



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 Directive (EU) 2022/2041 of 19.10.2022 on adequate minimum wages in the European Union;
- the Communication from the European Commission of 13.10.2022 “*Enforcing EU law for a Europe that delivers*”;
- the Communication from the European Commission of 6.10.2022 “*Report on Migration and Asylum*”;
- the Communication from the European Commission 7.9.2022 “*The European care strategy*”.

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

- 28.10.2022, C-435/22 PPU, *Generalstaatsanwaltschaft München () and ne bis in idem*), on the extradition of a third country national and on the principle of *ne bis in idem*;
- 27.10.2022, C-129/21, *Proximus (Annuaire électronique publics)*, on the processing of personal data and the protection of privacy in the electronic communications sector and on the right to erasure;
- 27.10.2022, C-485/21, *S.V. (Immeuble en copropriété)*, on unfair terms in consumer contracts and on the concept of “consumer” and of “seller or supplier”;
- 20.10.2022, C-825/21, *Centre public d’action sociale de Liège (Retrait ou suspension d’une décision de retour)*, on the illegal stay of third country nationals and on the issue of the authorization to temporary stay while the application for leave to remain for the purpose of medical treatment is being examined;
- 18.10.2022, C-677/20, *IG Metall and ver.di*, on the transformation of the company in a European company and on the involvement of employees in decision-making within the European company;
- 13.10.2022, C-344/20, *S.C.R.L. (Vêtement à connotation religieuse)*, on the internal rule of a private undertaking prohibiting any manifestation, in the workplace, of religious, philosophical or political belief;
- 13.10.2022, C-199/21, *Finanzamt Österreich (Recouvrement de prestations familiales)*, on the legislation of a Member State providing for the award of family benefits to the parent who has taken the child into his or her household;
- 06.10.2022, C-241/21, *Politsei- ja Piirivalveamet (Placement en rétention - Risque de commettre une infraction pénale)*, on the return of illegally staying third-country nationals, on the limitation to the right to freedom and on repatriation;

- 29.09.2022, C-3/21, *Chief Appeals Officer and others*, on social security of migrant workers and on free movement of persons;
- 22.09.2022, C-159/21, *Országos Idegenrendészeti Főigazgatóság and others*, on common procedures for withdrawing international protection following danger to national security and on the access to the file;
- 22.09.2022, C-120/21, *LB (Prescription du droit au congé annuel payé)*, on the protection of the safety and health of workers and on the right to paid annual leave;
- 22.09.2022, joined cases C-245/21 and C-248/21, *Bundesrepublik Deutschland (Suspension administrative de la décision de transfert)*, on the transfer of an asylum seeker;
- 22.09.2022, C-215/21, *Servicios prescriptor y medios de pagos EFC*, on unfair terms in consumer contracts;
- 20.09.2022, joined cases C-339/20 and C-397/20, *VD*, on general and indiscriminate retention of traffic data by operators providing electronic communications services and on protection of private life and of personal data;
- 20.09.2022, joined cases C-793/19 and C-794/19, *SpaceNet*, on processing of personal data in the electronic communications sector, on general and indiscriminate retention of connection data, on privacy of communication and on the protection of personal data;
- 15.09.2022, C-22/21, *Minister for Justice and Equality (Ressortissant de pays tiers cousin d'un citoyen de l'Union)*, on the right of European Union nationals and of their family members to move and reside freely within the territory of the Member States and on the concept of "other family members who are members of the household of the Union citizen having the primary right of residence";
- 15.09.2022, C-58/21, *Rechtsanwaltskammer Wien*, on the coordination of social security systems between the EU Member States and the Swiss Confederation;
- 07.09.2022, C-624/20, *Staatssecretaris van Justitie en Veiligheid (Nature du droit de séjour au titre de l'article 20 TFUE)*, on the status of third-country nationals, who are long-term residents, relatives of a EU national;
- 07.09.2022, C-391/20, *Cilevičs and others*, on the legislation of a Member State which provides for the obligation, for high schools, to provide courses of study in the official language of the Member State concerned.

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

- 30.08.2022, *Pârvu v. Romania* (n. 13326/18), on the use of lethal force during a police operation against an individual, wrongly identified as dangerous fugitive, not absolutely necessary, and on ineffective investigation;
- 30.08.2022, *Traskunova v. Russia* (n. 21648/11), on the violation of the Convention with regard to the death of the participant in a clinical trial of a new medicinal product after the deficient implementation of regulatory framework and non-compliance with guarantees ensuring an informed consent;
- 30.08.2022, *C. v. Romania* (n. 47358/20), on significant flaws in criminal investigation concerning alleged sexual harassment at the workplace;
- 30.08.2022, *Y.G. v. Russia* (n. 8647/12), on authorities' failure to adequately protect confidentiality of the applicant's health data and to investigate its disclosure through a database being sold in a market;
- 30.08.2022, *Tusă v. Romania* (n. 21854/18), on all available procedural avenues ineffective for the applicant claiming medical negligence after breast removal surgery performed on the basis of the oncologist's mistaken cancer diagnosis;
- 30.08.2022, *Sorokin v. Russia* (n. 52808/09), on the unjustified search of a journalist's home and seizure of his electronic devices in absence of procedural safeguards against interference with confidentiality of journalistic sources;
- 21.07.2022, *Darboe and Camara v. Italy* (n. 5797/17), on the violation of the Convention for having placed a minor in an adult reception center in inadequate conditions for more than four months and having subjected him to the age-assessment procedure;

- 12.07.2022, *Kotlyar v. Russia* (n. 38825/16 and others), on the retroactive application of criminal law for the deliberate false registration of immigrants at the applicant's property;
- 11.07.2022, *Kavala v. Turkey* (n. 28749/18), on the infringement proceedings against Turkey for failure to abide by the Court's final judgment explicitly indicating the applicant's immediate release;
- 07.07.2022, *Chocholáč v. Slovakia* (n. 81292/17), on the general and indiscriminate ban on the prisoner possession of pornographic material not permitting proportionality assessment in an individual case;
- 07.07.2022, *Safi and others v. Greece* (n. 5418/15), on the lack of adequate investigation concerning the sinking of a fishing boat transporting refugees, resulting in the death of some of them;
- 07.07.2022, *Tagiyeva v. Azerbaijan* (n. 72611/14), on the absence of a real and immediate risk to life of a well-known writer, fatally stabbed by an unknown person, against whom a religious fatwa had been issued several years beforehand, not sufficient to trigger positive obligations in particular case circumstances since there was no evidence of threats or any kind of intimidation;
- 05.07.2022, *Loizides v. Cyprus* (n. 31029/15), on the sufficiently reasoned dismissal of a criminal appeal;
- 05.07.2022, *Dimici v. Turkey* (n. 70133/16), on the refusal to allow a woman and her heirs to receive an income from a charitable foundation, on the basis of an Ottoman-era legal document. Pursuant to the Foundation's constituent document, dating from the 16th century, only male descendants could be paid sums from the Foundation's surplus income;
- 05.07.2022, *Case of Association of Civil Servants and Union for Collective Bargaining and others v. Germany* (n. 815/18 and others), on the legislation, rendering the conflicting collective agreements concluded by minority trade unions inapplicable, within the respondent State's margin of appreciation;
- 05.07.2022, *Drousiotis v. Cyprus* (n. 42315/15), on insufficient reasons and disproportionate damages award in the defamation action against a journalist for a newspaper article on high-ranking attorney in the Law Office of the Republic of Cyprus.

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

- the decision of the *Inter-American Court of Human Rights* of 31.8.2022, case *Habbal y otros vs. Argentina*, which excludes international responsibility of the State with regard to the revocation of Argentinian nationality obtained by a Syrian citizen through naturalization and the annulment of permanent residence for her three daughters, and the following administrative proceeding which led to the expulsion from the State; the decision of 25.8.2022, case *Deras García y otros vs. Honduras*, which found the responsibility of the State for the extra-judicial execution of a political manager and union consultant in 1983, and for the violence and violations committed against members of his family; the decision of 30.6.2022, case *Sales Pimenta vs. Brasil*, on the violation of the State duty to investigate with enhanced diligence on the violence committed against those who defend human rights; the decision of 22.6.2022, case *Guevara Díaz vs. Costa Rica*, on the violation of the Convention in a case of discrimination in the workplace based on intellectual disability; the decision of 22.6.2022, case *Movilla Galarcio y otros vs. Colombia*, which found the responsibility of the State for the forced disappearance in 1993 of a trade unionist and political activist of the Colombian communist party, and for the lack of adequate investigations; the decision of 23.5.2022, case *Moya Chacón y otro vs. Costa Rica*, on the violation of the right to freedom of thought and expression for the civil sanctions imposed onto two journalists for the publication of an article on bootlegging, which also referred to some policemen; and the decision of 11.5.2022, case *Casierra Quiñonez y otros vs. Ecuador*, on the excessive use of force by state agents during an operation against criminality, which led to the death of a person and the wounding of two others;

- the decision of the Eastern Caribbean Supreme Court in the Federation of Saint Christopher and Nevis (St. Kitts and Nevis) of 29.8.2022, which partially annulled sections 56 and 57 of the "Offences Against the Person Act", on the crime of sodomy, when concerning sexual acts in private and between adults.

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

- **Belgium:** the decision of the Cour constitutionnelle n. 110/2022 of 22.9.2022, in the matter of protection of personal data, which annuls several norms enforcing the cooperation agreement between federal and regional authorities with regard to joint data processing within the tracing of people's contacts (allegedly) affected by COVID-19, in the light of the norms of Regulation (EU) 2016/679 (GDPR), of articles 7 and 8 of the EU Charter of Fundamental Rights and article 8 of the ECHR, and of the jurisprudence of the Court of Justice; the decision n. 109/2022 of 22.9.2022, on the constitutional legitimacy, and the compatibility with the ECHR, of certain articles of the law of 15 May 2007 on civil security (*sécurité civile*), with regard to the circumstances in which the Minister can adopt the measures provided for by law and on the length of such measures; and the decision n. 103/2022 of 15.9.2022, which makes a reference for a preliminary ruling to the Court of Justice on the compatibility of Directive (EU) 2018/822, concerning the compulsory automatic exchange of tax information with regard to cross-border mechanisms subjected to notification requirement, with article 6(3) TEU, articles 7, 20, 21 and 49(1) of the EU Charter of Fundamental Rights and articles 7 and 8 of the ECHR;
- **Bosnia and Herzegovina:** the decision of the Ustavni sud (Constitutional Court) of 22.9.2022, which finds the constitutional legitimacy of article 71(2)(c) of the "Bankruptcy Law", where it provides for an age limit of 63 years old to be appointed as insolvency administrator, also in the light of the norms of the ECHR and the jurisprudence of the Court of Strasbourg;
- **France:** the decision of the Conseil constitutionnel n. 841/2022 of 13.8.2022, on the measures adopted by France in order to enforce the European Union anti-terrorism legislation; the decision of the Cour de cassation n. 1254 of 19.10.2022, on the appeal against a dismissal based on an annulled administrative measure, which recalls articles 6 and 13 of the ECHR; the decision of the Conseil d'État of 17.10.2022, in environment matters, which sanctions some companies for the violation of EU norms in such matter; and the decision of 30.8.2022, which revokes the suspension of the expulsion of a Moroccan national for behaviour of racial hatred (anti-Semitic);
- **Germany:** the decision of the Bundesverfassungsgericht (Federal Constitutional Tribunal) of 7.9.2022, which recalls the decision in the case *Paradiso-Campanelli v. Italy* of the ECHR in the matter of adoption and surrogated maternity; the decision of the Bundesgerichtshof (Federal Court of Justice) of 13.10.2022, on the protection of intellectual property, which recalls the jurisprudence of the Court of Justice and Union's sources; and the decision of 28.9.2022, in the matter of legal actions before German courts in order to oblige German rented cars to pay Hungarian road tolls; the decision of the Oberlandesgericht Karlsruhe (Court of Appeal of Karlsruhe) of 9.9.2022, in the matter of GDPR and transfer of data abroad, which recalls the jurisprudence of the Court of Justice and EU supra-national sources;
- **Great Britain:** the decision of the England and Wales Court of Appeal of 28.9.2022, according to which freedom of assembly and expression do not protect from the damage voluntarily caused to property during a nonpeaceful demonstration; the decision of the England and Wales High Court of 26.10.2022, on the balance between the right to freedom of expression and assembly and the right to property; the decision of 14.10.2022, according to which the lack of legislation in the matter of right to remain in the English territory for foreign women victim of domestic violence and of the so called "transnational marriage abandonment" are in contrast with the right to family life, read in combination with the prohibition of discrimination; the decision of 6.10.2022, in which the Court finds that the norm obliging Afghan nationals to undergo

biometric tests in order to reunite with their relatives in the United Kingdom is in contrast with article 8 of the ECHR; the decision of 12.9.2022, in the matter of extradition and prohibition of inhuman and degrading treatments; the decision of 7.9.2022, in the matter of social benefits provided for in the event of death of the spouse: in the specific case, the lack of importance given by the authority to the disability of the disappeared person is in contrast with the right to property and to family life, read in combination with the prohibition of discrimination; and the decision of 26.8.2022, on the standard of proof of the aggravating circumstance of racial hatred in a case of aggression;

- **Hungary:** the decision of the *Alkotmánybírósága* (Constitutional Court) of 1.3.2022, in the matter of processing of personal data in the light of the norms of the General Data Protection Regulation (GDPR);
- **Ireland:** the decision of the *Court of Appeal* of 14.10.2022, on the denial of the unemployment benefit to two Rumanian nationals resident in the State, which analyses EU legislation relevant in such matter and the jurisprudence of the Court of Justice; and the decision of 7.10.2022, concerning the request of a residence permit and the assessment of the rights provided for by article 8 of the ECHR, also in the light of the jurisprudence of the Court of Strasbourg; and the decision of the *High Court* of 16.8.2022, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of article 11(1)(a) of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, read in combination with article 47 of the EU Charter of Fundamental Rights and/or article 9 of the Convention of Aarhus, with regard to the legal standing of the members of the public;
- **Italy:** the order of the *Corte costituzionale* n. 215 of 20.10.2022, on the treatment of honorary judges, which recalls the recent jurisprudence of the Court of Justice; the decision of the *Corte di cassazione* n. 25440 of 29.8.2022, in the matter of international protection, which defines the judge's obligation of cooperation in the matter of proof also with the authorities of the country of origin, and recalls EU Treaties, the European legislation and the guideline of the Court of Strasbourg; the decision n. 29711 of 26.7.2022, on the right to a fair trial in the event of new juridical classification of the fact, which recalls the guideline of the Court of Strasbourg; the decision n. 28548 of 20.7.2022, on the right to a fair trial with regard to the accused person's knowledge of the proceeding; and the decision n. 19044 of 20.6.2022, which, with regard to fixed-term catholic religion teachers, finds that the directive on fixed-term workers is violated and deems they have the right to the so called "community damage" as sanction, but not to the conversion of the contract into a contract with no time limit, in the light of the jurisprudence of the Court of Justice; the order of the *Tribunale di Roma* of 4.10.2022, according to which the anagraphic requirement of ten years to receive the citizen salary can be demonstrated referring to the effective residence, recalling article 45 TFEU, article 21 of the EU Charter of Fundamental Rights and article 14 of the ECHR;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 651/2022 of 18.10.2022, in the matter of translation of procedural acts and competence of the examining judge, which finds the constitutional legitimacy of articles 17 and 268 of the criminal procedure code also in the light of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings;
- **Spain:** the decision of the *Tribunal Constitucional* n. 119/2022 of 29.9.2022, which analyses the jurisprudence of the Court of Strasbourg with regard to the protection of privacy and personal data of the worker in work relations; and the decision n. 113/2022 of 26.9.2022, on the violation of the right to an effective remedy following the denial of compensation in favour of the applicant for the time passed in prison in the United Kingdom for a European arrest warrant, within a proceeding ended with a judgment not to prosecute; and the decision of the *Tribunal Supremo* of 7.9.2022, which admitted the claim aiming at obtaining the increase of the pension for a woman orphan of her mother and whose father had been deprived of parental authority, also recalling article 24 of the EU Charter of Fundamental Rights.

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

Articles:

Sergio Galleano "The prohibition to wear religious, philosophical or spiritual signs at work does not amount to direct discrimination if it is general and indiscriminate"

Maria Alessandra Sandulli "Preliminary referral and administrative justice: the most recent development"

Stefania Scarponi "Fixed-term catholic religion teachers: which epilogue after the decision of the Court of Justice? Comment to the decision of the Court of Naples n. 2383 of 25 May 2022"

Notes and comments:

Giuseppe Bronzini "The European Commission requires the reinforcement of the protection of dignity of persons, decent work proposals, more efficient services for people "

Ruggiero Dipace "Bathing concessions and the persistent necessity of the decision of the Court of Justice"

Erasmus Mancini "Mechanism of conditionality which subjects the benefit of funds from the Union budget: the European Court of Justice rejects the claim lodged by Poland and Hungary"

Erasmus Mancini "Temporary protection in the event of massive flow of displaced people because of the war in Ukraine"

Sandra Recchione "Comment to the decision of the ECtHR, First Section, *M. S. v. Italy* of 7 July 2022, in the matter of limitation period for the crime of domestic violence"

Matteo Timo "*Ex lege* extension of "bathing" concessions before the Court of Justice: a controversial issue (note to the decision of the T.A.R. Puglia, Lecce, Section I, order of 11 May 2022, n. 743)"

Documents:

Emissions Gap Report 2022 of the United Nations Environment Programme (UNEP) "The Closing Window – Climate crisis calls for rapid transformation of societies", of 27 October 2022

"Phase 4 Report – Italy" of the Organization for Economic Cooperation and Development (OECD) on the implementation by Italy of the OECD Convention of 1997 on combating bribery of foreign public officials in international business and on related means, of 13 October 2022

Report by the Open Society Foundations "The Shortcomings of the EU's Corporate Sustainability Due Diligence Proposal in the Information, Communications, and Technology Sector", of October 2022

Study of the Council of State "*Intelligence artificielle et action publique : construire la confiance, servir la performance*", of 30 August 2022