



## OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

### **Newsletter n. 85**

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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](http://www.europeanrights.eu)

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

- the Regulation of the Public Prosecutor's Office of 21.01.2021;
- the Report of the European Commission of 15.12.2020 on citizenship 2020 "Empowering citizens and protecting their rights";
- the Report of the European Commission of 15.12.2020, pursuant to article 25 of the TFEU "Progress towards effective EU citizenship 2016-2020".

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

of the **Parliamentary Assembly**:

- the Resolution 2362 and the Recommendation 2194 of 27.1.2021, "Restrictions on NGO activities in Council of Europe member States";
- the Resolution 2361 of 27.1.2021, "Covid-19 vaccines: ethical, legal and practical considerations";
- the Resolution 2359 of 26.1.2021, "Judges in Poland and in the Republic of Moldova must remain independent";
- the Resolution 2358 and the Recommendation 2193 of 26.1.2021, "The implementation of judgments of the European Court of Human Rights".

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

- 02.03.2021, C-824/18, *A.B. and others (Nomination des juges à la Cour suprême - Recours)*, on the right to an effective remedy and the principle of independence of judges;
- 25.02.2021, C-940/19, *Les Chirurgiens-Dentistes de France and others*, on the authorised possibility of partial access to one of the professions covered by the mechanism for the automatic recognition of professional qualification and on people's freedom of movement;
- 25.02.2021, C-658/19, *Commission v. Spain (Directive données à caractère personnel - Domaine pénal)*, on the conviction of Spain for the failure to transpose the directive on protection of personal data in the framework of prevention and detection of criminal offences;

- 25.02.2021, C-129/20, *Caisse pour l'avenir des enfants (Emploi à la naissance)*, on the right to parental leave;
- 24.02.2021, C-673/19, *M and others (Transfert vers un État membre)*, on the status of refugee and the principle of "non-refoulement";
- 11.02.2021, C-760/18, *M.V. and others (Contrats de travail à durée déterminée successifs dans le secteur public)*, on the protection of workers and on the measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships;
- 11.02.2021, C-407/19 and C-471/19, *Katoen Natie Bulk Terminals and General Services Antwerp*, on dockers and workers' protection, on carrying out of port activities, freedom to provide services and freedom of establishment;
- 03.02.2021, C-555/19, *Fussl Modestraße Mayr*, on the provision of audiovisual media services;
- 03.02.2021, C-637/18, *Commission v. Hungary (Valeurs limites - PM10)*, on environmental protection;
- 02.02.2021, C-481/19, *Consob*, on the right of a person subjected to administrative proceeding to remain silent and to avoid self-incrimination whether his answers may highlight the responsibility for an offence of criminal nature;
- 28.01.2021, C-649/19, *Spetsializirana prokuratura (Déclaration des droits)*, on the communication of rights on arrest, on the right to be informed of the accusation, on the right of access to the materials of the case;
- 27.01.2021, joined cases C-229/19 and C-289/19, *Dexia Nederland*, on unfair clauses in consumer contracts and on consumer protection;
- 26.01.2020, C-16/19, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, on equal treatment in employment and occupation and in the matter of working conditions and on the prohibition of discrimination on grounds of disability;
- 21.01.2021, C-843/19, *INSS*, on anticipated voluntary retirement and on equal treatment of men and women in the matter of social security;
- 20.01.2021, C-255/19, *Secretary of State for the Home Department*, on minimum standards for granting refugee status or subsidiary protection;
- 20.01.2021, C-619/19, *Land Baden-Württemberg (Communications internes)*, on environmental protection;
- 14.01.2021, joined cases 322/19 e C-385/19, *The International Protection Appeals Tribunal and others*, on international protection of a third Country national.

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

- 16.02.2021, *V.C.L. and A.N. v. The United Kingdom* (n. 77587/12 and 74603/12), on the lack of adequate protection of two potential victims of child trafficking;
- 16.02.2021, *Tikhonov and Khasis v. Russia* (n. 12074/12 and 16442/12), on the lack of impartiality of a jury;
- 16.02.2021, *Gawlik v. Liechtenstein* (n. 23922/19), on the dismissal of a doctor for having accused another person of having practised euthanasia;
- 16.02.2021, Grand Chamber judgment, *Hanan v. Germany* (n. 4871/16), on investigations carried out by German authorities on NATO deadly attacks in Afghanistan, with the ascertainment of the non-violation of the right to life of the two children of the applicant;
- 09.02.2021, *Xhoxhaj v. Albania* (n. 15227/19), on the vetting proceeding, deemed fair and proportioned, which led to the dismissal of a judge of the Constitutional Court;
- 9.02.2021, *Sağdıç v. Turkey* (n. 9142/16), on the reputation of a member of the armed forces damaged by articles that contravened the standards of responsible journalism;
- 09.02.2021, *Ramazan Demir v. Turkey* (n. 68550/17), on the impossibility, deemed in violation of the Convention, for a prisoner (a lawyer) to consult the European Court website;
- 04.02.2021, *Jurčić v. Croatia* (n. 54711/15), on the ascertained discrimination of a pregnant woman by health authorities;

- 02.02.2021, Grand Chamber Judgment, *X and others v. Bulgaria* (n. 22457/16), on the failure of the investigation concerning the allegations of sexual abuse suffered in a Bulgarian orphanage by three children before being adopted by an Italian couple in 2021;
- 02.02.2021, *Strøbye and Rosenlind v. Denmark* (n. 25802/18 and 27338/18), on the loss of the right to vote by the applicants, deemed in accordance with the Convention;
- 21.01.2021, Grand Chamber judgment, *Georgia v. Russia (II)* (n. 38263/08), which, after having confirmed the jurisdiction of Russia with regard to Abkhazia and South Ossetia, established Russia's obligation to carry out an effective investigation on the facts which took place during the hostilities and after their cessation;
- 21.01.2021, *Lutsenko and Verbytskyy v. Ukraine* (12482/14 and 39800/14), and *Shmorgunov and others v. Ukraine* (n. 15367/14 and others), on inhuman and/or degrading treatment by the police and other groups of civilians against some demonstrators in Maidan Square, facts on which there had not been an effective investigation;
- 19.01.2021, *Shlykov and others v. Russia* (n. 78638/11), on the practice of systematically handcuffing the prisoners, without a preliminary examination of the specific case and of the alleged security reasons, found illegitimate;
- 19.01.2021, *Timofeyev and Postupkin v. Russia* (n. 45431/14 and 22769/15), on the lack of legal aid in favour of the applicant, who could not afford to pay a lawyer during the proceeding of administrative surveillance, found illegitimate by the Court. The Court found inadmissible the further issue, i.e. whether the administrative surveillance, after the prisoners finished serving their prison term, was a preventive measure or a penalty; instead was deemed not in violation of the Convention the fact that the surveillance was imposed after the accused had served six years' imprisonment;
- 19.01.2021, *Lacatus v. Switzerland* (n. 14065/15), on a fine imposed on a vulnerable person of Roma origin, because he was begging, followed by detention for five days for not having paid the fine, behaviour which the Court deemed in violation of the Convention;
- 19.01.2021, *X and Y v. Romania* (n. 2145/16 and 20607/16), on the refusal, deemed illegitimate by the Court, by national authorities to recognize the male identity of a transsexual person, who had not yet undergone the surgery in order to change sex;
- 14.01.2021, *Terna v. Italy* (n. 21052/18), on the decision to put in an institute the Roma daughter of the applicant, who had the parental authority since she was born, without guaranteeing her the right to visit, therefore violating article 8 of the ECHR;
- 14.01.2021, *Société éditrice de Mediapart and others v. France* (n. 281/15 and 34445/15), concerning the court order, deemed justified, to remove from a website the recordings of private conversations of a public vulnerable person, despite the fact that the content had been broadcasted by the media;
- 14.01.2021, *Sabalić v. Croatia* (n. 50231/13), on the conviction, deemed in violation of convention requirements, of the author of a violent homophobic aggression to a fine of 40 euros, in lack of an adequate ascertainment of the real reasons of the episode, followed by the end of criminal investigations pursuant to the principle of the *ne bis in idem*;
- 12.01.2021, *Victor Laurențiu Marin v. Romania* (n. 75614/14), and *Mihail Mihăilescu v. Romania* (n. 3795/15), on the non-violation of conventional norms with regard to the civil proceeding;
- 12.01.2021, *Svilengaćanin and others v. Serbia* (n. 50104/10 and others), on the requirements of impartiality and autonomy of the Supreme Court;
- 12.01.2021, *L.B. v. Hungary* (n. 36345/16), on the publishing, deemed justified, on the tax authorities' website of information which could reveal the identity and address of the applicant;
- 12.01.2021, *Gheorghe-Florin Popescu v. Romania* (n. 79671/13), on the civil conviction of a journalist and author of a blog for defamation of a colleague without a sufficient and pertinent reason, therefore violating the Convention.

and the decisions:

- 18.02.2021, *Grzęda v. Poland*, preliminary referral to the Grand Chamber of the case n. 43572/18 concerning the judicial reform in Poland;
- 17.02.2021, in application of emergency measures requested by Aleksey Navalnyy (of 21.01.2021): the Court asked the Russian Government to release him.

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

- the decision of the Pre-Trial Chamber I of the *International Criminal Court* of 5.2.2021, which established that the territorial jurisdiction of the Court in the case *Situation in the State of Palestine* extends to the territories occupied by Israel since 1967, i.e. Gaza Strip and the West Bank, including East Jerusalem; and the decision of the Trial Chamber IX of 4.2.2021, which found Dominic Ongwen, alleged former commander of the brigade of the Lord's Resistance Army (LRA), guilty of 61 counts of crimes against humanity and war crimes committed in north Uganda between 1 July 2002 and 31 December 2005;
- the decision of the *United Nations Committee for Human Rights* of 27.1.2021, which found the violation of article 6 (right to life) of the International Covenant on Civil and Political Rights by Italy with regard to the death of 200 migrants, who were on board a vessel that sank in the Mediterranean in 2013, and asked the State to carry out an independent and effective investigation and to adopt all necessary measures to prevent similar violations in the future;
- the decision of the *United States Court of Appeals for the Eighth Circuit* of 5.1.2021, which stopped the application of two laws of Arkansas in the matter of abortion, aiming at prohibiting, with some exceptions, the interruption of pregnancy after 18 weeks (Act 493 of 2019), and at allowing abortion only on the basis of a prenatal test for the Down Syndrome (Act 619 of 2019).

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 22/2021 of 11.2.2021, which partially annulled the decree of the Flemish Community of 15 February 2019 "on the law in the matter of youth crime" ("*sur le droit en matière de délinquance juvénile*"), which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 14/2021 of 28.1.2021, which finds the constitutional illegitimacy of article 1717(4) of the *Code judiciaire*, concerning the time limit for lodging the request of annulment of an arbitration ruling, also applying the jurisprudence of the Court of Strasbourg; the decision n. 3/2021 of 14.1.2021, which rejects the claim lodged against article 221(2) of the law of 30 July 2018 "*relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel*", aiming at giving execution to article 83(7) of the (EU) Regulation 2016/679 (GDPR), also in the light of the EU Charter of Fundamental Rights; and the decision n. 2/2021 of 14.1.2021, on the constitutional legitimacy of article 27 of the law of 25 November 2018 "*portant des dispositions diverses concernant le Registre national et les registres de population*", in the light of the Regulation (EU) 2019/1157 on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement;
- **Bosnia and Herzegovina:** the decision of the *Ustavni sud* (Constitutional Court) of 22.12.2020, in the matter of anti-pandemic measures, in the light of the norms of the ECHR concerning freedom of movement and respect for private life;
- **France:** the decision of the *Cour de cassation* n. 215 of 10.2.2021, with regard to the trade union representation in a works council, which recalls article 11 of the ECHR and articles 12 and 28 of the European Union Charter of Fundamental Rights; the decision n. 231 of 26.1.2012, in the matter of European arrest warrant, which examines some problems deriving from Brexit; the decision n. 366 of 24.2.2021, on the requirements which allow preventive detention in the light of article 5 of the ECHR; and the decision

- n. 101 of 13.1.2021, with regard to a request of extradition with the risk of inhuman and degrading treatment (with related right to subsidiary protection), in the light of article 3 of the ECHR; and the decision of the *Tribunal administratif de Paris* (Administrative Tribunal of Paris) of 3.2.2021, which found the responsibility of the State for ecologic damage as a consequence of the failure in the respect of commitments made in the matter of reduction of greenhouse gas emissions, also recalling the EU legislation relevant in such matter;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Tribunal) of 3.2.2021, which rejected the temporary injunction motion lodged against the law on the Convention of 5 May 2020 concerning the termination of bilateral investments; and the decision of 14.1.2021 in the matter of privacy in the application of Regulation on the protection of natural persons with regard to the processing of personal data (GDPR);
  - **Great Britain:** the decision of the *United Kingdom Supreme Court* of 19.2.2021, which classifies Uber drivers as “workers” and not “contractors” (self-employed), establishing that they are employees for the period of availability and have the right to a minimum decent pay, calculated on the basis of minimum wage, to paid rest periods, to protection in the event of parenthood, illness, discrimination; the decision of the *England and Wales High Court* of 22.1.2021, in which the Court finds that the rule of Universal credit to cover the expenses necessary for the childcare for children only reimbursing the expenses already paid and not also anticipating the cost, amounts to an indirect discrimination against women; the decision of 18.12.2020, in the matter of social assistance and discrimination for disability; and the decision of 8.12.2020, in which the Court finds that compulsory lessons on education to affection and also lessons on issues concerning equality of LGBTI individuals, do not amount to violation by the public authorities of the obligation to respect the “public sector equality duty” with regard to people with certain religious belief;
  - **Ireland:** the decision of the *Court of Appeal* of 26.1.2021, on the implementation of Directive 2004/38/EC, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, in the light of the jurisprudence of the Court of Justice; and the decision of 8.1.2021, on the interpretation of the concept of “member of the household of a Union citizen”, pursuant to article 3(2) of Directive 2004/38/EC; and the decision of the *High Court* of 15.12.2020, in which the Court, in the light of the jurisprudence of the court of Strasbourg, refused to give execution to the European arrest warrant issued by Romanian authorities in virtue of the concrete risk of violation of the rights provided for by article 3 of the ECHR, because of the detention conditions allegedly suffered by the defendant;
  - **Italy:** the decision of the *Corte costituzionale* n. 278/2020 of 23.12.2020, which found the constitutional legitimacy of the legislation in the matter of temporary suspension of limitation periods due to the pandemic, and found inadmissible the issues of constitutional illegitimacy for violation of the ECHR and of article 49 of the EU Charter of Rights; the decision of the *Corte di cassazione* n. 6551/2021 of 19.2.2021, on compensation due to detention in inhuman and degrading conditions, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 3842/2021 of 15.2.2021, on the power of the judge to disregard public authorities’ acts deemed illegitimate because discriminatory (through the special anti-discriminatory proceeding), which recalls Directive 2000/43/EC; the decision n. 2042/2021 of 18.1.2021, on the refusal of the status of refugee and of international protection to a national of Niger, which recalls article 3 of the ECHR; the decision n. 342/2021 of 12.1.2021, on the refusal of international protection to a Bangladeshi national, also in relation to article 3 of the ECHR; and the decision n. 151/2021 of 8.1.2021 on the refusal of international protection to a Ghanaian national, in the light of article 3 of the ECHR; the order of the *Tribunale di Roma* of 18.1.2021, which found the illegitimacy of the practice of informal re-admissions in Slovenia, carried out also towards asylum seekers, in the light of national and European law, in particular of articles 3 and 13 of the ECHR and 4 and 19 of the EU Charter of Fundamental Rights, and of the jurisprudence of the Courts of Strasbourg and Luxembourg; and the order of the *Tribunale di Bologna* of 1.12.2020,

on the constitutional legitimacy of the legislation in the matter of irregular immigration, also with regard to the violation of the ECHR and of the EU Charter of Fundamental Rights;

- **Romania**: the decision of the *Curtea Constituțională* (Constitutional Court) of 16.12.2020, which found the constitutional illegitimacy of article 7(1)(e), introduced by the article of the "Law amending Article 7 of National Education Law No 1/2011" aiming at prohibiting gender studies in schools, also recalling the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Slovenia**: the order of the *Ustavno Sodišče* (Constitutional Court) of 3.9.2020, which makes a reference for a preliminary ruling the Court of Justice with regard to the validity of some norms of Directive (EU) 2016/681 ("Directive PNR"), in the light of articles 7, 8 and 52 of the EU Charter of Fundamental Rights;
- **Spain**: the decision of the *Tribunal Constitucional* of 25.1.2021, which rejected the claim lodged, pursuant to the decision of the Court of Strasbourg in the case *Muñoz Díaz v. Spain*, for violation of the principle of non-discrimination and based on the failure to recognize the claimant the survivor's pension, in virtue of the lack of the formalisation, in the light of national law, of the marriage celebrated with gypsy rite; and the decision of 14.12.2020, on the application of the preventive measure without respecting the minimum legal and procedural guarantees, in violation of the right to personal freedom, which applies the jurisprudence of the Court of Strasbourg; and the decision of the *Tribunal Supremo* of 21.1.2021, in the matter of issue of a European arrest warrant and limitation periods for criminal offences, which recalls the jurisprudence of the Court of Justice.

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

#### **Articles:**

[Alessandro Centonze](#) "Right to privacy and the protection of personal data in jurisdictional measures taken by the Court of Cassation"

[Michele De Luca](#) "Conditionality and hypothesis of exclusion (from the second extension) of the temporary block on layoffs during the pandemic: a lot of fuss about (almost) nothing (minimum notes)"

[Vincenzo De Michele](#) "Is the Court of Cassation the last instance judge in case of clear violation of Union law? The EU preliminary ruling of the Joined Sections against the res iudicata of the Council of State which does not apply the decisions of the Court of Justice"

[Elena Falletti](#) "Privacy protection, big data gathering and public health issues: COVID-19 tracking app use in Italy"

[Sergio Galleano](#) "No peace for Italian school: also the European Committee for social rights challenges the national policy and jurisprudence on short terms school employees. And the European Commission opened an infringement procedure for all short terms public employees"

[Pierpaolo Gori](#), [Aniel Pahladsingh](#), "Fundamental rights under Covid-19: an European perspective on videoconferencing in court"

[Roberto Conti](#) "Integrated regulatory competence and supra-national law. Comparing the "facets" of the Court of Cassation"

## Notes and comments:

[Matilde Brancaccio, Francesca Picardi](#) "Comment to the judgment of the ECtHR, case *Lacatus v. Switzerland* of 19 January 2021: Harmless begging cannot be criminalized"

[Francesco Buffa](#) "Comment to the judgment of the ECtHR of 4.2.2021, *Jurčić v. Croatia*, n. 54711/15"

[Francesco Buffa](#) "Comment to the judgment of the ECtHR, section 1, Judgment in the case *Casarin v. Italy*, 11 February 2021, n. 4893/13"

[Marina Castellaneta](#) "Ratified Protocol n. 15... waiting for Prot. 16. On the way the amendments to the European Charter of Human Rights"

[Alessandro Centonze](#) "Comment to the decision of the Joined Sections n. 6551 of 21/09/2020, *Commisso*, on detention in inhuman and degrading conditions"

[Guido Favio](#) "Aiding and abetting of irregular immigration: some doubts of constitutional legitimacy. Notes regarding the order of the Court of Bologna of 1.12.2020"

[Sandra Recchione](#) "Comment to the decision of the ECHR, II section, 10 November 2020, *Dan v. Moldavia*, on the renewal of the proof on appeal"

[Deborah Tripiccion](#) "Comment to the judgment of the European Court of Human Rights, First Section, 14 January 2021, *Kargakis v. Greece* (application n. 27025/13)"

## Documents:

[Annual report of Freedom House](#) "Freedom in the World 2021 - Democracy under Siege", of 3 March 2021

[Annual Report of Human Rights Watch](#) "World Report 2021 - Events of 2020", of January 2021