



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

- 27.04.2023, C-681/21, *BVAEB (Montant de la pension de retraite)*, on retirement pension and the prohibition of discrimination on grounds of age;
- 27.04.2023, C-528/21, *M.D. (Interdiction d'entrée en Hongrie)*, on the ban of entry and stay adopted in respect of a third-country national, a family member of a minor EU citizen, and on the right to an effective remedy;
- 20.04.2023, C-775/21 and C-826/21, *Blue Air Aviation*, on the broadcasting of background music and the rights of intellectual property;
- 20.04.2023, C-650/21, *Landespolizeidirektion Niederösterreich and Finanzamt Österreich*, on the prohibition of discrimination on grounds of age and on remuneration of civil servants;
- 20.04.2023, C-348/22, *Autorità Garante della Concorrenza e del Mercato (Commune de Ginosa)*, on unconditional and sufficiently precise nature of the obligation for Member States to apply an impartial and transparent selection procedure to potential candidates and of the prohibition on automatic renewal of an authorisation granted for a given activity;
- 20.04.2023, C-263/22, *Ocidental - Companhia Portuguesa de Seguros de Vida*, on group insurance contract and on consumers' protection;
- 20.04.2023, C-52/22, *BVAEB (Adaptation des pensions de retraite)*, on the retirement pension regime and on the prohibition of discrimination on grounds of age;
- 18.04.2023, C-699/21, *E. D. L. (Motif de refus fondé sur la maladie)*, on the postponement of the execution of the European arrest warrant and on the risk of serious harm to health affecting the person concerned by the European arrest warrant;
- 18.04.2023, C-1/23 PPU, *Afrin*, on the possibility to submit an application for entry and stay in view of family reunification;
- 30.03.2023, C-556/21, *Staatssecretaris van Justitie en Veiligheid (Suspension du délai de transfert en appel)*, on application for international protection;
- 30.03.2023, C-269/22, *IP and others (Établissement de la matérialité des faits au principal - II)*, on the request for the preliminary ruling in criminal matters, on the right to an impartial judge and on the right to the presumption of innocence;
- 30.03.2023, C-5/22, *Green Network (Injonction de remboursement de frais)*, on internal market in electricity and on consumers' protection;
- 30.03.2023, C-34/21, *Hauptpersonalrat der Lehrerinnen und Lehrer*, on teaching by videoconference and on protection of personal data;
- 23.03.2023, joined cases C-514/21 and C-515/21, *Minister for Justice and Equality (Levée du sursis)*, on European arrest warrant and the rights of the defence;

- 23.03.2023, C-365/21, *Generalstaatsanwaltschaft Bamberg (Exception au principe ne bis in idem)*, on limitations to the principle of *ne bis in idem*;
- 16.03.2023, C-339/21, *Colt Technology Services and others*, on the reimbursement of costs associated with interception activities that telecommunications operators are ordered by the judicial authorities to carry out and on the principle of non-discrimination;
- 02.03.2023, C-695/21, *Recreatieprojecten Zeeland and others*, on games of chance and on restrictions on the freedom to provide services;
- 02.03.2023, C-477/21, *MÁV-START*, on the protection of workers' safety and health, on daily rest and weekly rest;
- 02.03.2023, C-16/22, *Staatsanwaltschaft Graz (Service des affaires fiscales pénales de Düsseldorf)*, on the European Investigation Order and on the concept of "judicial authority" and of "issuing authority".

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

- 30.03.2023, *J.A. and others v. Italy* (n. 21329/18), according to which the detention of immigrants in the hotspots in Lampedusa and their expulsion from Italy to Tunisia violates the Convention;
- 23.03.2023, *Udovychenko v. Ukraine* (n. 46396/14), according to which the European Convention protects the freedom of expression of a witness of a car accident;
- 21.03.2023, *Telek and others v. Turkey* (n. 66763/17, 66767/17 and 15891/18), which established that the cancellation of the passports of three academics after the coup d'état of 2016 violated the Convention;
- 09.03.2023, Grand Chamber judgment, *L.B. v. Hungary* (n. 36345/16), on the unjustified publication, on the tax authority website, of the applicant's identifying data, in particular his home address: according to the Court, the systematic publication of personal information of taxpayers in Hungary violates the Convention;
- 07.03.2023, *Kogan and others v. Russia* (n. 54003/20), on the case of a human rights' lawyer and her husband, who were sanctioned for the revocation of her residence permit;
- 07.03.2023, *Mamasakhlisi and others v. Georgia and Russia* (n. 29999/04 and 41424/04), according to which Russia is responsible for the unlawful arrests and inhuman treatments committed by the authorities during the detention of two vulnerable men;
- 21.02.2023, *Catană v. The Republic of Moldova* (n. 43237/13), according to which, in this particular case, the National Judicial Service Commission was not independent and impartial, as provided for by the Convention;
- 21.02.2023, *G.K. v. Cyprus* (n. 16205/21), which established that the decision to return a child abducted by his father, who resided in the United States, was not in violation of the rights of the mother, pursuant to the Convention;
- 14.02.2023, Grand Chamber judgment, *Halet v. Luxembourg* (n. 21884/18), on the violation of the freedom of expression of an employee of a private company, because of his criminal conviction, for disclosing to the media confidential documents, covered by professional secrecy, obtained at the workplace;
- 09.02.2023, *Ugulava v. Georgia* (n. 5432/15), concerning an order of preventive detention in breach of the right to freedom of a former mayor of Tbilisi;
- 09.02.2023, *C8 (Canal 8) v. France* (n. 58951/18 and 1308/19), according to which the sanctions imposed by the *Conseil supérieur de l'audiovisuel* ("CSA") on the television channel C8 for the content shown in the TV programme "*Touche pas à mon poste*" did not violate the freedom of expression;
- 07.02.2023, *B v. Russia* (n. 36328/20), according to which the criminal proceedings against sexual abusers of a minor caused the re-traumatisation of the victim;
- 07.02.2023, *Elvan v. Turkey* (n. 64937/19), on the lack of an effective investigation on the role of a law-enforcement director and a commissioner of Istanbul in the death of Berkin Elvan;

and the decisions:

- 02.03.2023, decision of inadmissibility, *Thierry v. France* (n. 37058/19), in which the Court found inadmissible the claim lodged according to article 6(1) of the Convention by the former police commissioner, head of the office for the suppression of illicit drug trafficking (OCRTIS), with regard to disciplinary procedures which concerned him;
- 09.02.2023, decision of inadmissibility, *Žegarac and others v. Serbia* (n. 54805/15 and 10 other applications), on the decision to reduce the old-age pension within an austerity plan in Serbia.

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

- the decision of the *International Court of Justice* of 30.3.2023, case *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, according to which the United States violated their obligations deriving from the Treaty of Amity, Economic Relations, and Consular Rights of 1955, by adopting legislative, executive and judicial measures, which determined the block and use of assets of Iranian companies and financial institutes, and must compensate Iran for the consequences of such violations;
- the decision of the *Inter-American Court of Human Rights* of 4.2.2023, case *Olivera Fuentes vs. Perú*, in the matter of discrimination on grounds of sexual orientation, which recognizes the responsibility of the State for the violation of the right to personal freedom, private life, equality before the law and to an effective remedy; the decision of 30.1.2023, case *Aguinaga Aillón vs Ecuador*, concerning the destitution of a member of the Electoral Supreme Tribunal in 2004 through the resolution of the Parliament, outside its competence and in violation of the principle of independence of the judge; the decision of 25.1.2023, case *García Rodríguez y otro vs. México*, which recognizes the violation of the right to personal freedom, personal integrity and effective remedy towards Daniel García Rodríguez and Reyes Alpízar Ortiz, in consideration of the detention and deprivation of freedom they suffered, with particular reference to the measures of *arraigo* and of *prisión preventiva oficiosa*, and to the criminal proceeding they had to face; and the decision of 24.11.2022, case *Baraona Bray vs. Chile*, on the violation of the right to freedom of thought and expression for the criminal proceeding against Carlos Baraona Bray and the conviction for the crime of serious defamation, in virtue of declarations regarding a senator, as civil servant, concerning an issue of public interest.

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

- **Austria:** the decision of the *Verfassungsgerichtshof* (Constitutional Court) of 15.3.2023, on the annulment of a decision of the Federal Administrative Tribunal, since Ukrainian residents were unfairly excluded from the order on displaced persons; and another decision of 15.3.2023, on an unconstitutional norm in the law concerning the media, which recalls the supra-national legislation;
- **Belgium:** the decision of the *Cour constitutionnelle* n. 59/2023 of 11.4.2023, in the matter of annulment of administrative acts and obligation of reasoning, which partially annuls the decree of the Region of 21 May 2021 "*amending the decree of 4 April 2014 on the organisation and procedure of certain Flemish administrative jurisdictions, with regard to the optimization of procedures*", in the light of the norms of the EU Charter of Fundamental Rights, of the ECHR, of the Convention of Aarhus and of EU legislation and recalling the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 33/2023 of 2.3.2023, which rejects the claims lodged against the "Pandemic" law of 14 August 2021 ("*loi relative aux mesures de police administrative lors d'une situation d'urgence épidémique*"), also 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; and the decision n. 26/2023 of 16.2.2023, which annulled

- certain articles of the decree of the Flemish Community of 18 December 2020, which introduced some measures due to COVID-19 pandemic, for the violation of the norms of the Regulation (EU) 2016/679 (General Data Protection Regulation);
- **Czech Republic:** the decision of the *Ústavní soud* (Constitutional Court) of 12.4.2023, which annulled, for the violation of the right to property, certain decisions of the Supreme Court concerning the amount of the compensation given to the claimant following the expropriation of agricultural lands, after the decision of the European Court of Human Rights;
 - **France:** the decision of the *Conseil constitutionnel* of 14.4.2023, concerning the measure on age pensions at 62 years old; the decree of the *Conseil d'État* of 7.4.2023, on the publication of the list of owners of frozen goods, pursuant to the decisions of the European Union, which recall supra-national sources; the decision of the *Cour de cassation* n. 515/2023 of 19.4.2023, which, in a case of seizure, during an investigation, of a good, which the owner wants to be returned (also in the light of article 47 of the EU Charter of Rights), recalls the necessity of an interpretation in conformity of Directive 2014/42/EU; and the decision of 3.3.2023, which examines the case concerning the conviction to a sanction, in the light of the principle of fair trial, pursuant to article 6 of the ECHR;
 - **Ireland:** the two linked decisions of the *Court of Appeal* of 31.3.2023, on the interpretation of dependent family member, pursuant to Directive 2004/38/EC in order to grant a residence permit, and on the violation of the right to the reasonable length of the proceeding, also in the light of article 41 of the EU Charter of Fundamental Rights; and the decision of 24.3.2023, on the admissibility, as proof in the proceeding, of the register of data concerning telephone calls, in the light of the jurisprudence of the Court of Justice on articles 7 and 8 of the EU Charter of Fundamental Rights; the decision of the *High Court* of 21.4.2023, according to which the failure of the State to grant a person claiming international protection "material conditions of reception", according to Directive 2013/33/EU is unlawful and in violation of the right of the claimant, pursuant to article 1 of the EU Charter of Fundamental Rights; the decision of 24.3.2023, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of article 4(4) and/or of paragraph 3 of Annex IIA to Directive 2011/92/EU on the environmental impact assessment, with regard to the information the developer must guarantee; and the decision of 8.3.2023, in the matter of family reunification and refusal of a request of visa lodged by a claimant, married to an Iraqi national, who benefits of subsidiary protection in the State, which recalls EU legislation relevant in such matter, the norms of the ECHR and the jurisprudence of the Court of Strasbourg;
 - **Italy:** the decision of the *Corte di cassazione* n. 9095/2023 of 20.4.2023, which deems discriminatory adding to the absences due to incapacity the ones due to illness, and which recalls the EU Charter of Fundamental Rights; the decision n. 9479/2023 of 6.4.2023, which recalls the most recent jurisprudence of the Court of Justice on consumers' rights and the question of *res iudicata* of decisions which do not ascertain the respect for Union law; the decision n. 11109/20223 of 15.3.2023, which, in the matter of inhuman and degrading treatments towards a prisoner, recalls the jurisprudence of the European Court of Human Rights and the necessary assessment of the intensity of the suffered deprivation; the decision n. 11941/2003 of 28.2.2023, according to which, in the light of the jurisprudence of the ECHR, it is legitimate to acquire at trial declarations made by the person before his death; the decision n. 8669/2023 of 28.2.2003, according to which the norm providing that the application before the court of cassation can be lodged "through the lawyer" is not in contrast with article 6 of the ECHR, also considering the norms in the matter of legal aid; and the decision n. 3077 of 1.2.2023 on the "polluter pays" principle, which reconstructs the supra-national legislation;
 - **Latvia:** the decision of the *Satversmes Tiesa* (Constitutional Court) of 3.11.2022, which found the constitutional illegitimacy of Section 6, Clause 2, of the Law on the Election of Local Government Councils, where it did not allow those, who were serving a sentence in prison, to exercise the right to vote at local elections, also recalling the ECHR and the jurisprudence of the Court of Strasbourg;

- **Portugal:** the decision of the *Tribunal Constitucional* n. 91/2023 of 16.3.2023, which states the partial constitutional illegitimacy of law 19/2012 on Judicial Regime of Competition, where it allowed the Authority, within administrative proceedings concerning restrictive practices of competition, the search and seizure of opened mails, also recalling articles 7 and 8 of the EU Charter of Fundamental Rights and the jurisprudence of the Courts of Strasbourg and Luxembourg; and the decision n. 76/2023 of 14.3.2023, in the matter of recognition and execution of decisions of confiscation, which rejects the claim lodged against certain articles of the Criminal Procedure Code, also recalling EU legislation relevant in such matter;
- **Spain:** the decision of the *Tribunal Constitucional* n. 19/2023 of 22.3.2023, which, also in the light of the norms of the ECHR and of the jurisprudence of the Court of Strasbourg, rejects the claim lodged against law 3/2021 regulating euthanasia, since it recognizes the right to self-determination in order to decide in a free, informed and conscious way about the moment to face death in situations of terminal or seriously incapacitating infirmities, and introduces guarantees and controls in accordance with the constitutional standards of protection of the right to life from external interferences; and the decision n. 4/2023 of 20.2.2023, on the violation of the right to personal freedom and the right of defence for the failed access by the claimant to essential elements of the proceeding capable to appeal against the measure of provisional detention, in the light of article 5 of the ECHR and of Directive 2012/13/EU and of the jurisprudence of the Court of Strasbourg; and the decision of the *Tribunal Supremo* of 2.3.2023, in the matter of social security measures for the birth and assistance to a minor in a single-parent family, which recalls the norms of the EU Charter of Fundamental Rights and EU legislation relevant in such matter;
- **The Netherlands:** the decision of the *Raad van State* (Council of State) of 26.4.2023, which suspends the transfer of asylum seekers from Holland to Italy, pursuant to the Treaty of Dublin, because of the structural deficiencies of the reception system; the decision of the *Rechtbank Gelderland* (District Tribunal of Gelderland) of 18.4.2023, according to which the regulation providing the limit to the possibility to work of 24 weeks a year for asylum seekers is in contrast with Directive 2013/33/EU (Reception conditions directive); and the decision of the *Rechtbank Amsterdam* (District Tribunal of Amsterdam) of 15.3.2023, concerning a collective legal action against Facebook Nederland, Facebook Inc. and Facebook Ireland: the Court, recalling the EU General Data Protection Regulation and the jurisprudence of the Court of Justice, established that, in the period between the first of April 2010 and the first of April 2020, Facebook violated the right to privacy of Dutch users with regard to the treatment of personal data for advertising aims due to the lack of a valid legal basis.

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

Articles:

[Vincenzo De Michele](#) "The decision AGCM of the EU Court on the compatibility with Union law of national norms concerning maritime, lake and river concessions"

[Sergio Galleano](#) "Comment to the ECHR decision in the case *Georgiuo v. Greece* of 14.3.2023 (Application n. 57378/18) on the obligation to justify the rejection of the request for a preliminary reference to the CJEU"

[Sandra Regina Martini, Andressa Fracaro Cavalheiro](#) "O 8 de janeiro brasileiro: uma análise a partir da metateoria do direito fraterno sobre a participação das mulheres nas invasões às sedes dos Três Poderes"

[Lucia Tria](#) "Human rights and climate changes"

Notes and comments:

[Giuseppe Bronzini](#) "A Directive on "adequate minimum wages" is essential for the social sustainability of the old continent development model"

[Bruno Capponi](#) "First considerations on the decision of the Court of Cassation, Joined Sections, 6 April 2023, n. 9479"

[Rosella Catena](#) "Comment to the decision of the European Court of Human Rights, Second section, *Daraibou v. Croatia* of 17 January 2023 in the matter of right to life (art. 2 ECHR)"

[Antonella Di Florio](#) "From humanitarian protection to complementary protection: what has changed?"

[Roberto Leonardi](#) "To each his own: the Joined Sections of the Court of Cassation pronounce themselves on the "polluter pays" principle and on the distribution system of environmental responsibilities (note to Cass., Joined Sections, 1 February 2023, n. 3077)"

[Erasmus Mancini](#) "The point of view of the German Constitutional Court on Recovery Plan"

[Dino Rinoldi, Nicoletta Parisi](#) "The new Italian legislation on whistleblowing in application of the European Directive: an uncertain result?"

[Fiorenzo Pilla](#) "What impact will have on us the Large Language Models and CHAT GPT (and which will be the consequences for the world of law)?"

[Gianni Reynaud](#) "Comment to the decision of the EU Court of Justice (Grand Section) – 20 September 2022 – joined cases V.D. (C-339/20) and S.R. (397/20) in the matter of treatment of personal data in electronic communications"

[Debora Tripiccion](#) "Comment to the ECHR decision, First Section, 30 March 2023, *J.A. and others v. Italy* in the matter of inhuman and degrading treatments"

Documents:

[2023 World Press Freedom Index by Reporters Without Borders \(RSF\)](#), of 3 May 2023

[Position of the European Trade Unions Confederation \(ETUC\)](#) on the reform of the economic governance "ETUC Position on the Reform of the economic governance (toward an EU pact for employment and investments)", of 12.4.2023

[Answer of the European civic forum](#) to the consultation of the European Commission on the Defence of Democracy Package, of April 2023

[Resolution of the African Commission on Human and Peoples' Rights](#) "Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa", of 21 March 2023

[Synthesis Report for the Sixth Assessment Report](#) by the Intergovernmental Panel on Climate Change (IPCC) "AR6 Synthesis Report: Climate Change 2023", of 20 March 2023