



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 European Commission Annual Report of 31 July 2020 "Monitoring the Application of European Union Law – 2019 Annual Report".

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

- 16.07.2020, C-129/19, *Presidenza del Consiglio dei Ministri*, on the concept of "fair and appropriate compensation" of victims of violent intentional crime residing in the Member State in which the violent intentional crime was committed and on the obligation for the national compensation scheme to cover that victim;
- 16.07.2020, joined cases C-133/19, C-136/19, C-137/19, *Belgian State (Regroupement familial - Enfant mineur)*, on children of the sponsor, who have reached majority during the decision-making procedure or court proceedings against the decision refusing the family reunification application, on best interests of the child and the right to an effective remedy;
- 16.07.2020, C-311/18, *Facebook Ireland and Schrems*, on the invalidity of the Implementing Decision (EU) 2016/1250 of the Commission, on the adequacy of the protection provided by the EU-US Privacy Shield;
- 16.07.2020, C-517/17, *Addis*, on common procedures for granting and withdrawing international protection and on the obligation to give applicants for international protection the opportunity of a personal interview before the adoption of a decision declaring the application to be inadmissible;
- 16.07.2020, C-610/18, *AFMB and others*, on social protection of long-distance lorry drivers normally employed in two or more Member States and on freedom of movement;
- 09.07.2020, C-264/19, *Constantin Film Verleih*, on copyright and related rights and on the definition of "address" of the person who uploaded a film on an internet video platform without the consent of the right holder;
- 09.07.2020, C-272/19, *Land Hessen*, on the protection of natural persons with regard to the processing of personal data;
- 09.07.2020, C-297/19, *Naturschutzbund Deutschland – Landesverband Schleswig-Holstein*, on environmental protection and the liability of legal public persons for environmental damages caused by activities carried out in the public interest;
- 09.07.2020, C-575/18 P, *Czech Republic v. Commission*, on the wrong position of the Czech Republic on the lack of any effective remedy in the event of disagreement with

the Commission on Member State's duties in the matter of own resources of the European Union;

- 09.07.2020, joined cases C-698/18 and C-699/18, *Raiffeisen Bank*, on consumer protection in case of unfair contractual terms;
- 02.07.2020, C-18/19, *Stadt Frankfurt am Main*, on the conditions of detention in a prison for the purpose of removal of illegally staying third-country nationals, who poses a serious threat to public policy or public security;

and for the **General Court** the judgment:

- 08.07.2020, T-429/18, *BRF and SHB Comercio e Industria de Alimentos v. Commission*, on the ban, on grounds of public health, on exporting to the European Union certain products of animal origin coming from third-country establishments.

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

- 04.08.2020, *Political Party "Patria" and others v. Republic of Moldova* (n. 5113/15 and 14 others), on the removal of the Political Party "Patria" from the electoral race in the parliamentary elections of November 2014, because of tax irregularities concerning the party: according to the Court, the right to free elections provided for by article 3 of Protocol n. 1 was violated;
- 04.08.2020, *Tërshana v. Albania* (n. 48756/14), on the insufficient investigation carried out by Albanian authorities into the acid attack suffered by a woman;
- 30.07.2020, *Kirinčić and others v. Croatia* (n. 31386/17) and *Marić v. Croatia* (n. 9849/15), on the violation of the principle of equal and reasonable length of the proceeding in Croatia between March 2013 and May 2019;
- 28.07.2020, *Pormes v. the Netherlands* (n. 25402/14), on the denial of the residence permit to a foreigner resident in the State where he arrived at a very young age, at first not being aware of his status as immigrant and responsible for some crimes for indecent assault: the Court held that the right to private life was not violated;
- 28.07.2020, *Monica Macovei v. Romania* (n. 53028/14), on the violation of freedom of expression of a politician condemned of defamation for having affirmed the incompatibility between exercising the profession of lawyer and being a member of the Parliament;
- 23.07.2020, *M.K. and others v. Poland* (n. 40503/17, 42902/17 and 43643/17), on the repeated refusal of Polish border guards on the border with Belarus to admit the applicants, who had come from Chechnya and had asked for international protection and on the return of those people to Belarus with the risk of being returned to their country of origin and subjected to inhuman and/or degrading treatments: the Court held that there was violation of the prohibition of collective expulsions, of inhuman and degrading treatments and of the right to an effective remedy;
- 21.07.2020, *Vanyo Todorov v. Bulgaria* (n. 31434/15), on the violation to the right to an effective remedy, because of the impossibility for the brother of the victim of a homicide to ask for compensation for the suffered damage;
- 16.07.2020, *Yunusova and Yunusov v. Azerbaijan (No. 2)* (n. 68817/14), on many violations of the Convention against Mr. And Mrs. Yunusov, human rights defenders, following their unjustified arrest at the airport: from the violation of the right to private life for the unlawful body search and the unjustified introduction of a male policeman in the toilet where the female applicant was wearing only her underwear, to the unlawful seizure of their goods and unjustified detention;
- 16.07.2020, *D v. France* (n. 11288/18), on the legitimacy of the obligation to use adoption in order to recognize the relation between the genetic mother and the children born from a surrogated mother;
- 10.07.2020, Grand Chamber judgment, *Mugemangango v. Belgium* (n. 310/15), on the lack of an effective application which allowed to challenge the result of the elections and to pretend a new counting of votes;

- 09.07.2020, *Y.T. v. Bulgaria* (n. 41701/16), on the unjustified refusal to a transsexual person to allow his gender reassignment on the birth, marriage and death registry, despite the fact that his social, physical and family identity had changed long time before;
- 07.07.2020, Grand Chamber judgment, *Albert and others v. Hungary* (n. 5294/14), on the consequences, for the shareholders of a bank, deriving from the law which put such bank under central supervising authorities and which would lead to an important restriction of their right to influence the operation of the banks in which they held shares: the Court found the application inadmissible;
- 07.07.2020, *Dimo Dimov and others v. Bulgaria* (n. 30044/10), on the lack of promptness in transferring an application for release to a court in a different territorial jurisdiction for the purpose of joint examination, and unjustified two-month ban on submitting a further application for release;
- 02.07.2020, *N.H. and others v. France* (n. 28820/13), according to which article 3 of the Convention, on the prohibition of inhuman and degrading treatments, is violated in virtue of the fact that the applicants, asylum seekers, had lived out on the street in the cold weather, because of the substantial lapse in time between the applicants' requests for asylum and the date on which their asylum applications were registered.

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

- the order of the United States District Court Eastern District of New York of 17.8.2020, on the interpretation of the concept of discrimination on grounds of sex, according to which the "2020 Rules" published on 19 June 2020 by the Department of Health and Human Services are in contrast with the recent decision of the Supreme Court of 15 June 2020 in the case *Bostock*;
- the orders of the United States District Court for the Middle District of Tennessee Nashville Division of 24.7.2020 and of 13.7.2020, which suspended the application of the "Tennessee Code Annotated Sections 39-15-216 and 39-15-217", which provide for the prohibition of abortion when the heartbeat of the foetus can be detected;
- the decision of the Federal Court (Canada) of 22.7.2020, which found unlawful the norms of the "Safe Third Country Agreement" (STCA), undersigned by Canada and the United States, establishing that certain norms of such agreement are in contrast with the right to liberty and security provided for by article 7 of the Canadian Charter of Rights and Freedoms;
- the decision of the Inter-American Court of Human Rights of 20.7.2020, case *Valle Ambrosio y otro vs. Argentina*, on the violation of the right to an effective remedy; the decision of 8.7.2020, case *Petro Urrego vs. Colombia*, on the violation of the political rights of Petro Urrego following the conviction of 2003 during the disciplinary proceeding against him, ended with the destitution as mayor of the city of Bogotá and the general interdiction for 15 years; the decision of 24.6.2020, case *Guzmán Albarracín y otras vs. Ecuador*, on the responsibility of the State for sexual abuses on a teenager committed inside the school she attended, which led her to commit suicide; and the decision of 3.6.2020, case *Roche Azaña y otros vs. Nicaragua*, on the violation of the right to life and to personal integrity following the illegitimate and disproportioned use of force by State agents;
- the order of the United States District Court for the Northern District of Georgia Atlanta Division of 13.7.2020, which suspended the application of the "Georgia House Bill 481", which provides for, amongst other things, the prohibition of abortion when the heartbeat of the foetus can be detected;
- the decision of the United States Court of Appeals for the Ninth Circuit of 6.7.2020, which found the illegitimacy of the interim final rule "Asylum Eligibility and Procedural Modifications", jointly issued on 16 July 2019 by the Department of Justice and the Department of Homeland Security, aiming at making the procedure for asylum inaccessible for migrants, who entered the United States through the southern border, unless they already asked for a similar protection in another State during their transit.

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 14.7.2020, in the matter of compensation for economic loss due to COVID-19, which recalls the jurisprudence of the Court of Strasbourg and most of all article 1 of Protocol n. 1 to the ECHR; the decision of 26.6.2020, which recalls the jurisprudence of the Court of Strasbourg in the matter of right to asylum; the decision of 16.6.2020, on quarantine due to COVID-19 after returning in one's Country, which recalls the protocols to the ECHR, in particular article 1 of Protocol n. 1; and the decision of 10.3.2020, on the motion by several churches concerning Holy Friday, which recalls some cases of the Court of Strasbourg;
- **Belgium:** the decision of the *Cour constitutionnelle* n. 104/2020 of 9.7.2020, on the responsibility of the customer in the matter of payment of social debts, which recalls articles 6 of the ECHR and 1 of the First Additional Protocol to the ECHR and the jurisprudence of the Court of Strasbourg;
- **France:** the decision of the *Cour de cassation* n. 1659/2020 of 19.8.2020, which examines a case of prison overcrowding during the period of Covid-19 pandemic, and excludes the violation of articles 2 and 3 of the ECHR also with regard to the lack of proof on the effective risk for the prisoner; the decision n. 715/2020 of 8.7.2020, in the matter of discrimination at work on grounds of religious belief, which recalls Directive 2000/78/EC excluding the discrimination in the light of the jurisprudence of the Court of Justice; the decision n. 1400/2020 of 8.7.2020, which, in a case of prison overcrowding also followed by a conviction of France by the Court of Strasbourg, states the competence of the national court – in case of a serious limitation to the essential dignity of prisoners – to give direct application to the sentences of the ECHR without waiting the national norms to be amended; and the decision n. 1423/2020 of 8.7.2020, which examines the legitimacy of the search of a lawyer in the light of article 8 of the ECHR;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 18.8.2020, which denies the constitutional illegitimacy of the law providing for the dismantling of coal-fired plants and recalls the EU Charter of Fundamental Rights; the decision of 16.7.2020, on the relation between the European Union and Member States on the measures requested by Spanish authorities against the representatives of the Catalan independence movement, in the light of articles 2 and 7 of the TEU; the decision of 14.7.2020, in the matter of renegotiation of Greek Government bonds, which recalls article 267 of the TFEU and the jurisprudence of the Courts of Luxembourg and Strasbourg; and the decision of 8.7.2020, on legal aid, which recalls EU legislation and the jurisprudence of the Court of Justice;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 15.7.2020, on the right to privacy of the accused person in a case of paedophilia; and the decision of 18.6.2020, in which the Court deems compatible with the right to family life the norms of the "Children's Hearings (Scotland) Act 2011", where it is excluded that brothers and sisters are automatically qualified as "relevant persons" (with the connected procedural guarantees); the decision of the *England and Wales Court of Appeal* of 11.8.2020, in which the Court amends the first instance decision, establishing that the facial recognition system used by the police of South Wales does not guarantee the standards provided for by the norms on the protection of personal data; the decision of 16.7.2020, in which the court allows the return in the United Kingdom of a citizen, whose British citizenship was revoked, after her decision to take part to ISIL, in order to be able to participate to the trial following the claim lodged against such revocation; and the decision of 15.6.2020, in the matter of female genital mutilation; the decision of the *England and Wales High Court* of 31.7.2020, in the matter of freedom of thought and right to marriage; the decision of 30.7.2020, on the compatibility of emergency measures adopted after a terrorist attack with the right to freedom and to non-discrimination and the principle of non-retroactivity of criminal law; the decision of 24.7.2020, on the requirements of an effective investigation following a homicide, according to article 2 of the ECHR; and the decision of 21.7.2020 in the matter of

detention of foreign nationals pending their expulsion and of the impossibility for them to be released on bail because of the lack of adoption of the necessary measures by the Secretary of State;

- **Ireland:** the decision of the *Supreme Court* of 31.7.2020, according to which the "National Mitigation Plan", adopted pursuant to the norms of the "Climate Action and Low Carbon Development Act 2015", is inadequate with regard to the environmental goals within 2050, provided for by the law of 2015; the decision of 24.7.2020, on the consequences of a marriage of convenience according to the "European Communities (Free Movement of Persons) Regulations 2015", which recall Directive 2004/38/EC, the norms of the ECHR and the jurisprudence of the Court of Strasbourg; another decision of 24.7.2020, which examines article 17 ("Discretionary terms") of the Regulation (EU) n. 604/2013 ("Dublin III Regulation"), in the light of the jurisprudence of the Court of Justice; and the decision of 1.7.2020, on the compatibility of some norms of the "Planning & Development Act 2000" with Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, also in the light of the jurisprudence of the Court of Justice; the decision of the *Court of Appeal* of 5.8.2020, on the return of a minor to Poland according to the Convention of the Hague of 1980 on Civil Aspects of International Child Abduction, which also applies the norms of article 8 of the ECHR and the jurisprudence of the Court of Strasbourg; and the decision of 6.7.2020, in the matter of reasonable length of the proceeding, which recalls the jurisprudence of the Court of Strasbourg;
- **Italy:** the order of the *Corte costituzionale* n. 182/2020 of 5.8.2020, which makes a reference for a preliminary ruling to the Court of Justice on the exclusion, amongst the beneficiaries of some social benefits for families, of individuals with residence and work permit, recalling the norms of the European Union and article 34 of the EU Charter of Fundamental Rights; the decision n. 192/2020 of 31.7.2020, on the challenged right of the accused person to ask for oblation in the event of amendment of the charges, which recalls the jurisprudence of the Court of Strasbourg and Luxembourg and article 48 of the EU Charter of Fundamental Rights; and the decision n. 191/2020 of 31.7.2020, which excludes the illegitimacy of the obligation of detention in prison for individuals belonging to an international association with terrorist purposes, provided that there are precautionary requirements, which recalls EU legislation in the matter of fight against International terrorism; and the order n. 171/2020 of 28.7.2020, which deems not violated article 7 of the ECHR in the case of an administrative sanction, deriving from an abrogated crime, applied following the *res iudicata*; the decision of the *Corte di cassazione* n. 23948/2020 of 17.8.2020, in the matter of communication to the lawyer, which recalls the guideline of the Court of Strasbourg; and the decision n. 23166/2020 of 29.7.2020, which, in the matter of backdating of the terms of detention on remand, examines the jurisprudence of the Court of Strasbourg;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 422/2020 of 15.7.2020, which adopts a dismissal decision with regard to a claim aiming at examining the constitutional legitimacy of a European Union norm (article 19(1) of the (EEC) Regulation n. 2220/85);
- **Spain:** the decision of the *Tribunal Constitucional* of 20.7.2020, on the authorities duty to carry out a sufficient and effective investigation during the criminal proceeding, as part of the right to an effective remedy, in the event of alleged gender-based violence, which applies a wide jurisprudence of the Court of Strasbourg and recalls the Istanbul Convention on preventing and combating violence against women and domestic violence; and the decision of 29.6.2020, in the matter of discrimination on grounds of sex, which recalls the jurisprudence of the Court of Strasbourg and Luxembourg;
- **The Netherlands:** the decision of the *Hoge Raad* (Supreme Court) of 26.6.2020, which excluded the State obligation to repatriate women and children of Dutch nationality, or having special relation with the Country, who are at the moment in refugee camps in north Syria after having travelled, from the Netherlands, in areas under the "Islamic State" control.

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

Articles:

[Various authors](#) "Coronavirus and law in Europe"

[Roberto Cosio](#) "Dissuasive sanctions in collective redundancies. Principles of reasonableness and proportionality"

[Michele De Luca](#) "Stop to dismissals during Covid-19 pandemic: searching types of dismissals included (brief notes)"

[Vincenzo De Michele](#) "The decision of the Court of Justice on the rights of honorary judges"

[Stefano Giubboni](#) "Labour law after the pandemic: notes for a liberal agenda"

Notes and comments:

[Roberta Barberini](#) "Marò: the final chapter on the case of the Enrica Lexie"

[Valentina Bonini](#) "State compensation for the victims of violent intentional crimes: another appeal by the European institutions"

[Federica Casarosa](#) "The European legislative approach to online hatred: balance between an efficient and effective "enforcement" system and the protection of freedom of expression"

[Maria Giuliana Civinini, Giuliano Scarselli](#) "It must never happen again"

[Francesco Florit](#) "From Hero to Zero"

[Rita Russo](#) "Immigration, permit of stay and pandemic. Comment on the decision of the court of Naples of 25 June 2020"

Documents:

[Review of the first semester 2020](#) of the decisions of the Court of Cassation in the matter of International protection (by the Court), of 30 July 2020

[General Comment n. 37](#) of the United Nations Human Rights Committee on article 21 of the International Covenant on Civil and Political Rights "Article 21: right of peaceful assembly", of 27 July 2020

[The Reports of the HM](#) Chief Inspector of Prisons and of the Parliamentary Joint Committee on Human Rights on prison conditions in England, of 9 July 2019 and of 27 July 2020

[Annual Report of the Secretary General of the Council of Europe](#) "Multilateralism 2020", of 9 July 2020