



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 Report by the European Union Agency for Fundamental Rights of 5.4.2021 on presumption of innocence and related rights;
- the Communication by the European Commission of 24.3.2021 "EU strategy on the rights of the child".

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

of the **Parliamentary Assembly**:

- the Resolution 2376 of 22.4.2021 "The functioning of democratic institutions in Turkey";
- the Resolution 2375 and the Recommendation 2202 of 22.4.2021 "The arrest and detention of Alexei Navalny in January 2021";
- the Resolution 2370 of 20.4.2021 "Fighting fiscal injustice: the work of the OECD on taxation of digital economy";

of the **Committee of Ministers**:

- the Recommendation CM/Rec(2021)2 of 31.3.2021 "Recommendation of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment";
- the Recommendation CM/Rec(2021)1 of 31.3.2021 "Recommendation of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions".

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

- 12.05.2021, C-505/19, *Bundesrepublik Deutschland (Notice rouge d'Interpol)*, on the *ne bis in idem* principle;
- 29.04.2021, C-665/20 PPU, X (*Mandat d'arrêt européen - Ne bis in idem*), on the *ne bis in idem* principle applicable to the execution of the European arrest warrant for facts already judged by a third State;

- 20.04.2021, C-896/19, *Repubblika*, on the independence of the members of the judiciary of a Member State, on appointments procedure and on effective remedies;
- 15.04.2021, C-30/19, *Braathens Regional Aviation*, on the finding of the alleged discrimination and on effective judicial protection;
- 15.04.2021, C-194/19, *Belgian State (Éléments postérieurs à la décision de transfert)*, on an asylum seeker and on effective judicial protection;
- 15.04.2021, C-221/19, *AV (Jugement global)*, on an aggregate sentence and on judicial cooperation in criminal matters;
- 15.04.2021, C-511/19, *Olympiako Athlitiko Kentro Athinon*, on unequal treatment on grounds of age provided for by a Greek law, which aims at a legitimate social policy objective;
- 25.03.2021, C-565/19 P, *Carvalho and others/ Parliament and Council*, on the inadmissibility of the claim lodged against the EU "climate package" of 2018;
- 23.03.2021, C-28/20, *Airhelp*, on the strike by an air carrier and on the air carrier's freedom to conduct a business, right to property and right of negotiation;
- 17.03.2021, C-488/19, *Minister for Justice and Equality (Mandat d'arrêt - Condamnation dans un État tiers, membre de l'EEE)*, on the European arrest warrant, its scope and on the concept of "enforceable judgment";
- 17.03.2021, C-585/19, *Academia de Studii Economice din București*, on the protection of the safety and health of workers and on the minimum period of daily rest;
- 17.03.2021, C-652/19, *Consulmarketing*, on the extension of a new protection system for workers with no time limit contract, in the event of illegitimate collective dismissal, to workers whose fixed-term contracts were converted into contracts with indefinite duration;

and the conclusions of the **Advocate general**:

- 15.04.2021, C-487/19, *W. Ż. () and des affaires publiques de la Cour suprême - nomination* and C-508/19, *Prokurator Generalny (Chambre disciplinaire de la Cour suprême - Nomination)*, both on the appointment of judges of the Polish Supreme Court and on the compatibility with EU legislation, and in particular with the right to an effective judicial protection, to natural judge and to independence of the court;
- 15.04.2021, C-490/20, *Stolichna obshtina, rayon „Pancharevo"*, on the recognition in the European Union of the parentage of the child of a married same-sex couple and on the right to freedom of movement and of residence;
- 15.04.2021, C-564/19, *IS (Illégalité de l'ordonnance de renvoi)*, on the appeal against the decision which orders the preliminary referral and on compatibility with EU legislation;
- 15.04.2021, C-561/19, *Consortio Italian Management and Catania Multiservizi*, on the duty of National courts of last instance to request a preliminary ruling.

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

- 30.03.2021, *Gasangusenov v. Russia* (n. 78019/17), on the lack of an effective remedy and on the violation of the right to life;
- 25.03.2021, *Smiljanic v. Croatia* (n. 35983/14), on the authorities' failure to take appropriate deterrent and preventive measures against a repeat offender, who later caused a fatal collision;
- 25.03.2021, *Di Martino and Molinari v. Italy* (n. 15931/15 and 16459/15), according to which there was no violation of the right to a fair trial in the case of the conviction issued by the Court of Appeal, which failed to hear prosecution witnesses before overturning the acquittal verdict given at first instance under summary procedure;
- 25.03.2021, *Stoimenovikj and Miloshevikj v. Macedonia* (n. 59842/14), on the lack of impartiality of the member of the Supreme Court who took part, in a 5 judges' panel, to a criminal proceeding and to the related civil proceeding;
- 25.03.2021, *Matalas v. Greece* (n. 1864/18), on the violation of the right to freedom of expression following the conviction for defamation;

- 25.03.2021, *Bivolaru and Moldovan v. France* (n. 40324/16 and 12623/17), in which the Court highlights the conditions for the application of the presumption of equivalent protection with regard to disputes on the execution of a European arrest warrant issued by Romania: the Court found the violation of article 3 in the case *Moldovan*, but not in the case *Bivolaru*;
- 18.03.2021, *Petrella v. Italy* (n. 24340/07), on the excessive length of preliminary investigations, which prevented the applicant from acting as injured party in the criminal proceeding and asking for compensation in the civil proceeding: the Court found the violation of article 6 of the Convention;
- 16.03.2021, *Hussein and others v. Belgium* (n. 45187/12), on the non-violation of the Convention concerning the decision of the Belgian court, in 2003, to declare the proceeding inadmissible and the lack of jurisdiction with regard to crimes committed under international humanitarian laws;
- 16.03.2021, *Gavrilova and others v. Russia* (n. 2625/17), on the judicial annulment of the applicants' title deeds over plots of land which they had purchased as part of a series of transactions, and the return of those plots to State ownership on the grounds that they were "forestry resources";
- 16.03.2021, *Semenov v. Russia* (n. 17254/15), on the violation of the right to the respect for property with regard to the annulment of the applicant's property rights over a plot of land, which he had purchased from a private individual and the return of the plot to municipal ownership.;
- 11.03.2021, *Feilazoo v. Malta* (n. 6865/19), which found several violations of the Convention in the case of a deportation detainee housed with Covid-19 quarantine patients;
- 11.03.2021, *Baranin and Vukcevic v. Montenegro* (n. 24655/18 and 24656/18), on the lack of effectiveness of investigations concerning abuses committed by the police following the recognition by judicial authorities of the violation of article 3 of the Convention;
- 09.03.2021, *Hassine v. Romania* (n. 36328/13), according to which the applicants were denied the protection of their procedural rights during the expulsion from Romania on national-security grounds;
- 09.03.2021, *Bilgen v. Turkey* (n. 1571/07), on the absence of judicial review with regard to the transfer of a judge;
- 09.03.2021, *Eminağaoğlu v. Turkey* (n. 76521/12), on the disciplinary sanction imposed to a judge, which violated his right to freedom of expression and to a fair trial;
- 02.03.2021, *R.R. and others v. Hungary* (n. 36037/17), which found several violations of the rights of an asylum-seeking family, including children and a pregnant woman, during their stay in the Roszke transit zone;

and the decisions:

- 23.03.2021, decision of partial inadmissibility, *Fenech v. Malta* (n. 19090/20), on the arrest of the applicant suspected of being involved in 2017 in the assassination of the Maltese journalist Daphne Caruana Galizia, and in particular on the pre-trial detention of the applicant during the Covid-19 public-health emergency, the precautions around his state of health as a detainee, the resulting proceedings before the authorities and in particular their length;
- 04.03.2021, decisions to struck the following applications out of its list of cases, *Sigurjón Árnason v. Iceland* (n. 42655/16 and 27595/18), *Ívar Guðjónsson v. Iceland* (n. 46015/16), *Sigurflór Charles Guðmundsson v. Iceland* (n. 60672/16), *Margrét Guðjónsdóttir v. Iceland* (n. 60704/16) and *Karl Emil Wernersson v. Iceland* (n. 61464/16), on the violation of the right to a fair trial in the case of convictions related to the financial crisis.

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. 616 of 14.4.2021, concerning preventive detention on the basis of a conviction to prison, which excludes the violation of article 5 of the ECHR; the decision n. 491 of 14.4.2021, on the principle of *ne bis in idem* between two decisions issued respectively in France and in Great Britain after Brexit, which recalls article 50 of the EU Charter of Fundamental Rights; the decision n. 479 of 14.4.2021, in the matter of discrimination on grounds of religious belief, in particular in the case of a worker who wore the veil at her workplace, which recalls Directive 2000/78/EC and the jurisprudence of the Court of Justice; the decision n. 388 of 24.3.2021, which, in the matter of working time, recalls article 31 of the EU Charter of Fundamental Rights and the need to interpret national legislation in the light of supranational directives; and the decision n. 132 of 3.2.2021, which finds that article 6 of the ECHR was non violated in a case of immunity from legal proceedings invoked by an Embassy of an African State against the execution of two decisions in civil matters;
- **Germany:** the order of the *Bundesverfassungsgericht* (Federal Constitutional Tribunal) of 15.4.2021, which rejects the request to suspend the ratification by the German Federal Republic of the European Union decision on the so-called "*EU Recovery package*", concerning the supra-national "own resources" aimed at the European projects; the decision of 4.3.2021, which makes a reference for a preliminary ruling to the Court of Justice on issues in tax and freedom of establishment matters; and the decision of 5.3.2021, which establishes that reports concerning the violation of constitutional norms against measures adopted by the Court of Justice and the European Union Tribunal are inadmissible because it is not underlined a specific sovereign act; and the decision of the *Verwaltungsgericht Freiburg* (Administrative Tribunal of Fribourg) of 5.3.2021, which applies article 3 of the ECHR in a case concerning the request of asylum lodged by an Afghan refugee and which recalls in detail the jurisprudence of the two European Courts: in particular, the Court dwells on the life conditions in Kabul and how they would be unsustainable for the claimant as far as food, health, cost of rents concerns and therefore also with regard to the guarantee of a minimum wage;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 19.3.2021, in the matter of right to asylum in a case concerning the protection of a minor son of a citizen asylum seeker, whom the woman took with her, without telling the father, when she escaped from her Country of origin; and the decision of 26.2.2021, in which the Court deems compatible with the ECHR norms on right to freedom and to a fair trial the decision of state authorities to refuse the right to entry a second time the national territory to an English national escaped to Syria in order to take part to ISIS; the decision of the *England and Wales High Court* of 3.3.2021, in the matter of discrimination on grounds of disability; the decision of 1.3.2021, on the obligation of the competent local authorities to find for two minors belonging to an orthodox Jewish community a home for children with Jewish religious orientation and not a public lay home, so to allow them to live according to their religious belief; and the decision of 17.2.2021, in which the Court deems that calculating rules provided for by the norms establishing how to have access to extraordinary economic benefits due to the Covid-19 health emergency with regard to self-employed men and women do not amount to an indirect discrimination on grounds of gender;
- **Italy:** the decision of the *Corte costituzionale* n. 68/2021 of 16.4.2021, on *ne bis in idem* with regard to cumulation of criminal and administrative sanctions (in the specific case, suspension of the driving licence), which recalls the guideline of the Court of Strasbourg; and the decision n. 59/2021 of 1.4.2021, in the matter of dismissal, which establishes the obligation for the judge – and not the mere possibility – to order the reinstatement in the workplace in the event of manifest lack of the economic reasons given to justify the dismissal, and which recalls article 30 of the EU Charter of Fundamental Rights and article 24 of the European Social Charter; the order of the *Corte di cassazione* n. 9379/2021 of 8.4.2021, which raises the question of constitutional legitimacy with regard to the exclusion, from certain family services, of non-Community workers residing in the European Union and with regard to relatives not residing in Italy, exclusion already found in contrast with Union law by a decision of the Court of Justice; the decision n. 9006/2021 of 31.3.2021, concerning the adoption

by a homosexual couple, which excludes that public order reasons may be an obstacle to the recognition, in Italy, of the effects of a foreign jurisdictional measure, recalling the ECHR, the EU Charter of Fundamental Rights and the jurisprudence of the two European Courts; the decision n. 6319/2021 of 8.3.2021, in the matter of compensation in the event of illegitimate dismissal, following the decision of the Court of Justice of 25.6.2020 and which finds that, between the date of the dismissal and the date of the reinstatement, the worker has the right to the allowance in lieu in substitution of paid leave, of permits and public holidays not due, in the light of Directive 2003/88/EC and article 31 of the EU Charter of Fundamental Rights; the order n. 19618/2020 of 18.9.2020, on the legitimacy of a disciplinary sanction imposed to a teacher for having removed the crucifix from the class, which recalls the jurisprudence of the Courts of Strasbourg and Luxembourg and Directive 2000/78/EC; and the order n. 19598/2020 of 18.9.2020, which make a reference for a preliminary ruling with regard to the possibility to censor, with a claim to the Court of Cassation, decisions of the Council of State which violated Union law for excess of jurisdiction, and which recalls article 47 of the EU Charter of Fundamental Rights, the norms of the Treaties and the jurisprudence of the Court of Justice.

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

Articles:

[Giuseppe Bronzini](#) "Ursula's sense for solidarity: towards a pan-European welfare?"

[Roberto Conti and Franco de Stefano](#) "Algorithm and the new era of digital constitutionalism: which challenges for the legal expert (theoretical and practical)? Talking to Oreste Pollicino"

[Michele De Luca](#) "Block of dismissals during the Covid-19 pandemic a year later: it's time to take stock (note to the decisions of the Court of Rome of 26 February 2021 and the Court of Ravenna of 7 January 2021)"

[Vincenzo De Michele](#) "Direct effect of the principle of non-discrimination of the Charter of Nice in the conclusions of the Advocate general on short-term religion teachers"

[Sergio Galleano](#) "Decision of the Court of Cassation n. 6497/21 and the protection of fragile workers, also during the Covid-19 pandemic"

[Stefano Mogini](#) "The ratification of Protocol n. 15 to the ECHR"

[Mauro Palma](#) "Rights of individuals deprived of freedom"

[Lorenzo Salazar](#) "The European Prosecutor's Office at the eve of the entry into force"

Notes and comments:

[Elena Boghetic](#) "EU Court of Justice, Second section, 17 march 2021, Case C-652/19 in the matter of collective dismissals"

[Alessandro Centonze](#) "The ECtHR on the right to a fair trial in the cases of unreasonable length of preliminary investigation (ECtHR, Petrella v. Italy)"

[Filippo D'Angelo](#) "Proposal of regulation of European Union digital services: proceeding (brief notes)"

[Gaetano De Amicis](#) "Comment on the decision of the European Court of Human Rights, II Section, 9 March 2021, *Eminağaoğlu v. Turkey* (n. 76521/12)"

[Maria Laura Lepore, Fausta Fanizzi](#) "Temporariness of employment: protection of the worker and anti-abusive techniques after the intervention of the EUCJ"

[Sandra Recchione](#) "Comment on the decision of the European Court of Human Rights, I Section, 25 March 2021, *Di Martino and Molinari v. Italy*"

[Giorgio Repetto](#) "On the utility for the Court of Justice of the priority of the question of constitutional legitimacy. With regard to the decision of 2 February 2021 on the right to silence in proceedings aiming at imposing punitive administrative sanctions (Court of Justice, Grand Section, C-481-19, *DB v. Consob*)"

Documents:

[Report of the French Senate](#) "*L'État de droit dans l'Union européenne*" ("Rule of law in the European Union"), of 18 March 2021