



OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

Newsletter n. 94

15 September 2022

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 study of the European Parliament of 27.06.2022 "Violence against women and domestic violence. The new Commission proposal in light of European Parliament requests";
- the report of the European Union Agency for Fundamental Rights of 21.06.2022 "Children as suspects or accused persons in criminal proceedings – procedural safeguard".

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

- 01.08.2022, C-19/21, *Staatssecretaris van Justitie en Veiligheid (Refus de prise en charge d'un mineur égyptien non accompagné)*, on the right to an effective remedy of a minor or of a relative, legally present in another Member State, against the decision which refuses the minor's take charge request;
- 01.08.2022, C-184/20, *Vyriausioji tarnybinės etikos komisija*, on the publication on the internet of data contained in the declarations of private interests of natural persons working in the public service or of heads of associations or establishments receiving public funds, and on the protection of personal data;
- 01.08.2022, C-242/22 PPU, *TL () and de traduction*), on the right to information in criminal proceedings;
- 01.08.2022, C-273/20 and C-355/20, *Bundesrepublik Deutschland (Regroupement familial avec un mineur réfugié)*, on the request of family reunification lodged by an adult with a minor who has obtained refugee status;
- 01.08.2022, C-279/20, *Bundesrepublik Deutschland (Regroupement familial d'un enfant devenu majeur)*, on the child applying for family reunification with her father, who has obtained the refugee status, on the concept of "minor child" and of "real family relationship";
- 01.08.2022, C-411/20, *Familienkasse Niedersachsen-Bremen*, on social security benefits and on free movement of persons;
- 01.08.2022, C-422/21, *Ministero dell'Interno (Retrait des conditions matérielles d'accueil)*, on seriously violent behaviour of an applicant for international protection and on Member States' right to determine the sanctions applicable;
- 01.08.2022, C-720/20, *Bundesrepublik Deutschland (Enfant de réfugiés, né hors de l'État d'accueil)*, on the application for international protection lodged by a minor in his or her Member State of birth;

- 14.07.2022, joined cases C-274/21 and C-275/21, *EPIC Financial Consulting*, on national legislation providing for the refusal of a claim in the event of failure of payment of fees for access to administrative proceedings and the right to an effective remedy;
- 14.07.2022, C-572/21, *CC (Transfert de la résidence habituelle de l'enfant vers un État tiers)*, on the transfer, during the proceedings, of the habitual residence of a child from a Member State of the European Union to a third State that is party to the 1996 Hague Convention;
- 07.07.2022, C-7/21, *LKW WALTER*, on the period within which the right to refuse to accept a document and to lodge a claim are to be exercised, and on the right to an effective remedy;
- 07.07.2022, C-261/21, *F. Hoffmann-La Roche and others*, on the right to an effective remedy and on the access to an independent and impartial tribunal previously established by law and on the obligation on the referring court to give full effect to the interpretation of EU law provided by the Court of Justice;
- 07.07.2022, joined cases C-257/21 and 258/21, *Coca-Cola European Partners Deutschland*, on the collective agreement which provides for a lower supplementary allowance for regular night work than that established for irregular night work;
- 07.07.2022, C-377/21, *Zone de secours Hainaut – Centre*, on taking into account, for the purpose of calculating the remuneration of a full-time professional firefighter, the length of service for remuneration purposes, which he has acquired as a volunteer firefighter, in accordance with the principle of *pro rata temporis* and the principle of non-discrimination;
- 07.07.2022, C-576/20, *Pensionsversicherungsanstalt (Périodes d'éducation d'enfants à l'étranger)*, on old-age pension and taking into account of child-raising periods completed in other Member States and on free movement of citizens.

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

- 30.06.2022, *Azadliq and Zayidov v. Azerbaijan* (n. 20755/08), in violation of the Convention for insufficiency of the reasoning of the sentence which imposed a disproportioned penalty for the publication of defamatory articles in a newspaper;
- 30.06.2022, *Paparrigopoulos v. Greece* (n. 61657/16), in violation of the Convention for the impossibility for the father of a child born out of wedlock to exercise his parental responsibility without the mother's consent, despite the DNA test;
- 28.06.2022, *Boutaffala v. Belgium* (n. 20762/19), on the conviction of the applicant for resisting to police officers on grounds of the police officers' testimony: the Court found the violation of the Convention;
- 26.06.2022, *M.D. and others v. Spain* (n. 36584/17), on the report compiled by the police concerning judges, who signed a manifesto, which set out their opinion that the Catalan people should have a "right to decide" and the insufficient investigations on the leak of information to the press: the Court establishes the violation of the Convention;
- 23.06.2022, *Haščák v. Slovakia* (n. 58359/12 and others), on the violation of the Convention, because of the almost unlimited power exercised by the Slovak Intelligence Service during a surveillance operation without adequate surveillance warrants for the persons affected by such operation;
- 23.06.2022, *Rouillan v. France* (n. 28000/19), on the violation of the Convention on the disproportion of the detention imposed to an old terrorist for the public glorification of the terrorist acts of 2015 in Paris made on a radio show and on the internet some months later;
- 23.06.2022, *Grosam v. Czech Republic* (n. 19750/13), on insufficient procedural guarantees with regard the appointment of non-professional judges in disciplinary proceedings and their protection from external pressure: according to the Court, there was violation of the Convention;
- 21.06.2022, *P.W. v. Austria* (n. 10425/19), on the applicant's confinement for more than three years because of psychiatric disorder after three expert reports: according to the Court, there was no violation of the Convention;

- 14.06.2022, *Algirdas Butkevičius v. Lithuania* (n. 70489/17), on the disclosure of secretly recorded telephone conversation of the Prime Minister concerning a person of public interest, since it was provided for by law and proportioned to the aim: according to the Court, there was no violation of the Convention;
- 14.06.2022, *Ecodefence and others v. Russia* (n. 9988/13 and others), on the applicability of the law on foreign agents to non-governmental organisations and their directors, which was not provided for by the law nor necessary in a democratic society: according to the Court, there was violation of the Convention;
- 14.06.2022, *Abdullah Yalçın v. Turkey (No. 2)* (n. 34417/10), on the unjustified refusal to give a room of the high-security prison to a Muslim prisoner for the congregational Friday prayer: according to the Court, there was violation of the Convention;
- 14.06.2022, *L.B. vs Lithuania* (n. 38121/20), on the violation of the Convention following the refusal to issue the applicant with a new alien's passport based on formalistic grounds, not considering that he was a long-term resident of Chechen origin, ex-beneficiary of subsidiary protection and afraid to contact Russian authorities;
- 09.06.2022, *Xavier Lucas v. France* (n. 15567/20), on the excessive formalism concerning the inadmissibility of the application, for having been issued electronically: according to the Court, there was violation of the Convention;
- 07.06.2022, *Patrício Monteiro Telo de Abreu v. Portugal* (n. 42713/15), on the penalty for defamation of a municipal councillor imposed to a political opponent for having published three cartoons by a painter on a blog which he ran at the time: according to the Court, there was violation of the Convention;
- 02.06.2022, *Straume v. Latvia* (n. 59402/14), in violation of the Convention with regard to the fact that national legal systems did not apply the norms of the Convention, nor correctly applied the sanctions against an employee who signed a letter in representation of the trade union;
- 31.05.2022, *Arnar Helgi Lárusson v. Iceland* (n. 23077/19), according to which there was no discrimination against a person on a wheelchair because of the impossibility to access the office of the local administration, in consideration of many other important measures taken in order to improve such accessibility: according to the Court, there was no violation of the Convention;
- 31.05.2022, *X and others v. Albania* (n. 73548/17 and 45521/19), in violation of the Convention for the lack of quick and effective measures against segregation in a primary school mostly attended by Roma and Egyptian children;
- 19.05.2022, *T.C. v. Italy* (n. 54032/18), on the order (which may be amended and revoked) concerning the prohibition imposed on a Jehovah witness to refrain from involving his little child, educated in the Catholic faith, in functions and practices of his religion: according to the Court, there was no violation of the Convention;
- 17.05.2022, *Oganezova v. Armenia* (n. 71367/12 and 72961/12), in violation of the Convention for the lack of protection of the LGBT owner of a bar against a criminal fire and harassment and homophobic attacks and for the lack of an effective investigation;
- 12.05.2022, *Dragan Kovačević v. Croatia* (n. 49281/15), in violation of the Convention for the disproportioned refusal of a request for reimbursement of the costs of the proceeding before the Constitutional Court with regard to the deprivation of his legal capacity;
- 10.05.2022, *Yeşiller Ve Sol Gelecek Partisi v. Turkey* (n. 41955/14), on the prohibition to a political party to hold a congress in a town due to the lack of adequate places in order to run in the Parliamentary elections: according to the Court, there was no violation of the Convention;
- 04.05.2022, *Bumbeş v. Romania* (n. 18079/15), on the case of an activist fined for a short and peaceful gathering, without prior notice, with three other persons, who handcuffed themselves to a government car park barrier, in protest against a mining project: according to the Court, there was violation of the Convention;
- 03.05.2022, *Volodya Avetisyan v. Armenia* (n. 39087/15), in violation of the Convention because of the lack of effectiveness of national applications aiming at protesting against detention conditions.

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

- the decision of the *First District Court of Appeal, State of Florida* of 15.8.2022, which rejected the request of a minor to be exempted from the parents'/legal guardian's consent in order to end her pregnancy (as provided by the law of the State), deeming the girl non sufficiently mature to decide on such issue;
- the order of the *District Court of Teton County, Wyoming* of 9.8.2022, which temporarily blocked the execution of the norms of Amendment HB 92 aiming at extending legal restrictions to abortion;
- the decision of the *Committee on the Elimination of Discrimination against Women* (CEDAW) of 18.7.2022, which stigmatizes the decisions of some Italian judicial authorities in a trial for rape;
- the decision of the *Supreme Court of Iowa* of 17.6.2022, which reverted its previous decision in the case *Planned Parenthood of the Heartland v. Reynolds (PPH II)*, establishing that abortion is not a fundamental right according to the Constitution of Iowa;
- the order of the *Supreme Court of India* of 19.5.2022, according to which the right to life provided for by article 21 of the Constitution includes the right to live with dignity, and involves also sex workers: the Court outlined some instructions pending a specific law in such matter;
- the decision of the *Inter-American Court of Human Rights* of 4.2.2022, case *Pavez Pavez vs. Chile*, in violation of the Convention for the revocation, by the vicariate, of the certificate for suitability of teaching catholic religion against a female teacher of a public school, in virtue of her sexual preferences; and the decision of 1.2.2022, case *Federación Nacional de Trabajadores Marítimos y Portuarios (FEMAPOR) vs. Perú*, on the violation of the rights to an effective remedy, to work and to private property of 4090 workers of the maritime and port sector following the failure to execute of a decision of 1992 of the Supreme Court concerning the calculation of the salary increase in favour of those workers.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 79/2022 of 9.6.2022, on the interpretation whether the parental leave is an interruption of the uninterrupted period of occupation of five years provided for by the law in order to have access to Belgian nationality, also in the light of article 8 of the ECHR; and the decision n. 75/2022 of 9.6.2022, which annuls article 2.4.4.2 of the Belgian Code of navigation for the lack of norms on the disembarkation of clandestine passengers in determinate circumstances and for the lack of specific judicial guarantees in the event of detention of the clandestine passenger on board, recalling the ECHR and the Regulation (EU) 2016/399 (Schengen Borders Code) and the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Bosnia and Herzegovina:** the decision of the *Ustavni sud* (Constitutional Court) of 14.7.2022, which finds the constitutional legitimacy of article 3 of the "Law on Amendments to the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children" with regard to the differences of treatment in invalidity allowances for persons with disabilities and for civilians victims of war, also recalling the jurisprudence of the Court of Strasbourg; the decision of 24.3.2022, which finds the constitutional legitimacy of article 105 of the "Law on Misdemeanours" in the matter of deprivation of liberty, also in the light of the norms of the ECHR and of the jurisprudence of the Court of Strasbourg; and another decision of 24.3.2022, which found the constitutional illegitimacy of the law on wages and other allowances of judges and public prosecutors, because of the lack of the meal allowance, which is provided for other public officers, also recalling the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Czech Republic:** the decision of the *Ústavní soud* (Constitutional Court) of 22.3.2022, which confirms the constitutional legitimacy of the norms of article 65(1) of the "Police

Act” on the storage of DNA samples by the police, recalling EU legislation and the jurisprudence of the Court of Strasbourg;

- **France:** the decree of the *Conseil d'État* n. 463850 of 27.7.2022, on the legitimacy of the restoration of control at borders, which recalls the EU Treaties and supra-national legislation; the decision of the *Cour de cassation* of 12.7.2022, which examines a case of alleged discrimination also with regard to the violation of articles 6 and 8 of the ECHR, for the failure to acquire proof of the alleged unequal treatment; the decision n. 771 of 12.7.2022, on the legitimacy of the storage of personal data, which recall the jurisprudence of the Court of Justice, supra-national legislation and the EU Charter of Fundamental Rights; and the decision n. 655 of 11.5.2022, on the amount of the redundancy payment and on its coherence with article 24 of the European Social Charter (of which the Court excludes the direct applicability);
- **Germany:** the decision of the *Bundesverfassungsgericht* (Constitutional Federal Court) of 1.8.2022, on international children abduction; and the decision of 28.6.2022, which finds the constitutional legitimacy of the legislation which does not recognize family allowance to the children of foreigners holding humanitarian residence permits for discrimination reasons; the decision of the *Bundesgerichtshof* (Federal Court of Justice) of 2.6.2022, which recalls the jurisprudence of the Court of Justice in the matter of intellectual property and mentions article 17 of the EU Charter of Fundamental Rights;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 20.7.2022, in the matter of deportation and right to family and private life; and the decision of 6.7.2022, in which the Court establishes that immunity cannot be invoked for a diplomat called to respond before the Employment Tribunal accused of labour exploitation and slavery against his housekeeper; the decision of the *England and Wales High Court* of 29.7.2022, on guarantees provided for by the United Kingdom, with regard to the prohibition of inhuman and degrading treatments and to the right to life, in a proceeding for the European arrest warrant towards Latvia; the decision of 4.7.2022, in which the Court finds compatible with the right to property and the right to freedom of expression of an undertaking, the suggestions, within the national campaign against juvenile obesity, regarding how to sale cereals for breakfast; the decision of 22.6.2022, on the obligation in the matter of investigation for the authorities in the event of apparent suicide, in the light of article 2 of the ECHR; and another decision of 22.6.2022, in the matter of in vitro fertilisation *post mortem* of one parent and the right to family life; the decisions of the *Employment Tribunal* of 6.7.2022 and of 22.7.2022: in two decisions similar one to each other, the Tribunal finds that the measures adopted by the employers against two workers, who had given their negative opinion in the matter of the proposal of reform of national legislation on rectification of gender, amount to discrimination on grounds of their personal belief;
- **Ireland:** the decision of the *Supreme Court* of 18.7.2022, on the interpretation of the concept of “applicant” according to the International Protection Act 2015, in the light of EU legislation and of the jurisprudence of the Court of Justice; and the decision of 15.6.2022, in the matter of surrender according to the European arrest warrant and general obligations of the State deriving from article 3 of the ECHR, which analyses the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision of the *Court of Appeal* of 24.5.2022, which deemed unlawful the use of data collected by a security camera for a different aim (in the specific case, for a disciplinary proceeding against an employee) from the declared one, recalling the norms of the General Data Protection Regulation (GDPR); and the decision of 22.4.2022, on the relation between obligation of investigation on serious offences and the right to the protection of journalist sources, which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg; the decisions of the *High Court* of 14.7.2022 and of 10.6.2022, which make a reference for a preliminary ruling to the Court of Justice with regard to the interpretation of the scope of articles 9(3) and (4) of the Aarhus Convention in the matter of access to justice; the decision of 9.6.2022, which, in the matter of access to labour market of an international protection seeker, recognizes the wrong transposition by the State of the norms of article 15(1) of Directive 2013/33/EU; and the decision of 27.4.2022, on the wrong interpretation of the criteria of dependent persons and member of the

household, pursuant to the Regulations transposing Directive 2004/38/EC, at the basis of the refusal of a residence permit;

- **Italy:** the decision of the *Corte di cassazione* n. 22861 of 21.7.2022, on time limits in the renewal of temporary agency contracts, which recalls the jurisprudence of the Court of Justice; the decision n. 23853 of 21.6.2022, on a case of conviction in *absentia*, which recalls the jurisprudence of the ECHR; the decision n. 23194 of 14.6.2022, on the assignment to a farming colony or a working home of a person deemed an habitual offender and on the compatibility of such proceeding with the norms of the ECHR; and the decision n. 22182 of 8.6.2022, on a case of expulsion of a foreigner accused of crimes in the matter of drugs, which recalls the national jurisprudence and the case law of the ECHR on the necessity to ascertain the dangerousness of the person; the decision of the *Consiglio di stato* (Council of State) of 13.7.2022, which establishes the right of the holder of a residence permit for humanitarian reasons to get a travel document from the Italian authorities, recalling the EU legislation in such matter; and the order of the *Tribunale di Brescia* of 26.6.2022, which condemns the Italian National Social Security Institute (INPS) for legal overreach for having resisted in a proceeding on the recognition of family benefits after the decisions of the Court of Justice and the Constitutional Court in such matter;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 540/2022 of 16.8.2022, which found the constitutional illegitimacy of article 24 of law n. 65/2003 on the European arrest warrant, where it did not allow the prisoner, who gave his consent to his hand over, to appeal against the order confirming such consent; the decision n. 303/2022 of 27.4.2022, which finds the constitutional legitimacy of article 3(1) of the *Novo Regime do Fundo de Garantia Salarial* with regard to the payment ceilings, by the Fund of Wage Guarantee, of credits coming from work contracts in the event of insolvency of the employer, in the light of Directive 2008/94/EC and of the jurisprudence of the Court of Justice; and the decision n. 268/2022 of 19.4.2022, which found the constitutional illegitimacy of certain articles of law n. 32/2008, which transposes Directive 2006/24/EC – declared invalid by the Court of Justice in the case *Digital Rights Ireland* (C-293/12 and C-594/12) – in the light of the norms of the EU Charter of Fundamental Rights and of the ECHR and of the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Slovenia:** the decision of the *Ustavno Sodišče* (Constitutional Court) of 16.6.2022, which found the constitutional illegitimacy of norms which considered the marriage the only form of union between persons of different sex, also recalling the norms of the ECHR and of the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg; and another decision of 16.6.2022, which found the constitutional illegitimacy of the legal prohibition to include same sex partners in the register of candidates for joint adoption, also in the light of the norms of the ECHR and of the EU Charter of Fundamental Rights and of the jurisprudence of the Court of Strasbourg;
- **Spain:** the decision of the *Tribunal Constitucional* n. 89/2022 of 29.6.2022, which annulled a decision of the Supreme Tribunal, with which such Court had declared the nullity of resolutions of the Agencia Española de Protección de Datos, aiming at preventing the association between the name of the applicant and specific results on Google, recalling the EU legislation in the matter of protection of personal data, the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 82/2022 of 27.6.2022, in the matter of recognition of filiation out of wedlock, which recalls the jurisprudence of the Court of Strasbourg; the decision n. 53/2022 of 4.4.2022, on the violation of the right to an effective remedy because of the temporary interruption of investigations concerning the case of a police van which run over a minor, also in the light of the jurisprudence of the Court of Strasbourg; the decision of the *Tribunal Supremo* of 28.7.2022, concerning the balancing between the right of image and freedom of expression, in the light of the jurisprudence of the Court of Strasbourg; and the decision of 12.7.2022, on the right of the father to lactation permit, also recalling the jurisprudence of the Court of Justice; the order of 29.6.2022, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of articles 4 and 7 of Directive 93/13/EEC, concerning

unfair clauses in consumer contracts, in combination with article 47 of the EU Charter of Fundamental Rights; and the decision of 30.5.2022, on the recognition of maternity allowance to a person, who already receives old-age pension, in the light of the jurisprudence of the Court of Justice, and in particular of the decision in the case *WA v. Instituto Nacional de la Seguridad Social* (C-450/18);

- **The Netherlands:** the three decisions of the *Raad Van State* (Council of State) of 6.7.2022, on the transfer of Syrian asylum seekers in Denmark (two decisions) and Sweden (one decision) according to the "Dublin Regulation": the Court established that, in the case of Denmark, the Ministry has the obligation to remove any doubt on the risk of indirect *refoulement* towards Syria and, as a consequence, of violation of articles 3 of the ECHR and 4 of the EU Charter of Fundamental Rights; the decision of the *Rechtbank Rotterdam* (District Tribunal of Rotterdam) of 6.7.2022, according to which the "new Dockers' Clause", contractual clause added in 2018 to the collective agreements of the International Bargaining Forum (IBF), is not in violation of EU legislation on competition; and three decisions of the *College van Beroep voor het bedrijfsleven* (Appeal Court of Commerce and Industry) of 3.5.2022, in the matter of evaluation of phytosanitary products for the authorization to their introduction in the market, which make a reference for a preliminary ruling to the Court of Justice on the interpretation of the norms of Regulation (EC) 1107/2009 and of Regulation (EU) 2018/605.

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

Articles:

[Giuseppe Bronzini](#) "Temporary agency work and the reiterated guarantees of the Union"

[Vincenzo De Michele](#) "The strange case of bathing concessions and the creative jurisprudence of the Council of State on the primacy of EU law"

[Sergio Galleano](#) "Decision of the Court of Cassation n. 22861/2022: how to deal with the problem of the reiteration of temporary agency work in violation of the principle of temporariness established by European law despite the forfeiture pursuant to art. 32 of law 183/10"

[Elisabetta Grande](#) "The recent decisions of the American Supreme Court on arms, abortion and climate: a challenge to its survival?"

[Maria Merlino](#) "Italian terrorists in France: does the ECHR shield prevent from extradition?"

[Tiziana Orrù](#) "Pending proceedings and legislative intervention. Another stop from the Constitutional Court"

[Nello Rossi](#) "Against the war of aggression: the right to resist"

[Mario Serio](#) "Extradition and human rights. Considerations on the decision of the English High Court in the case Assange"

Notes and comments:

[Thierry Breton](#) "Neither autarchy nor dependence – more European autonomy"

[Gaetano De Amicis](#) "Comment to the decision of the ECHR, GC, 29 April 2022, *Khasanov and Rakhmanov v. Russia* on the prohibition of inhuman and degrading treatments"

[Paola Di Nicola Travaglini](#) "Discrimination towards women in judicial language"

[Lucia Tria](#) "Women as magistrates. An adequate judicial system for our society"

[Enrico Zucca](#) "The case of Julian Assange. Is it right to charge him and for which offence? When informing people as a guarantee of democracy amounts to hostile attack"

Reports:

[Michele De Luca](#) "Procedural *overruling versus* the functionality of civil proceedings?"

[Olaf Scholz](#) "Speech of the Chancellor of the German Federal Republic at the Charles University in Prague: 'Europe is our future'"

Documents:

[Resolution of the General Assembly of the United Nations](#) "*The human right to a clean, healthy and sustainable environment*", of 28 July 2022

[Note of the Italian Senate](#) "The sanctions of the European Union against the Russian Federation" (updated version), of June 2022