



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:

- Directive (EU) 2019/1152 of 20.06.2019 on transparent and predictable working conditions in the European Union.

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

- 29.07.2019, C-38/18, *Gambino and Hyka*, on the audition of the victim by the first instance court, on the right to a fair trial, on the right of defence and the right of the victim to protection during the criminal proceeding;
- 29.07.2019, C-40/17, *Fashion ID*, on the collection and transmission of a web site visitors' personal data;
- 29.07.2019, C-411/17, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, on environmental protection;
- 29.07.2019, C-469/17, *Funke Medien NRW*, and C-516/17, *Spiegel Online*, both on the balance between copyright, freedom of the press and freedom of information;
- 29.07.2019, C-476/17, *Pelham and others*, on the sampling of a phonogram and on copyright;
- 29.07.2019, C-481/18, *Commission/ Italy () and cellules d'origine humaine*, on the lack of transposition of the directive on certain technical prescriptions concerning exams on human tissues and cells and on health protection;
- 29.07.2019, C-556/17, *Torubarov*, on the recognition of international protection, on the right to an effective remedy and on the extent of the power of the first-instance court;
- 29.07.2019, C-680/17, *Vethanayagam and others*, on the right to appeal against the refusal to issue a Schengen visa.

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

- 27.08.2019, *Izmestyev v. Russia* (n. 74141/10), on the many violations of the Convention after the sentence to life imprisonment of the applicant: his complaints concerned detention conditions and in particular the security cameras which operated in his cell 24 hours a day;
- 27.08.2019, *Magnitskiy and others v. Russia* (n. 32631/09 and 53799/12), on the several violations of the Convention in the case of a Russian auditor charged with organised tax evasion, who died in pre-trial detention;

- 25.07.2019, *Svanidze v. Georgia* (n. 37809/08), on the violation of the Convention following the conviction pronounced by a substitute judge, who decided on the basis of the transcription of the declarations without having heard the witnesses;
- 25.07.2019, *Rook v. Germany* (n. 1586/15), on the time for the preparation of the defence, which the Court found sufficient;
- 18.07.2019, *Vazagashvili and Shanava v. Georgia* (n. 50375/07), on the violation of the Convention for the manifest disproportion between seriousness of the act committed by State agents and the punishment imposed;
- 18.07.2019, *T.I. and others v. Greece* (n. 40311/10), on the violation of the Convention for the failure by the authorities, among other things, to conduct an effective investigation into the issuing of visas by public officials, which allegedly enabled human trafficking;
- 18.07.2019, *Rustavi 2 Broadcasting Company Ltd and others v. Georgia* (n. 16812/17), on the alleged lack of independence and impartiality of the judges deciding the case at first instance, on appeal and before the Supreme Court in a dispute over ownership of shares in television broadcasting company;
- 16.07.2019, *Júlíus Þór Sigurþórsson v. Iceland* (n. 38797/17), according to which the acquittal was overturned by the Supreme Court without rehearing oral testimonies, which were found unreliable;
- 16.07.2019, *Zülküf Murat Kahraman v. Turkey* (n. 65808/10), on the violation of the right to freedom of expression for the serious conviction of the applicant for having participated in a demonstration (which the applicant also denied);
- 16.07.2019, *Zhdanov and others v. Russia* (n. 12200/08), on the violation of the Convention for the refusal to register an LGBT organisation;
- 11.07.2019, *Abdalov and others v. Azerbaijan* (n. 28508/11), on the violation of the Convention for such long delays in registering as candidates for parliamentary elections that they had had no time to campaign and compete effectively;
- 9.07.2019, *Volodina v. Russia* (n. 41261/17), in which the Court found the violation of the Convention for the lack of adequate measures to protect the applicant from repeated domestic violence and for the fact that the current legal regime in Russia is inadequate for dealing with such violence;
- 9.07.2019, *Tim Henrik Bruun Hansen v. Denmark* (n. 51072/15),), on the violation of the Convention for the lack of an external medical opinion on the decision to maintain the applicant's sentence of safe custody;
- 9.07.2019, *Romeo Castaño v. Belgium* (n. 8351/17), on the violation of articles 1 and 2 of the Convention for the refusal to execute a European arrest warrant, preventing an adequate investigation on a murder which took place in Spain;
- 8.07.2019, *Svitlana Ilchenko v. Ukraine* (n. 47166/09), which found the violation of the Convention for the lack of compensation following the demolition of a garage, situated on public ground, used to make way for a new commercial housing development;
- 8.07.2019, Grand Chamber judgment, *Mihalache v. Romania* (n. 54012/10), which found the violation of the Convention with regard to the right not to be tried or punished twice in view of the reopening of the a criminal proceeding, which had been previously modified in an administrative fine;
- 4.07.2019, *Kurt v. Austria* (n. 62903/15), according to which the preventive measures provided for by the authorities were sufficient, because of the impossibility to predict the murder of the son at school by his father, who was accused of domestic violence and was banned from the house where the family lived;
- 4.07.2019, *Korban v. Ukraine* (n. 26744/16), on the non-violation of the Convention with regard to the arrest of the applicant, who complained it was grounded on political and discriminatory reasons;
- 2.07.2019, *Gorlov and others v. Russia* (n. 27057/06), on the lack of guarantees, in national law, against abuses deriving from constant surveillance of prisoners' cells by closed-circuit television cameras;
- 2.07.2019, *R.S. v. Hungary* (n. 65290/14), in which the Court found the violation of the Convention for having the authorities forced a urine test via a catheter in order to proof the violation of road rules;

and the decisions:

- 25.06.2019, decision of inadmissibility, *Martínez Agirre and others v. Spain* (n. 75529/16), which rejected a request of compensation provided for by the legislation on victims of terrorism, because the deceased persons had been members of ETA;
- 25.06.2019, decision of inadmissibility, *Glaisen v. Switzerland* (n. 40477/13), which excludes the application of article 8 of the Convention in a case concerning the lack of adequate structures inside a cinema in order to guarantee the access of a disabled person.

On 8.08.2019, the Armenian Constitutional Court asked the Court an advisory opinion on an article of its criminal code. Armenia is the second Country to ask the advisory opinion provided for by Protocol 16 to the Convention. The first question, concerning surrogacy, was requested by France in October 2018 and was followed by the advisory opinion in April 2019.

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

- the order of the *United States District Court for the Western District of Missouri Central Division* of 28.8.2019, which blocked the application of some sections of the Missouri House Bill 126, which limited the possibilities of abortion;
- the decision of the *United States District Court for the District of Columbia* of 2.8.2019, which found the illegitimacy of the Interim Final Rule "Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims" issued on 9 November 2018 by the Attorney General and the Secretary of Homeland Security, which banned, in combination with the Presidential Proclamation "Addressing Mass Migration Through the Southern Border of the United States", the access to asylum procedures for those foreigners, who entered the territory of the United States through the Mexican border (except from the authorized ports of entry) starting from such date;
- the order of the *United States District Court Eastern District of Arkansas Western Division* of 23.7.2019, which temporarily suspended the application of three legislative measures issued by the State of Arkansas in the matter of abortion;
- the order of the *United States Court of Appeals for the Ninth Circuit* of 3.7.2019, which confirmed the order of the district court blocking the decision of the President and of certain members of his cabinet to "reprogram" funds appropriated to the Department of Defence and to redirect those funds to the construction of a barrier along the southern border of the United States;
- the order of the *United States District Court Southern District of Ohio Western Division* of 3.7.2019, which suspended the execution of the *Senate Bill 23*, which prohibits abortion (with few exceptions) as soon as the heartbeat of the foetus can be detected.

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

- **Belgium:** the decisions of the *Cour constitutionnelle* n. 119/2019 and n. 118/2019 of 29.8.2019, which judges on the constitutional legitimacy, and on the compatibility with the norms of the ECHR, of some articles of the decree of the Flemish Community of 12 July 2013 on integral help to youth ("*aide intégrale à la jeunesse*"), also applying the jurisprudence of the Court of Strasbourg; the decision n. 116/2019 of 18.7.2019, in the matter of authorization to the production and distribution of medicines for human use, which recalls EU legislation relevant in such matter and the jurisprudence of the Court of Justice; the decision n. 112/2019 of 18.7.2019, which, judging on a claim for the annulment of the law of 24 February 2017, amending the law of 15 December 2018 on the access to the territory, residence, establishment and removal of foreigners to increase the protection of the public order and national security, makes a reference for a preliminary ruling to the Court of Justice on the interpretation of articles 20 and 21 of the TFEU and Directive 2004/38/EC with regard to the norms of Directive 2008/115/EC

("Directive on common standards and procedures in Member States for returning illegally staying third-country nationals"); and the decision n. 111/2019 of 18.7.2019, which rejects the claim lodged against the law of 15 March 2017, amending article 39/79 of the law of 15 December 2018 on the access to the territory, the establishment and removal of foreigners with regard to the abolition of the suspensive claim in case of decisions taken for essential reasons of national security, recalling the norms of the EU Charter of Fundamental Rights and of the ECHR and of the jurisprudence of the Courts of Strasbourg and Luxembourg;

- **France:** the decision of the *Cour de cassation* n. 1551/2019 of 7.8.2019, which examines the legitimacy of a European arrest warrant, in the light of articles 2 and 10 of the ECHR; the decision n. 1671/2019 of 7.8.2019, which examines the violation of the right to defence, in the light of article 6 of the ECHR; and the decision n. 640/2019 of 4.7.2019, in the matter of copyright, which recalls EU legislation in such matter;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 30.7.2019, in the matter of European banking supervision, which recalls EU legislation; the order of 17.7.2019, in the matter of loss of citizenship following the disclaim of paternity; and the decision of 16.7.2019, on the extradition of an American citizen to the U.S., which recalls the ECHR;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 15.5.2019, in the matter of access to social benefits and discrimination against families with only one parent; the decision of the *England and Wales Court of Appeal* of 16.7.2019, in which the Court finds that the detention of some irregular migrants, on grounds of their mental disability before their expulsion, does not violate articles 3 and 8 of the ECHR, but it is in contrast with national norms on equality and non-discrimination; the decision of 27.6.2019, on the limits and the applicability of exceptions in the matter of prohibition of discrimination, provided for by religious organizations, which deal with housing assistance; the decision of 21.6.2019, in the matter of occupation and discrimination on grounds of disability; and the decision of 14.5.2019, in which the Court confirms the legitimacy of the dismissal of a nurse, who violated the code of neutrality of the hospital making religious proselytism among the patients, pursuant to the jurisprudence of the ECHR in the matter of religious freedom; the decision of the *England and Wales High Court* of 7.8.2019, in which the Court rejects the request of appeal, issued by the father of an English national, against the revocation of the English citizenship after the son became a member of the ISIL (Islamic State of Iraq and of the Levant), pleading the violation of articles 6 and 8 of the ECHR; the decision of 5.8.2019, concerning the guarantees of equal trial; the decision of 8.7.2019, on minors' rights, in the light of standards provided for by article 8 of the ECHR; the decision of 18.6.2019, on the inhibition of pacific demonstrations, outside schools, concerning the introduction in the curriculum of lectures on affectivity in LGBTQ relations; the decision of 14.6.2019, on investigation standards requested, in the light of article 3 of the ECHR, in cases of ill-treatment in expulsion centres for migrants; and the decision of 15.5.2019, on the inapplicability of obligations deriving from article 2 of the ECHR in an alleged case of medical malpractice; and the decision of the *England and Wales Court of Protection* of 22.5.2019, in the matter of suspension of life-saving treatments with regard to a patient in a vegetative state;
- **Ireland:** the decision of the *Court of Appeal* of 26.6.2019, on the interpretation of article 17 ("discretionary Clauses") of EU Regulation 604/2013 ("Dublin III Regulation") also in the light of the jurisprudence of the Court of Justice and of articles 8 of the ECHR and 7 of the EU Charter of Fundamental Rights; the decision of the *High Court* of 6.8.2019, which rejects the claim against an expulsion order and a measure of prohibition of entry for five years issued against a Polish national, applying the jurisprudence of the Court of Justice; the decision of 23.7.2019, which, also recalling the jurisprudence of the Court of Justice, has temporarily suspended the application, pending the merits proceeding, of Ministerial Regulations "Planning and Development (Exempted Development) Regulations 2019" – on the activity of extraction of peat – because it could be in contrast with the Environmental Impact Assessment Directive and with "Habitats Directive", as well as with State obligations deriving from European law; the decision of 17.7.2019, in the matter of family reunification, which found the

constitutional illegitimacy, and incompatibility with State obligations deriving from articles 8 and 14 of the ECHR, of Section 56(9)(a) of the International Protection Act 2015, also applying the jurisprudence of the Court of Strasbourg; the decision of 28.6.2019, on the compatibility of Section 172B of the Taxes Consolidation Act 1997, concerning the tax regime of international flight crews, with EU law, which rejects the request for a preliminary referral to the Court of Justice; the decision of 25.6.2019, which makes a reference for a preliminary ruling to the Court of Justice in the matter of European arrest warrant; and the decision of 21.5.2019, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of the concept of "judicial capacity", provided for by article 2(2) Directive 2003/4/EC on the access of the public to environmental information;

- **Italy:** the decision of the *Corte costituzionale* n. 194/2019 of 27.7.2019, which rejects the claim lodged by some Italian regions against norms of the Security Decree, excluding doubts on the alleged violation of the ECHR and of the EU Charter of Fundamental Rights; the decision of the *Corte di cassazione* n. 32862/2019 of 22.7.2019, according to which the punishment for a very offensive statement against Roma people, pronounced by a politician, does not violate article 10 of the ECHR; the decree of the *Tribunale amministrativo regionale (TAR) del Lazio* (Administrative Regional Court of Lazio) of 14.8.2019, which orders the suspension of the ban on the NGO migrant rescue ship Open Arms entering Italian waters, assuming the violation of international law because of the serious situation of emergency; the preliminary referral ordered by the *Tribunale di Milano* of 8.8.2019, on the norms concerning illegitimate collective dismissals, which finds the violation of Union law with regard to the suitability of the provided sanctions; and the order of the *Tribunale di Napoli* of 10.7.2019, which deems discriminatory the lack of medical assistance by the local medical authority (ASL) in favour of a person asking for humanitarian protection;
- **Lithuania:** the decision of the *Konstitucinis Teismas (Constitutional Court)* of 1.3.2019, on the requirements, provided for by article 306(3) of the Civil Procedure Code, in order to appeal in civil proceedings and the right to legal aid, which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 394/2019 of 3.7.2019, which rejected the constitutional claim lodged against article 1817(1) of the Civil Code, where it provides a limitation period of 10 years, from the majority or the emancipation of the claimant, in order to initiate the paternity dispute, also recalling the norms of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 387/2019 of 26.6.2019, which, also recalling EU legislation relevant in such matter, found the constitutional legitimacy of article 178 of the Criminal Procedure Code, where it gives the Public Prosecutor competence in the matter of seizure of goods representing the gain, the price or the reward of the crime; the decision n. 386/2019 of 26.6.2019, in the matter of right to an impartial judge with regard to the case of rejection for uniformity of the jurisprudence (*recurso para uniformização de jurisprudência*), provided for by article 692 of the Civil Procedure Code, which applies the jurisprudence of the Court of Strasbourg; and the two decisions n. 364/2019 and n. 363/2019 of 19.6.2019, which confirm the decision issued by the same court on 4 June 2019 with regard to the constitutional illegitimacy of Decree n. 19/2011, where it provided for a tax for slaughterhouses to finance the system of collection in the undertakings of the dead animals (SIRCA), introduced in order to give execution to the norms provided for by the Regulations (EC) n. 1069/2009 and (EU) n. 142/2011;
- **Slovenia:** the decision of the *Ustavno Sodišče* (Constitutional Court) of 4.7.2019, which held the constitutional illegitimacy of some articles of the *Police Tasks and Powers Act*, with regard to the use, by the police, of technological means for optical recognition of licence plates, for the violation of the right to the protection of personal data, also recalling Directive 2016/680 and the jurisprudence of the Court of Strasbourg;
- **Spain:** the decision of the *Tribunal Constitucional* n. 99/2019 of 18.7.2019, which, also recalling the jurisprudence of the Court of Strasbourg, found the constitutional illegitimacy of article 1.1 of law 3/2017, where it allows only adults to modify their sex in the civil registry, if applied to minors "sufficiently mature" and in a "stable situation

- of transsexuality”; the decision n. 97/2019 of 16.7.2019, on the possible violation of the right to a fair trial following the admission to the proceeding of a proof illicitly obtained, which also applies the jurisprudence of the Court of Strasbourg; the decisions n. 95/2019 and 94/2019 of 15.7.2019 and n. 83/2019 of 17.6.2019, on the right to access to information on the investigation in the face of the application of a measure of detention on remand, which recall the jurisprudence of the Court of Strasbourg and Directive 2012/13/EU on the right to information in criminal proceedings; the decision n. 91/2019 of 3.7.2019, on the constitutional illegitimacy of certain norms of the general law on social security (“*Ley general de la Seguridad Social*”) concerning the calculation of old-age pension for part-time workers, which recalls EU Directives on non-discrimination and the jurisprudence of the Court of Justice; the decision n. 85/2019 of 19.6.2019, in the matter of detention on remand followed by the acquittal, which, also applying the norms of the ECHR and the jurisprudence of the Court of Strasbourg, holds the constitutional illegitimacy of article 294.1 de la *Ley Orgánica 6/1985 del Poder Judicial*, where it limited the compensation to the only cases of “non-existence of the fact” and “to the said cause”; and the decision n. 80/2019 of 17.6.2019, which rejected the claim lodged against the decisions of the Audiencia Nacional and of the Tribunal Supremo to archive the proceeding concerning the violent death of a Spanish photo reporter, who was killed in 2003 in Baghdad by a bullet shot by an American tank, recalling the norms of the Fourth Geneva Convention and of the ECHR and the jurisprudence of the Court of Strasbourg; and the order of the *Tribunal Supremo* of 1.7.2019, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of article 9 of Protocol 7 to the TFEU on the privileges and immunities of the European Union with regard to the election, as member of the European parliament, of Oriol Junqueras Vies, president of the party *Esquerra Republicana de Catalunya (ERC)* and in detention on remand from 2 November 2017;
- **The Netherlands:** the decision of the *Hoge Raad* (Supreme Court) of 19.7.2019, which found the limited responsibility of the State, according to International law and to the ECHR, with regard to the facts linked to the fall of the town of Srebrenica (11 July 1995) and the evacuation of the compound of the Dutch battalion (“*Dutchbat*”) during the following days, limiting the State obligation of compensation to such responsibility.

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

Articles:

[Various Authors](#) “Final publication of the research project: Improving cooperation between [Sergio Galleano](#) member states in confiscation procedures”

“The decision 12174/2019: “The Court of Cassation defines, helped by the European Social Charter, the material fact in the dismissal”

[Jeremias Prassl](#) “Article 47 CFR and the Effective Enforcement of EU Labour Law: Teeth for Paper Tigers?”

Notes and comments:

[Stefano Calabria](#) “Rejections at sea after the so-called decree *security-bis* (and in particular in the light of paragraph 1-ter of art. 11 of law n. 286/1998)”

[Nicola Canzian](#) “Hypothesis of retroactive application of the repeal of humanitarian protection to pending proceedings: critical approach to the question referred to the United Sections”

[Roberto Conti](#) "Comment to the judgment of the ECHR of 25 June 2019, Grand Chamber, *Nicolae Virgiliu Tanase v. Romania*"

[Gaetano De Amicis](#) "Comment to the judgment of the ECHR of 09.07.2019, *Romeo Castaño v. Belgium*"

Documents:

[Special Report of the Intergovernmental Panel on Climate Change \(IPCC\)](#) "Climate Change and Land", of 7 August 2019

[Bulletin n. 1 of the Italian Court of Cassation](#) "Jurisprudence of the ECHR, first semester 2019", of 30 June 2019