right to vote and to stand for elections, which recalls the jurisprudence of the Court of Strasbourg;
- **Spain:** the decisions of the *Tribunal Constitucional* n. 117/2018 of 29.10.2018 and n. 111/2018 of 17.10.2018, on proceedings concerning the request to equalize the length of paternity and maternity leaves, which recall the EU legislation, the ILO Convention n. 103, the International Covenant on Economic, Social and Cultural Rights and the jurisprudence of the Court of Justice; and the decisions n. 92/2018 and 91/2018 of 17.9.2018, which recognize the violation of the claimants' right to freedom, following the application of a pejorative precautionary measure – in the specific case, pre-trial detention – to coincide with the notification of the first instance conviction and lacking any specific hearing, also in the light of the jurisprudence of the Court of Strasbourg; the decision of the *Tribunal Supremo* of 28.11.2018, on unfair terms in a loan subscribed with a bank, in the light of the norms of Directive 93/13/EEC and of the jurisprudence of the Court of Justice; and the decision of 19.11.2018, on the aggravating circumstance of gender-based violence in a case of attempted murder and ill-treatment, which applies the norms of the Convention of the Council of Europe on preventing and combating violence against women and domestic violence ("Istanbul Convention");
- **The Netherlands:** the decision of the *Hoge Raad* (Supreme Court) of 18.12.2018, which rejected the claim lodged by a Dutch national convicted of collaboration with the enemy in war crimes committed by the regime of Charles Taylor during the second Liberian civil war and of the violation of the embargo on arms, also recalling articles 2 and 3 of the ECHR and the jurisprudence of the Court of Strasbourg; and the decision of 19.10.2018, on the alleged wrong transposition by the State of Directives 2002/91/EC and 2010/31/EU on the energy performance of buildings.

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

Articles:

[Francesca Capotorti](#) "Role of the national judge of asylum between effectiveness of claims and procedural autonomy of the Member States: making the point on the suspension"

[Elena Falletti](#) "Assisted suicide and principle of separation of powers of the State. Some considerations on the order 207/2018 concerning the "case Cappato"

[Chiara Favilli](#) "The Union which protects and the Union which rejects. Progress, contradictions and paradoxes of the European asylum system"

[Giorgio Fontana](#) "Constitutional court and decree n. 23/2015: one step forward two steps backwards"

[Sergio Galleano](#) "Discrimination on grounds of age once again before the EU Court of Justice: the order n. 13678/2018 of the labour section of the Court of Cassation"

[Vincenzo De Michele](#) "The Charter and the Courts: some considerations on the role of the Constitutional Court after the decision in the case Bauer"

Notes and comments:

[Marco Bignami](#) "The case Cappato before the Constitutional Court: an order subjected to deferred constitutional illegitimacy"

[Raffaello Magi](#) "Comment on the decision n. 50919 of the Italian Court of Cassation"

[Guido Savio](#) "The administrative detention of the foreigner in the Centres for repatriation cannot be justified on grounds of prevention and public order"

[Elisabetta Tarquini](#) "The regulation of the Town Hall of Lodi on the access to benefits or bureaucracy of unfairness"

Reports:

[Roberto Cosio](#) "Judgment n. 194/2018 of the Constitutional Court and European law. First considerations"

[Mario Draghi](#) "Europe and the euro 20 years on"

[Elena Falletti](#) "Privacy and secrets: is it possible to extend to big data the protection provided for the *habeas corpus*?"

[Gaetano Silvestri](#) "The fundamental right of asylum and of international protection"

Documents:

[Report by the House of Lords](#) "Brexit: the Withdrawal Agreement and Political Declaration", of 5 December 2018

[Study by the European Foundation for the improvement of Living and Working Conditions \(Eurofond\)](#) "Social insecurities and resilience", of 9 October 2018