



## OBSERVATORY ON THE RESPECT FOR FUNDAMENTAL RIGHTS IN EUROPE

### **Newsletter n. 107**

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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](http://www.europeanrights.eu)

For the acts of the **European Union** we have included:

- the Commission's annual Report 2024 of 10 October 2024 on the application of the European Union Charter of Fundamental Rights "Funding to promote, protect and enforce fundamental rights";
- Regulation (EU) 2024/1991 of 24.06.2024 on nature restoration.

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

- 17.10.2024, C-76/22, *Santander Bank Polska*, on consumer protection in credit agreements relating to residential immovable;
- 17.10.2024, C-159/23, *Sony Computer Entertainment Europe*, on legal protection of computer programs and on copyright;
- 17.10.2024, C-349/23, *Zetschek*, on the prohibition of discrimination on grounds of age and on difference in treatment on grounds of membership of a socio-professional category or place of work;
- 04.10.2024, C-4/23, *Mirin*, on the refusal of a Member State to recognize the change of gender identity lawfully acquired in another Member State and on the right to move and reside freely within the territory of the Member States;
- 04.10.2024, C-21/23, *Lindenapotheke*, on the protection of personal data;
- 04.10.2024, C-406/22, *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, on common procedures for granting and withdrawing international protection and on the right to an effective remedy;
- 04.10.2024, C-446/21, *Schrems (Communication de données au grand public)*, on the general terms of use relating to contracts concluded between an online social network and a user, on the right to the respect for private life and on the right to the protection of personal data;
- 04.10.2024, C-548/21, *Bezirkshauptmannschaft Landeck (Tentative d'accès aux données personnelles stockées sur un téléphone portable)*, on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences;
- 04.10.2024, joined cases C-608/22 and C-609/22, *Bundesamt für Fremdenwesen und Asyl and others (Femmes afghanes)*, on the right to asylum and on international protection and on specific requirements;
- 26.09.2024, C-330/23, *Aldi Süd*, on the indication of the prices of products and on consumer protection;

- 26.09.2024, C-432/23, *Ordre des avocats du Barreau de Luxembourg*, on the decision ordering a lawyer to communicate information and on the respect for communications between the lawyer and his client;
- 26.09.2024, C-768/21, *Land Hessen (Obligation d'agir de l'autorité de protection des données)*, on the discretion of the supervisory authority in the event of violation of personal data;
- 26.09.2024, C-792/22, *Energotehnica*, on workers' safety and health protection and on the right to be heard;
- 19.09.2024, C-439/23, *Consiglio nazionale delle Ricerche*, on the determination of the length of service and on the principle of non-discrimination;
- 12.09.2024, C-63/23, *Sagrario*, on family reunification and on the possibility for the minor to be heard;
- 12.09.2024, C-352/23, *Changu*, on the rights of an illegally staying third-country national in the event of postponement of his removal;
- 05.09.2024, C-603/22, *M.S. and others (Droits procéduraux d'une personne mineure)*, on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

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

- 05.11.2024, *Nezirić v. Bosnia-Herzegovina* (n. 4088/21), on the lack of adequacy of guarantees provided for by national legislation in the matter of data protection with regard to the seizure and examination of a lawyer's mobile phone in the context of a criminal investigation against him;
- 05.11.2024, *Miron v. Romania* (n. 37324/16), according to which the criminal conviction of the applicant – a Ministry of Interior civil servant at the relevant time – for forgery and abuse of office did not violate his right to a fair trial;
- 24.10.2024, *B.B. v. Slovakia* (n. 48587/21), on the alleged failure of the Slovakian authorities to conduct an effective investigation into the suspicion of the offence of human trafficking allegedly committed against a Slovakian woman in the United Kingdom, in violation of article 4 of the Convention (prohibition of slavery and forced labour);
- 22.10.2024, *J.B. and others v. Malta* (n. 1766/23), with which the Court calls on Malta to enact legislation after multiple violations concerning prolonged detention of unaccompanied minors;
- 22.10.2024, *Kobaliya and others v. Russia* (n. 39446/16 and 106 other applications), according to which the "Foreign agent" legislation in Russia is arbitrary and creates a climate of distrust, in violation of articles 8, 10 and 11 of the Convention;
- 17.10.2024, *Cesarano v. Italy* (n. 71250/16), according to which the ineligibility to have life sentence reduced to 30 years' imprisonment is not a violation of the Convention;
- 17.10.2024, *Central Unitaria de Traballadores/as v. Spain* (n. 49363/20), according to which the ban on the trade-union demonstration at the height of COVID-19 pandemic was justified and did not violate article 11 of the ECHR;
- 17.10.2024, *Amerisoc Center S.R.L. v. Luxembourg* (n. 50527/20), the inability to effectively challenge the seizure of its bank assets infringed the company's right to enjoyment of its possessions, in violation of article 1 of Protocol n. 1 (protection of property);
- 15.10.2024, *Haugen v. Norway* (n. 59476/21), according to which the Norwegian authorities failed to protect the life of a mentally ill prisoner, who committed suicide in prison, in violation of articles 2 and 13 of the ECHR;
- 15.10.2024, *Daugaard Sorensen v. Denmark* (n. 25650/22), on significant flaws in the procedural response to a rape allegation, in violation of articles 3 and 8 of the ECHR;
- 15.10.2024, *Nsingi v. Greece* (n. 27985/19), on the violation of article 5, paragraphs 1 and 5 of the Convention (right to liberty and security, right to compensation) on account of the unreasoned decision dismissing objections by the applicant, who was imprisoned pursuant to a judgment concerning another person with whom he was confused at the time of the arrest;

- 15.10.2024, *Gadzhiev and Gostev v. Russia* (n. 73585/14 and 51427/18), on the violation of freedom of expression of two State employees penalised for publicly raising matters of general interest;
- 10.10.2024, *T.V. v. Spain* (n. 22512/21), according to which Spanish authorities disregarded their duty to investigate into a Nigerian woman's serious allegations of human trafficking in violation of article 4 of the ECHR;
- 10.10.2024, *Validity Foundation on behalf of T.J. v. Hungary* (n. 31970/20), on the inadequate response to alarming conditions in a social care institution in relation to the death of a 45 years old woman, who was diagnosed with a severe intellectual disability: the Court finds the violation of article 2 of the ECHR;
- 08.10.2024, *M.A. and Z.R. v. Cyprus* (n. 39090/20), on the summary return of two Syrian nationals to Lebanon, following the interception of their boat by the Cypriot Port and Marine Police, despite their alleged wish to seek asylum in Cyprus;
- 08.10.2024, *Micha and others v. Greece* (n. 13991/20), on the restriction on the applicants' use of their land and the inability to rectify the situation in spite of judicial decisions in their favour;
- 08.10.2024, *Severin v. Romania* (n. 20440/18), on the trial against a former member of the European Parliament which was not found unfair.

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

- the order of the *Supreme Court of India* of 23.10.2024, in the matter of enforcement of the environment legislation, which recognizes the right to live in an unpolluted environment, pursuant to article 21 of the Constitution (protection of life and personal liberty);
- the order of the *Superior Court of Fulton County, State of Georgia* of 30.09.2024, which finds the constitutional illegitimacy of Section 4 of the *Living Infants Fairness and Equality (LIFE) Act* of 2019, where it did not allow the interruption of pregnancy from the moment it was possible to detect the heartbeat of the fetus;
- the decision of the *Inter-American Court of Human Rights* of 4.9.2024, case *Pérez Lucas y otros vs. Guatemala*, which recognized the responsibility of the State for the continue threats and persecutions against four human rights defenders because of their activities, and for their forced disappearance, carried out by State security forces during the national armed conflict; the decision of 28.8.2024, case *Hidalgo y otros vs. Ecuador*, which recognized the responsibility of the State for the violation of the right to life and to personal integrity in relation to the tortures and to the extrajudicial execution of a person, who was arrested and detained by policemen after a discussion; the decision of 6.6.2024, case *Miembros del Sindicato Único de Trabajadores de Ecasa (Sutecasa) vs. Peru*, on the violation of the Convention for the lack of execution by the State of decisions of annulment of decrees, which prevented some companies from giving wage increases to their employees through collective negotiation; the decision of 29.4.2024, case *Poggioli Pérez vs. Venezuela*, on the responsibility of the State for the unlawful and arbitrary detention of a General, and the violation of his right to an effective remedy with regard to proceedings pending before the criminal military jurisdiction following the facts which lead to the establishment of the "*Gobierno de Transición Democrática*" on 12 April 2002; the decision of 12.3.2024, case *Vega González y otros vs. Chile*, on the violation of fair trial safeguards in relation to the situation of 44 persons, who were victims of forced disappearance and of five persons victims of extra-judicial execution, because of the application by the courts of the benefit of "*media prescripción*", provided for by article 103 of the criminal code, within the context of crimes against humanity committed during the military dictatorship; and the decision of 11.3.2024, case *Yangali Iparraguirre vs. Peru*, on the failure by the State in the fulfilment of a pecuniary obligation ordered by the court as compensation following the dismissal, in violation of the right to an effective remedy.

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

- **Belgium:** the decision of the *Cour constitutionnelle* n. 102/2024 of 26.9.2024, which finds the constitutional illegitimacy of article 458 of the Criminal Code and of article 57 of the law of 6 July 2007, where it prevented fertility clinics from giving the conceived person any information regarding the donor, also in the light of article 8 of the ECHR; the decision n. 98/2024 of 26.9.2024, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of certain articles of the Directive (EU) 2019/790, on copyright and on related rights in the digital single market, read in combination also with articles 16, 20 and 21 of the EU Charter of Fundamental Rights; and the decision n. 97/2024 of 26.9.2024, which makes a reference for a preliminary ruling to the Court of Justice in the matter of interpretation of article 15(1) of Directive 2002/58/EC on processing of personal data and protection of privacy in the electronic communication sector, read in combination with articles 7, 8 and 52 of the EU Charter of Fundamental Rights;
- **Czech Republic:** the decision of the *Ústavní soud* (Constitutional Court) of 30.5.2024, which recognized the violation to the right to an effective remedy with regard to article 3 of the ECHR, in virtue of the decision of the police to close the case concerning five persons accused of rape and of the following decisions of the district and municipal prosecutors to reject the claim lodged against the police;
- **France:** the opinion of the *Council of State* of 4.11.2024, concerning a law aimed at bringing the French legal system into line with the European Union one on several economic and social issues; the decision of 30.10.2024, on the legitimacy of some religious celebrations at the Eliseo, which rejects the claims which also recalled the ECHR; and the decision of 24.10.2024, in the matter of requirements for the compensation of damages deriving from the international behaviour of France;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Tribunal) of 1.10.2024, in the matter of collection and storage of personal data, which states the constitutional illegitimacy of certain norms of the *Bundeskriminalamtgesetz - BKAG* (Law on the Federal Office of Criminal Police), also recalling the EU Charter of Fundamental Rights, EU legislation on such matter and the jurisprudence of the Court of Justice; the decision of 1.10.2024 which excludes the application of EU law with regard to the right to informational self-determination in the event of personal data storage; the decision of 13 August 2024 in the matter of recognition of the right to asylum of an Iraqi national of Kurdish ethnicity and Yazidi religion; and the decision of 17.7.2024, on the collection of air passengers data, which recalls the wide EU legislation on such matter;
- **Ireland:** the decision of the *Supreme Court* of 22.10.2024, in the matter of surrender pursuant to a European arrest warrant, which makes a reference for a preliminary ruling to the Court of Justice concerning the compatibility with article 49 of the European Charter of Fundamental Rights of the application of a more unfavourable legal regime - considering the legal regime into force at the time of the crime - in the matter of release from prison; the decision of 9.10.2024, which makes a reference for a preliminary ruling to the Court of Justice on the interpretation of the concept of delay attributable to the applicant, pursuant to article 15(1) of Directive 2013/33/EU; the decision of 31.7.2024 and of 17.6.2024, on the admission as evidence in the proceeding of traffic and location telephone data gained in an unlawful way according to the norms of the *Communications (Retention of Data) Act 2011*, which was after declared incompatible with EU law, in the light of the jurisprudence of the Court of Justice and in particular of the decisions *Digital Rights Ireland* and *Tele2 Sverige*; and the decision of 25.7.2024, which confirms the order of the court which annulled the decision of the Ministry not to revoke the order of expulsion, for not having given primary importance to the minor's best interest, also in the light of article 8 of the ECHR; the decision of the *Court of Appeal* of 21.6.2024, which makes a reference for a preliminary ruling to the Court of Justice on the loss of benefits deriving from Directive 2004/38/EC on freedom of movement and residence, if obtained through a marriage of convenience; the decision of the *High Court* of 28.6.2024, which prevents from the

surrender of a Croatian national pursuant to a European arrest warrant, because of the detention conditions in the Country, which would lead to a violation of the rights provided for in article 3 of the ECHR; and two decisions of 20.6.2024, both concerning the interpretation and application of the norms of Directive 2018/1808 on audiovisual media services - as provided for by the *Broadcasting Act 2009* - in relation to social networks, in the light of the guidelines of the European Commission, of EU legislation relevant in such matter and of the jurisprudence of the Court of Justice;

- **Italy:** the decision of the *Corte costituzionale* n. 181 of 19.11.2024, which on a case of gender discrimination inside the penitentiary police applies article 21 of the EU Charter of Fundamental Rights and the other supra-national norms and in particular article 157 TFEU; the decision n. 176 of 7.11.2024, which recalls article 7 of the ECHR in a case of penitentiary measures in relation to the principle of stability of the *res iudicata*; the decision n. 179 of 4.11.2024, in the matter of fair trial and incompatibility of judges with regard to cases already defined in other phases of the proceeding, which recalls article 47 of the EU Charter of Rights; and the decision n. 173 of 4.11.2024, on the legitimacy of a norm concerning violence against women, which recalls the convention of the Council of Europe and Union's sources; the decision of the *Consiglio di Stato* (Council of State) of 28.9.2024, on discrimination of disabled students with regard to the right to school and to inclusive education, which recalls international and EU sources; the preliminary referral order of the *Tribunale di Palermo* of 5.11.2024, on the issue of "safe third countries"; the decree of the *Tribunale di Bologna* of 4.11.2024, which did not validate the detention of migrants in relation to the concept of "safe third country"; and the preliminary referral order of the *Tribunale di Milano* of 7.10.2024, on the non-conversion of illegitimate fixed-term contracts concerning symphonic lyrical foundations and on their alleged discriminatory nature;
- **Latvia:** the decision of the *Satversmes Tiesa* (Constitutional Court) of 15.2.2024, which establishes the constitutional legitimacy of Paragraph 58 of the "Transitional Provisions of Immigration Law" and of Section 5 of the law of 22 September 2022 "Amendments to Immigration Law", amending the requirements for the acquisition of permanent residence, and the compatibility of article 4 (Prohibition of collective expulsions of foreigners) of Protocol n. 4 to the ECHR;
- **Portugal:** the decision of the *Constitutional Tribunal* n. 548/2024 of 11.7.2024, which finds the constitutional legitimacy of certain norms of law 26/2020, transposing Directive (EU) 2018/822 on the automatic compulsory exchange of information in the tax field, with regard to their compatibility with the right to a fair trial, to the respect for private and family life, and to the secrecy of communications between the lawyer and his client, also recalling the norms of the EU Charter of Fundamental Rights and the jurisprudence of the Court of Justice;
- **Slovenia:** the decision of the *Ustavno Sodišče* (Constitutional Court) of 20.6.2024, on the limits to freedom of expression and proportionality of detention for the crimes of di insults and threats against a judge, which also applies the norms of the ECHR and the jurisprudence of the Court of Strasbourg; another decision of the 20.6.2024, in the matter of retroactive application of the most favourable law, which excludes the violation of the claimant's rights, pursuant to article 49 of the EU Charter of Fundamental Rights, following the sentence in 2020 to the payment of a sanction for having circumvented the maritime boundary control between Croatia and Slovenia, which became *res iudicata* in 2023, after the entry of Croatia in the Schengen area; and the decision of 18.4.2024, on the violation of the right to defence and to be heard, in virtue of the improper communication to the claimant of the indictment, which extended her detention, which also recalls the jurisprudence of the Court of Strasbourg;
- **Spain:** the decision of the *Tribunal Supremo* of 15.10.2024, which, in virtue of the principle of non-discrimination and of the minor's best interest, recognized the right of single-parent families to an extension of the permit for birth/adoption of the minor provided for by article 49 of the Statute of the civil service (*Texto Refundido de la Ley del Estatuto Básico del Empleado Público*), also recalling article 24 of the EU Charter of Fundamental Rights; the decision of 8.10.2024, which questions on the nature of personal data containing information of the physical and mental health condition of athletes with regard to the application of control against doping: according to the Court,

such data belong to the category of data concerning health and therefore they are subjected to the enhanced protection provided for by EU and national legislation in the matter of protection of personal data; and the decision of 14.6.2024, in the matter of unfair terms in bank loan contracts, which applies the jurisprudence of the Court of Justice;

- **The Netherlands:** the decision of the *Gerechtshof Den Haag* (Court of Appeal of the Hague) of 12.11.2024, which reverted the decision of the district court, according to which Shell should have reduced its CO2 emissions by 45% in 2030 with regard to the parameters of 2019: the Court of Appeal, also recalling EU legislation, including the Charter of Fundamental Rights, the ECHR and the jurisprudence of the Court of Strasbourg, established that Shell is compelled to reduce its emissions, but the exact percentage is not determinable; and the decision of the *Rechtbank Den Haag* (District Tribunal of the Hague) of 16.10.2024, which denies the responsibility of the State, and the violation of article 8 of the ECHR, on irregularities in adoption proceedings concerning 8 persons from Sri Lanka in the period 1983-1990, which prevented the claimants from the possibility of finding their biological parents.

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

#### **Articles:**

[Giuseppe Bronzini](#) "Collegato lavoro' and issues of European compatibility"

[Sergio Galleano](#) "Fight against discrimination in the jurisprudence of the Court: two paradoxical cases of discrimination as a consequence of the anti-discriminatory legislation"

[Lucia Tria](#) "Harassment: an increasing phenomenon. Strategies to fight against such problem"

#### **Notes and comments:**

[Alessandro Andronio, Matilde Brancaccio](#) "Comment on the sentence of the Court of Justice, Grand Chamber, *C.G. v. Bezirkshauptmannschaft Landeck*, of 4 October 2024 (C-548/21), in the matter of access to personal data contained in a telephone"

[Federico Avanzi](#) "Dismissal and disability in the jurisprudence. Comment on seven decisions of the Court of Cassation"

[Gabriella Cappello](#) "Comment on the ECHR decision, First Section, *Patricolo and others v. Italy*, of 23 May 2024, in the matter of procedural flaws and principle of fair trial"

[Pier Virgilio Dastoli](#) "Rebellion of the Italian government against European judges and the respect for the rule of law"

[Emilio De Capitani](#) "EU Transparency and participative democracy in the EU institutions after Lisbon: Everything must change for everything to remain the same?"

[Fabrizio Felice](#) "The protection of victims and vulnerable persons in the Italian criminal system"

[Maria Rosaria Guglielmi](#) "Magistratura democratica and Medel: story of a common journey"

[Sandra Recchione, Matilde Brancaccio](#) "Comment on the ECHR decision, First Section, *Cramesteter v. Italy*, of 1 June 2024, in the matter of illegitimate deprivation of freedom in a psychiatric institute"

[Luca Saltalamacchia](#) "Strategic climate dispute and the principle of separation of powers"

**Documents:**

[Guidelines of the Prosecutor's Office at the Court of Tivoli](#) "on the application of the crime provided for by article 572 of the criminal procedure code and on procedural issues concerning gender violence, domestic violence and violence against women. Considerations on the most recent jurisprudence of the Court of Cassation", of 8 November 2024

[Report by the Democracy Institute](#) - Rule of the law clinic "Rule of the law beyond the EU Member States", of October 2024

[Report by the Independent International Commission of Inquiry on the Occupied Palestinian Territory](#), including East Jerusalem, and Israel, presented in conformity to Resolution S-30/1 of the United Nations Council for Human Rights, of 11 September 2024