



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 Annual Report 2019 of the European Data Protection Supervisor of 18.3.2020.

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

of the **Parliamentary Assembly**:

- the Resolution 2328 of 9.3.2020, "Prevention of violence and discrimination against religious minorities amongst refugees in Europe";

of the **Committee of Ministers**:

- the Resolution CM/Res(2020)3 of 11.3.2020, "Resolution on the implementation of pharmaceutical care for the benefit of patients and health services";

We would like to highlight also the following declarations and decisions:

- the Declaration by the Committee of Ministers of 22.4.2020 on the COVID-19 pandemic;
- the Decision adopted by the European Committee of Social rights on 11.2.2020 on the complaint by Confederazione Generale Italiana del Lavoro (CGIL) v. Italy.

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

- 30.04.2020, C-584/18, *Blue Air-Airline Management Solutions*, on control at frontiers, asylum and immigration and on the recognition, by Bulgaria, Croatia, Cyprus and Romania, of certain documents as equivalent to their National visa;
- 30.04.2020, C-560/18 P, *Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych/ Commission*, on the access to the documents of the institutions;
- 30.04.2020, C-211/19, *Készenléti Rendőrség*, on the protection of security and health of workers;
- 30.04.2020, joined cases C-168/19 and C-169/19, *Istituto nazionale della previdenza sociale*, on freedom of movement of individuals and on non-discrimination;

- 23.04.2020, C-507/18, *Associazione Avvocatura per i diritti LGBTI*, on the conditions for the access to employment and to occupation and on the prohibition of discrimination based on sexual orientation;
- 02.04.2020, C-830/18, *Landkreis Südliche Weinstraße*, on children of frontier workers and the legislation which provides for reimbursement of costs of school transport and on freedom of movement for workers;
- 02.04.2020, C-802/18, *Caisse pour l'avenir des enfants (Enfant du conjoint d'un travailleur frontalier)*, on social security for migrant workers;
- 02.04.2020, C-753/18, *Stim and SAMI*, on copyright and on the concept of "communication to the public";
- 02.04.2020, joined cases C-715/17, C-718/17, C-719/17, *Commission/ Poland (Mécanisme temporaire de relocalisation de demandeurs de protection internationale)*, on temporary measures in the International protection area;
- 26.03.2020, C-66/19, *Kreissparkasse Saarlouis*, on credit agreements for consumers and consumer protection;
- 26.03.2020, C-2/19, *A. P. (Mesures de probation)*, on mutual recognition of judgments and probation decisions;
- 19.03.2020, C-234/18, *AGRO IN 2001*, on the confiscation of crime-related goods without a previous criminal conviction;
- 19.03.2020, joined cases C-103/18 and C-429/18, *Sánchez Ruiz*, on successive fixed-term work contracts;
- 04.03.2020, C-34/19, *Telecom Italia Spa*, on the force of *res judicata* attaching to a higher court judgment considered contrary to EU law;

and the order:

- 08.04.2020, C-791/19 R, *European Commission v. Poland*, on independence and impartiality of judges.

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

- 30.04.2020, *Keaney v. Ireland* (n. 72060/17), according to which the Irish legal system does not provide for an effective remedy against the excessive length of the proceeding;
- 30.04.2020, *Castellani v. France* (n. 43207/16), on the disproportioned use of force by the police during the arrest of a suspected person and therefore in violation of article 3 of the Convention;
- 14.04.2020, *Dragan Petrović v. Serbia* (n. 75229/10), on the DNA swab during an investigation for homicide: the law was deemed not clear enough and therefore the right to private and family life of the applicant was violated;
- 02.04.2020, *Kukhalashvili and others v. Georgia* (n. 8938/07 and 41891/07), on a police operation in a prison and the disproportionate use of violence;
- 31.03.2020, *Andreea-Marusia Dumitru v. Romania* (n. 9637/16), on the violation of the right to life following the use of a weapon by a policeman, who caused the applicant serious wounds, and also for the excessive length of the investigation;
- 31.03.2020, *Jeanty v. Belgium* (n. 82284/17), according to which the Belgian authorities prevented the suicide attempts of a prisoner, who suffered from mental disorder and therefore there was not violation of the right to life of the applicant; the authorities, however, subjected the applicant to a degrading treatment;
- 31.03.2020, *Dos Santos Calado and others v. Portugal* (n. 55997/14, 68143/16, 78841/16 and 3706/17), on the excessive formalism of the Constitutional Court, which denied the applicants their right to access a court;
- 26.03.2020, *Tête v. France* (n. 59636/16), according to which the conviction for the offence of slander of the author of an open letter addressed to the authority for financial brands was disproportioned;
- 24.03.2020, *Asady and others v. Slovakia* (n. 24917/15), on the non-violation of article 4 of the Protocol n. 4, which prohibits collective expulsions of foreigners: in the specific

case the Slovakian police did not subject the applicants to a collective expulsion when they returned them to Ukraine;

- 24.03.2020, *Cegolea v. Romania* (n. 25560/13), on the right to stand in Parliamentary elections of 2012: the candidate of a foundation, which represented some Italian minorities, suffered discrimination;
- 19.03.2020, *Fabris and Parziale v. Italy* (n. 41603/13), according to which the fact that a drug addict has died in prison after having voluntarily inhaled the gas from a cooker does not involve the responsibility of the State for the violation of the right to life of the applicant;
- 10.03.2020, *Altıntaş v. Turkey* (n. 50495/08), according to which the apology of violence is not covered by freedom of expression, but in any case criminal procedure must respond to the need for fairness;
- 10.03.2020, *Hudorovič and others v. Slovenia* (n. 24816/14 and 25140/14), according to which Slovenia has adopted adequate measures to provide two Roma settlements with access to water;
- 10.03.2020, *Dyagilev v. Russia* (n. 49972/16), according to which the procedure to gain the status of conscientious objector in Russia is in accordance with the European Convention;
- 03.03.2020, *Baş v. Turkey* (n. 66448/17), according to which the precautionary detention ordered by judge M. Baş, following the attempted coup d'état of 15.07.2016, violated article 5 of the Convention;
- 03.03.2020, *Convertito and others v. Romania* (n. 30547/14), according to which the annulment, on grounds of administrative irregularities, of diplomas given by the Romanian State to some Italian nationals was unjustified and in violation of the applicants' right to private and family life;
- 03.03.2020, *Filkin v. Portugal* (n. 69729/12), on the violation of the right to property for having frozen the bank account of the applicant;

and the decision:

- 09.04.2020, *Shmelev and others v. Russia* (n. 41743/17 and 16 others), on the new mechanism of compensation to prisoners, who were subjected to inadequate detention conditions in Russia, deemed effective; however the applications lodged in order to improve the situation have not yet been assessed.

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

- the decision of the *High Court of the Republic of Singapore* of 30.3.2020, which rejected the claim lodged against Section 377A of the Criminal Code aiming at punishing, with detention up to two years "any act of gross indecency" between two men;
- the decision of the *Constitutional Court of Uganda* of 26.3.2020, which stated the constitutional illegitimacy of section 8 of the "Public Order Management Act 2013" (POMA), where it gave the police, in person of the General Inspector, new powers aiming at interrupting, preventing and scattering public gatherings;
- the decision of the *Interamerican Court of Human Rights* of 12.3.2020, case *Azul Rojas Marín y otra vs. Perú*, which convicted the State for the illegal, arbitrary and discriminatory detention and the violence, considered by the Court as torture, against a transsexual woman, who, at the time of facts, identified herself as a homosexual man, on grounds of his sexual orientation and gender identity; the decision of 9.3.2020, case *Noguera y otra vs. Paraguay*, on the responsibility of the State, according to the Inter-American Convention for the death of an adolescent, who served in the army as volunteer; the decision of 6.2.2020, case *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs. Argentina*, which recognized the violation of the right to property of the indigenous communities since the State did not guarantee the application of the decrees, which gave the property of certain territories, and the violation of the rights to a healthy environment, to adequate food, to water and to participate to the cultural life, because of the continuous activities on such territory

- detrimental to the life style of the native communities; the decision of 3.2.2020, case *Carranza Alarcón vs. Ecuador*, on the violation of the principle of presumption of innocence and of the right to an effective remedy because of the arbitrariness of the pre-trial detention, suffered by Ramón Rosendo Carranza Alarcón during the criminal proceeding against him; and the decision of 27.1.2020, case *Montesinos Mejía vs. Ecuador*, which recognized the responsibility of the State for the violation of the right to freedom, to personal integrity and to an effective remedy with regard to the detention of Mario Montesinos Mejía and to the criminal proceeding against him;
- the decision of the *High Court of the Hong Kong Special Administrative Region* of 4.3.2020, which found the constitutional illegitimacy of the Hong Kong Housing Authority's policy aiming at excluding same sex spouses from submitting an application for housing as "ordinary families";
 - the decision of the *United States Court of Appeals for the Ninth Circuit* of 28.2.2020, on the validity of the joint 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 Department of Justice and the Department for Homeland Security, and aiming at – together with the "Presidential Proclamation Addressing Mass Migration Through the Southern Border of the United States" – making the procedures for asylum not accessible to migrants entered in the United States through the Mexican border outside the legal points of access.

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

- **France:** the decision of the *Cour de cassation* n. 487/2020 of 1.4.2020, on criminal seizure, which examines the conformity of the measure with article 6 of the ECHR; the decision n. 406/2020 of 19.3.2020, which, with regard to legal aid, recalls article 6 of the ECHR, examining the consequences of conventional law on the right to an effective remedy; and the decision n. 374/2020 of 4.3.2020, which qualifies as employment contract the relationship between a driver and the company *Uber*;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 5.5.2020, according to which the Federal Government and the Parliament (*Bundestag*) should have challenged the decisions adopted by the European Central Bank from 2015 to 2017 of buying public sector assets without respecting the principle of proportionality: the decision of the Court of Justice, which endorsed such decisions, is not comprehensible and must be deemed arbitrary; the decision of 14.4.2020, which establishes the illegitimacy of the prohibition of assembly because of the COVID-19 epidemic, since it is not guaranteed the necessary balance between the right to assembly and the protection of health; the decision of 23.3.2020, on the request to block urgently the agreement for the resolution of bilateral contracts for the protection of investments between Member States of the European Union; and the decision of 11.3.2020, on the debated constitutional legitimacy of criminal norms in the code of food and animal feed, which widely recalls the norms of the European legislation in such matter;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 29.4.2020, on the interpretation of the prohibition of inhuman and degrading treatment in a case concerning the repatriation of an asylum seeker suffering from diseases which cannot be adequately treated in his Country of origin; the decision of 1.4.2020, in which the Court analyses the issue if, in the light of article 8 of the ECHR, the compensation paid to a woman after a wrong diagnosis, which made her infertile, must also include the expenses to become mother through surrogacy; and the decision of 12.2.2020, on the right to freedom, according to article 5 of the ECHR and on curfew; the decision of the *England and Wales Court of Appeal* of 21.4.2020, in which the Court admits the appeal of the Secretary of State, deeming justified the discrimination against foreign nationals deriving from the necessary investigation into the legitimacy of the stay, provided for by the norms in such matter, with regard to who rents private houses; and the decision of 12.3.2020, on the application of article 8 of the ECHR in the event of pre-adoption

custody; the decision of the *England and Wales Court of Protection* of 25.3.2020, in which the Court exercises, on behalf of the United Kingdom, on grounds of the covid-19 emergency, the power to derogate from the application of the norms of the ECHR (in this specific case article 5, right to freedom), recognized to the States by the Convention, pursuant to article 15 in the event of emergency, simply giving credit of such thing in the decision concerning the case: article 15 of the ECHR, however, provides that such power must be notified to the Council of Europe by the State through an official communication;

- **Italy:** the decision of the *Corte di cassazione* n. 13539/2020 of 30.4.2020, on the confiscation in the event of extinction of the offence on grounds of the limitation period, which recalls the decision of the Court of Strasbourg in the case *G.I.E.M.*; the order n. 8325/2020 of 29.4.2020, which raises the question of constitutional legitimacy of the norms which do not allow the recognition of the effects of the foreign birth certificate concerning a minor born thanks to surrogacy, recalling article 8 of the ECHR, the opinion of the Grand Chamber of the Court of Strasbourg issued on 10 April 2019 to the French Court of Cassation according to Protocol n. 16 to the ECHR, and article 24 of the EU Charter of Fundamental Rights; the order n. 8236/2020 of 28.4.2020, according to which the ordinary jurisdiction is competent with regard to a proceeding concerning the compensation requested on grounds of the violation of the individual's reliance on good faith and correctness of the public authorities, which issued the administrative measure, and recalls the jurisprudence of the Court of Justice; and the order n. 7893/2020 of 17.4.2020, in the matter of equal treatment of religions, with regard to atheism and agnosticism, which recalls the norms of the EU Charter of Fundamental Rights and of the ECHR;
- **Poland:** the decision of the *Trybunał Konstytucyjny* (Constitutional Court) of 20.4.2020, which found the constitutional illegitimacy and the non-conformity with articles 2 and 4(3) of the TEU and article 6 of the ECHR, of the Resolution of the Supreme Court of 23 January 2020 concerning the lack of legitimacy and independence of judges appointed on the proposal of the National Council of the Judiciary, according to the norms of the "Act amending the Act on the National Council of the Judiciary and certain other acts" of 8 December 2017.

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

Articles:

[Ekaterina Baksanova](#) "Rule of law in Bulgaria: is it a 'Fata Morgana'?"

[Fabrizio Filice and Giulia Marzia Locati](#) "Democratic rule of law to the test of the contagion"

[Simone Gaboriau](#) "Institutions and safeguard bodies in France"

[Vincenzo Roppo, Roberto Natoli](#) "From health emergency to economic emergency"

Notes and comments:

[Francesco Buffa](#) "Illegitimate dismissals: decision of the European Committee of Social Rights"

[Antonello Cosentino](#) "Comment to the decision of the Court of Justice of 4.3.2020, *Telecom*, on the relation between supranational legal system and National *res iudicata*"

[Andrea Giordano](#) "Emergency and 'the' emergencies according to a recent *climate case*"

[Michelangelo Strazzeri](#) "The supranational principle of fair trial towards an equal administrative relationship: comment on the order of the Court of Cassation, joined sections, of 28 April 2020, n. 8236"

Reports:

[Wojciech Wiewiórowski](#) (European Data Protection Supervisor) "EU Digital Solidarity: a call for a pan-European approach against the pandemic"

Documents:

[Guidelines of the United Nations High Commissioner for Human Rights](#) "Emergency Measures and COVID-19: Guidance", of 27 April 2020

[Declaration of the European Movement in Italy](#) "Program for Europe", of 25 April 2020

[Report by the Autorità garante per l'infanzia e l'adolescenza](#) (Italian National Ombudsman for childhood and adolescence) "Right of minors to be heard in court", of 22 April 2020

[Report by the International Renewable Energy Agency - IRENA](#) "Global Renewables Outlook: Energy transformation 2050", of 20 April 2020

[Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on the concept of "psychological torture"](#), of 20 March 2020

[Annual Report 2019 of the European Court of Human Rights](#), of 29 January 2020