



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 Fundamental Rights Report 2022 of the European Union Agency for Fundamental Rights of 8 June 2022;
- the Regulation (EU) 2022/868 of 30.05.2022 on European data governance and amending Regulation (EU) 2018/1724;
- the Regulation (EU) 2022/850 of 30.05.2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system) and amending Regulation (EU) 2018/1726.

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

- 21.06.2022, C-817/19, *Ligue des droits humains*, on the use of PNR data of air passengers of flights operated within the European Union and on respect for private life, on personal data protection and the right of non-discrimination;
- 16.06.2022, C-328/20, *Commission v. Austria (Indexation des prestations familiales)*, on family benefits and on freedom of movement for workers;
- 09.06.2022, C-673/20, *Préfet du Gers and Institut national de la statistique et des études économiques*, on the disappearance, for British nationals, of the rights linked to the European citizenship (right to vote and to stand as a candidate in municipal elections in the Member State of residence) as a consequence of the Brexit;
- 02.06.2022, C-122/21, *Get Fresh Cosmetics*, on the distribution of cosmetics and on the protection of consumers' health and safety;
- 02.06.2022, C-587/20, *HK/Danmark and HK/Privat*, on the age limit to stand as sector convenor of an organization of workers and on the prohibition of discrimination on grounds of age;
- 19.05.2022, C-569/20, *Spetsializirana prokuratura (Procès d'un accusé en fuite)*, on the possibility of a trial and a conviction *in absentia* and on the right to a new trial or to another legal remedy, which allows a fresh determination of the merits of the case;
- 19.05.2022, C-33/21, *INAIL and INPS*, on workers employed in the territory of two or more Member States and on social security;
- 12.05.2022, C-644/20, *W. J. (Changement de résidence habituelle du créancier d'aliments)*, on the law which may be applied to the maintenance claim of a minor child transferred by his parent to a Member State and on children rights;
- 12.05.2022, C-426/20, *Luso Temp*, on compensation in respect of days of paid annual leave not taken and the corresponding holiday bonus pay in case of end of the employment;

- 05.05.2022, joined cases C-451/19 and C-532/19, *Subdelegación del Gobierno en Toledo*, on the rights of a Union national, who has never exercised his or her freedom of movement and on the application for a residence card for his or her family member, who is a third-country national;
- 05.05.2022, C-179/21, *Victorinox*, on the obligation of the trader to inform the consumer of the existence and the conditions of a manufacturer's commercial guarantee and on the conditions under which such an obligation arises and on consumer protection;
- 05.05.2022, C-101/21, *HJ () and de directeur d'une société*, on the protection of employees in the event of their employer's insolvency and on the concept of "employee";
- 05.05.2022, C-570/20, *Direction départementale des finances publiques de la Haute-Savoie*, on national legislation which provides for an administrative penalty and a criminal penalty for the same acts and on the principle of *ne bis in idem*;

and the order:

- 18.05.2022, C-450/21, *UC v. Ministero dell'istruzione*, on the principle of non-discrimination and on the denial for fixed-term teachers of 500 euros integrative pay for educational goods and services.

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

- 29.04.2022, Grand Chamber Judgment, *Khasanov and Rakhmanov v. Russia* (28492/15 and 49975/15), on the lack of an effective individual risk of ill-treatment in the event of extradition from Uzbekistan to Kyrgyzstan: according to the Court the extradition would not breach the Convention;
- 26.04.2022, *Mediengruppe Österreich GmbH v. Austria* (n. 37713/18), on the order for a newspaper not to publish a photograph with the title "condemned neo nazi", 20 years after the sentence against the person, who stopped such behaviour and who obtained the cancellation from the criminal record: the court found that the Convention was not violated;
- 12.04.2022, *Lings v. Denmark* (n. 15136/20), on the recognition of the responsibility of a pro-euthanasia physician and on his conviction to prison with no suspension for having assisted several people to suicide: according to the Court there was no violation of the Convention;
- 07.04.2022, *Landi v. Italy* (n. 10929/19), on the violation of the Convention for the lack of adoption of preventive measures by the authorities, despite the frequent domestic violence which led to the attempted homicide of the claimant by her partner and to the homicide of their children;
- 06.04.2022, *A.A. and others v. North Macedonia* (n. 55798/16), on the lack of individual removal decisions for migrants, arriving in large groups for whom there were not concrete, legal and effective procedures in order to allow them to enter legally: according to the Court there was no violation of the Convention;
- 05.04.2022, *Nana Muradyan v. Armenia* (n. 69517/11), on the lack of measures to protect the life of a conscript, who committed suicide, against backdrop of harassment, monetary disputes and discouragement of reporting misconduct in his military unit;
- 05.04.2022, *Benkharbouche and Janah v. the United Kingdom* (n. 19059/18 and 19725/18), on the legislation granting immunity to foreign states from domestic court jurisdiction, thereby preventing the applicants from bringing employment claims after dismissal from foreign embassies within the United Kingdom: according to the Court there was violation of the Convention;
- 05.04.2022, Grand Chamber Judgment, *NIT S.R.L. v. the Republic of Moldova* (n. 28470/12), on the justified revocation of the broadcasting licence of a TV channel after repeated and serious breach of the statutory requirement to ensure political balance and pluralism in news bulletins: according to the Court there was no violation of the Convention;

- 05.04.2022, *Teslenko and others v. Russia* (n. 49588/12), on the prosecution for administrative offences for calling on voters not to vote for a party or to abstain from voting in elections: according to the Court there was violation of the Convention;
- 05.04.2022, *Anderlecht Christian Assembly of Jehovah's Witnesses and others v. Belgium* (n. 20165/20), in violation of the Convention for the lack of tax exemption for buildings used for the public practice of a non-recognised religion: according to the Court, the rules on such recognition were devoid of the minimum guarantees of fairness and objectivity;
- 31.03.2022, *N.B. and others v. France* (n. 49775/20), on the fourteen days' administrative detention, pending removal of an eight-year-old foreign National accompanied by his parents, in an unsuitable centre: according to the Court there was violation of the Convention;
- 22.03.2022, *Y and others v. Bulgaria* (n. 9077/18), on the violation of the Convention for the authorities' failure to protect the life of a woman murdered by her husband, despite her several complaints about domestic violence over a period of nine months;
- 15.03.2022, *Lidiya Nikitina v. Russia* (n. 8051/20), on the return to the State of an unclaimed apartment without any award of compensation to the bona fide purchaser in good faith, who could not make use of a new compensatory remedy;
- 15.03.2022, *Bjarki H. Diego v. Iceland* (n. 30965/17), on the trial fairness undermined through the failure to inform of charges and provide legal assistance to the applicant questioned as a witness, while being already under investigation and suspected: according to the Court there was violation of the Convention;
- 15.03.2022, *Gonçalves Monteiro v. Portugal* (n. 65666/16), on the violation of the Convention for the lack of immediate and appropriate action by the authorities to trace a missing 18 year-old woman with schizophrenia, who committed suicide;
- 15.03.2022, Grand Chamber Judgment, *Grzęda v. Poland* (n. 43572/18), on the violation of the Convention for the lack of judicial review of the premature termination *ex lege* of the judge's mandate, after a legislative reform;
- 15.03.2022, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland* (n. 21881/20), on the violation of the Convention following the blanket ban on public meetings, for two and a half months at the start of the Covid-19 pandemic, with associated criminal sanctions and no judicial review of proportionality;
- 08.03.2022, *Tonkov v. Belgium* (n. 41115/14), on the applicant's conviction based on his statements and those of a co-accused, having been given at the initial stage of the investigation, without access to a lawyer, pursuant to the applicable law: according to the Court there was violation of the Convention;
- 08.03.2022, *Reyes Jimenez v. Spain* (n. 57020/18), on the violation of the Convention for the unjustified dismissal of appeal against failure to comply with statutory requirements to obtain written consent for one of three related surgical operations;
- 08.03.2022, *Sabani v. Belgium* (n. 53069/15), on the entry of the police into the home of the applicant without legal basis or consent of alien who let them in, in connection with a removal decision: according to the Court there was violation of the Convention;
- 08.03.2022, *Ekrem Can and others v. Turkey* (n. 10613/10), on the violation of the Convention for the disproportionately lengthy pre-trial detention and prison sentences for involvement in non-violent, albeit disruptive, courthouse protest;
- 01.03.2022, *Sebeleva and others v. Russia* (n. 42416/18), on the attachment of shares held by the applicants, with a total freeze on all related rights for four years and eight months, without sufficient justification: according to the Court there was violation of the Convention;
- 01.03.2022, *Fenech v. Malta* (n. 19090/20), on adequate and proportionate measures during Covid-19 pandemic protecting health of a detained applicant, lacking a kidney, and limiting the spread of the virus in the prison: according to the Court there was not violation of the Convention;

and the decision:

- 08.03.2022, *Diamantopoulos v. Greece* (n. 68144/13), on the acquittal pronounced following the decision of the Court of Appeal, which found the civil responsibility of the

person for the same facts invoked after before the Court of Cassation in order to establish such responsibility: according to the Court article 6(2) is not applicable.

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

- the decision of the *Supreme Court of the United States* of 24.6.2022, which overturned its previous decisions in the cases *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, stating that the US Constitution does not recognize the right to abortion and attributing the regulation of such matter to the people and their elected representatives.

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

- **France:** the decision of the *Conseil constitutionnel* n. 2022/989 of 22.4.2022, on national legislation on the European arrest warrant, which recalls the sources of the European Union and the Treaties; the decision of the *Conseil d'État* of 3.6.2022, on the computerised system for the processing of requests of residence permits and asylum and for the issue of such documents, which recalls the European Union legislation; and the decision of 28.4.2022, which annuls the dissolution of two pro-Palestinian organizations deemed violent by the Government, recalling the ECHR; and the decree of 30.3.2022, which annuls the dissolution of an anti-fascist group and which recalls the ECHR;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Tribunal) of 20.4.2022, in the matter of European arrest warrant; and the decision of 18.3.2022, on the right to an effective remedy linked to the principle of non-discrimination on grounds of age, which recalls the jurisprudence of the Court of Justice; the decision of the *Oberverwaltungsgericht Berlin-Brandenburg* (Administrative Tribunal of Appeal of Berlin-Brandenburg) of 25.4.2022, in the matter of asylum and refugees, which explains when the national jurisprudence can diverge from the jurisprudence of the Court of Justice; the decision of the *Verwaltungsgericht Cottbus* (Administrative Tribunal of Cottbus) of 16.5.2022, on the application of the Regulation (EU) 2016/429 in the matter of animal diseases and of the protection of human health; and the decision of the *Finanzgericht Berlin-Brandenburg* (Fiscal Court of Berlin-Brandenburg) of 15.5.2022, which recalls the jurisprudence of the Court of Justice in tax matters;
- **Italy:** the decision of the *Corte costituzionale* n. 149 of 16.6.2022, on the principle of *ne bis in idem*, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 148 of 14.6.2022, which excludes the criminal nature of certain penalties, according to the jurisprudence of the ECHR, provided for by Italian law on drugs and excludes the right to "silence" for those who receive such measures, recalling the jurisprudence of the Court of Strasbourg; and the decision n. 145 of 13.6.2022, which, in the matter of application of a benefit provided for employees of the Ministry of Foreign Affairs, finds the constitutional illegitimacy of a norm with retroactive effect also for contrast with article 6 of the ECHR and which recalls the jurisprudence of the Court of Strasbourg; the decision of the *Corte di cassazione* n. 20367 of 25.5.2022, on the possibility to appeal against the decisions of the Council of State before the joined sections of the Court of Cassation, for the violation of Union law, according to article 111(8) of the Constitution, which recalls the guideline of the Court of Justice; and the decision n. 20367 of 25.5.2022, on life sentence deemed compatible with the principles of the Convention; the order n. 16521 of 23.5.2022, on the right to compensation, denied because it had been asked for more than two years after, deemed compatible with Union law and the jurisprudence of the Court of Justice; the decision n. 17929 of 18.5.2022, on the right to compensation of taxes in virtue of *ius superveniens*, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 18044 of 5.5.2022, on the extradition to the Russian Federation, which examines the jurisprudence of the

Court of Strasbourg; the decision n. 17054 of 5.5.2022, on the legitimacy of the detention of a person suffering from Parkinson, which recalls the considerations in the light of the ECHR jurisprudence; the decision n. 17781 of 4.5.2022, on the way criminal hearings took place during Covid-19 pandemic, according to which the adversarial principle was not violated and recalls the jurisprudence of ECHR; and the decision n. 17095 of 2.5.2022, on the concept of forced labour, which recalls the ILO guideline and jurisprudence of the Court of Strasbourg; the order of the *Corte di appello di Milano* of 30.5.2022, which raises the question of constitutional legitimacy of the norm on citizenship income which may be granted to those who have been residing in Italy for at least ten years, also for contrast with Union law and with articles 21 and 34 of the EU Charter of Fundamental Rights; and the decision of the *Tribunale di Napoli* of 25.5.2022 on Italian religion teachers, which, following a preliminary referral, decides the dispute recognizing the teachers a compensation calculated in an innovative way and which examines the jurisprudence of the Court of Justice.

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

Articles:

[Gianfranco Amendola](#) "Incinerators and waste-to-energy plants. EU and Italy: lies and truth"

[Giuseppe Bronzini](#) "Europe: towards the reform of the Treaties? We should start the discussion"

[Michele De Luca](#) "The employer's power of control between tradition and innovation: from the civil code to the Personal Data Protection Code, through the Workers' statute and the Jobs Act" (Updated text)

[Gilda Ferrando](#) "Adoption in particular cases and family relationships. Does anything change for children born from surrogated mothers?"

[Sergio Galleano](#) "Decision of the Court of Justice in the case FNV of 21.04.22 (C-227/20): transfer of undertaking and pre-pack procedure in Dutch legislation".

[Cesare Pinelli](#) "*Respect for the Common Values within Member States and Protection of the EU Financial Interests*"

Notes and comments:

[Gabriella Cappello](#) "Comment to the decision of the ECHR, *Sinan Çetinkaya and Agyar Çetinkaya v. Turkey*, of 24 May 2022, n. 74536/10 and 75462/10, on retroactivity of the more favourable treatment in criminal matters"

[Alessandro Centonze](#) "Comment to the decision of the ECHR, *Oganezova v. Armenia*, 17 May 2022, n. 72961/2012, in the matter of inhuman and degrading treatments and the prohibition of discrimination"

Reports:

[Francesco Buffa](#) "Freedom of expression of judges and the European Convention on Human Rights"

[Italian National Guarantor for the Rights of Persons Detained or Deprived of Liberty](#) "Report to the Parliament 2022"

Documents:

[The Final Report of the Commission for the Code of International Crimes](#), of 21 June 2022

[The note of the Italian Senate](#) "Sanctions of the European Union against Russia", of June 2022

[The guide of the Ministerio de Trabajo y Economía Social](#) "*Información algorítmica en el ámbito laboral*" (guide on obligations deriving from the use of algorithms in working fields by the Spanish Government), of May 2022