

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:

- 24.02.2022, C-389/20, *TGSS (Chômage des employés de maison)*, on the exclusion of domestic workers from the protection against unemployment and on the prohibition of any indirect discrimination on grounds of sex;
- 24.02.2022, joined cases C-143/20 and C-213/20, *A (Contrats d'assurance « unit-linked »)*, on the scope and content of pre-contractual information disclosure obligations concerning group life assurance contracts linked to investment funds called "unit-linked" and on consumer protection;
- 22.02.2022, joined cases C-562/21 PPU and C-563/21 PPU, *Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission)*, on the obligation of the executing judicial authority to determine, specifically and precisely, whether there are substantial grounds for believing that the person in respect of whom a European arrest warrant has been issued, if surrendered, runs a real risk of breach of his or her fundamental right to a fair trial before an independent and impartial tribunal previously established by law;
- 22.02.2022, C-483/20, *Commissaire général aux réfugiés et aux apatrides (Unité familiale - Protection déjà accordée)*, on the inadmissibility of an application for international protection lodged in a Member State by a third-country national, who has obtained refugee status in another Member State, where the minor child of that third-country national, who is a beneficiary of subsidiary protection status, resides in the first Member State and on the obligation on the Member States to ensure the family unity of the beneficiaries of international protection is maintained;
- 22.02.2022, C-430/21, *RS (Effet des arrêts d'une cour constitutionnelle)*, on the primacy of EU law;
- 10.02.2022, C-485/20, *HR Rail*, on the dismissal of a worker, who had become permanently incapable of performing the essential functions of the post, on the prohibition of discrimination on the ground of disability and on the reassignment to another post;
- 10.02.2022, C-522/20, *OE (Résidence habituelle d'un époux - Critère de nationalité)*, on the concept of habitual residence and on jurisdiction to hear and determine an application for divorce;
- 18.01.2022, C-118/20, *Wiener Landesregierung (Révocation d'une assurance de naturalisation)*, on the renunciation of the nationality of one Member State in order to obtain the nationality of another Member State in accordance with the assurance given by the latter to naturalise the person concerned and on the revocation of that assurance on grounds of public policy or public security;

- 20.01.2022, C-432/20, *Landeshauptmann von Wien (Perte du statut de résident de longue durée)*, on the loss of the status of long-term resident third-country national;
- 13.01.2022, C-282/19, *MIUR and Ufficio Scolastico Regionale per la Campania*, on the renewal of the fixed-term employment contracts of catholic religious education teachers;
- 13.01.2022, C-351/20 P, *Dragnea/ Commission*, on investigations conducted by the European Anti-Fraud Office (OLAF) and on access to documents;
- 13.01.2022, C-514/20, *Koch Personaldienstleistungen*, on no overtime pay when taking annual leave;

and the conclusions of the **Advocate General**:

- 24.02.2022, C-673/20, *Préfet du Gers and Institut National de la Statistique and des Études Économiques*, on the consequences of the withdrawal of the United Kingdom from the European Union in the matter of rights deriving from EU citizenship;
- 27.01.2022, C-817/19, *Ligue des droits humains*, on the processing and the free movement of passenger name record data, on the respect for private life and on personal data protection;
- 20.01.2022, C-328/20, *Commission v. Austria (Indexation des prestations familiales)*, on child benefits and on tax benefits granted to Austrian workers whose children reside in other Member States, on the exclusion of such benefits for workers citizens of other Member States.

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

- 14.12.2021, *Tunikova and others v. Russia* (n. 55974/16), on the violation of the Convention for the discriminatory effects on women of continued failure to adopt legislation to combat domestic violence and provide any protective measures: the State is required to take comprehensive measures to address structural and discriminatory lack of protection of women against domestic violence;
- 14.12.2021, *Samoylova v. Russia* (n. 49108/11), on the unjustified dismissal of the claim about the disclosure of the applicant's address, tax id number and house interior images by a television report on a criminal case against her retired prosecutor husband: the Court found the violation of the Convention;
- 14.12.2021, *Mukhin v. Russia* (n. 3642/10), on the violation of the Convention in virtue of the unjustified conviction of a newspaper editor and the termination of the newspaper's media-outlet status under anti-extremism law;
- 10.12.2021, Grand Chamber Judgement, *Abdi Ibrahim v. Norway* (n. 15379/16), on shortcomings in the decision-making process resulting in severance of mother-child ties in a context of different cultural and religious backgrounds of the mother and adoptive parents: the Court finds the violation of the Convention;
- 09.12.2021, *R.M. v. Latvia* (n. 53487/13), on the justified temporary suspension of the parental authority and the limitation of contact with a particularly vulnerable child in a context of uncooperative parent: the Court finds the Convention was not violated;
- 09.12.2021, *Rovshan Hajiye v. Azerbaijan* (n. 19925/12 and 47532/13), on the unlawful and in violation of the Convention refusal to provide a journalist access to information of public interest on the environmental and health impact of a former Soviet military radar station;
- 07.12.2021, *Standard Verlagsgesellschaft MBH v. Austria (No. 3)* (n. 39378/15), on the unjustified court's order against a media company to disclose data of author of offensive comments posted on its internal news portal as part of a political debate: the Court finds the Convention was not violated;
- 07.12.2021, *Savran v. Demark* (n. 57467/15), on the permanent exclusion order toward the country of origin on long-term settled migrant with schizophrenia, despite the fact that the risks for his health reached the level of application of article 3: according to the Court, article 3 of the Convention was not violated, but there was violation of article 8 for the lack of respect for his right to private life;

- 07.12.2021, *Yefimove Youth Human Rights Group/Groupe de la jeunesse pour la défense des droits de l'homme v. Russia* (n. 12385/15), on the violation of the Convention for the unjustified investigations and the placement on the list of terrorists and extremists for publishing a note criticizing the Russian Orthodox Church;
- 30.11.2022, *Derenik Mkrtchyan and Gayane Mkrtchyan v. Armenia* (n. 69736/12), according to which the school was not responsible for the death of a child, whose vulnerability was not known, who has been unexpectedly beaten to death during the absence of the teacher by other students with no criminal record: according to the Court there was no violation of the Convention;
- 30.11.2021, *Genov and Sarbinska v. Bulgaria* (n. 52358/15), in violation of the Convention for the unjustified conviction to a criminal sanction for having spray-painted the partisans' monument in protest against the then Government;
- 30.11.2021, *Mironescu v. Romania* (n. 17504/18), on the unjustified limitation of the right to vote of the applicant, who was serving a prison sentence in a prison situated outside the electoral constituency of his place of residence: according to the Court there was violation of the Convention;
- 25.11.2021, *Sassi and Benchellali v. France* (n. 10917/15 and 10941/15), according to which the statements the applicant had made to the French authorities at Guantánamo Bay US naval base have not been used for the investigations and the convictions in France: according to the Court the Convention was not violated;
- 25.11.2021, *Biancardi v. Italy* (n. 77419/16), which sentences, from the civil point of view, a publisher who refused to remove the index from an article which described a criminal case, which was easily found writing the names in the online browser: according to the Court the Convention was not violated;
- 23.11.2021, *Turan and others v. Turkey* (n. 75805/16), on the violation of the Convention with regard to pre-trial detention of judges suspected of membership of an illegal organization following a coup attempt, on the basis of an unreasonable extension of the concept of in flagrante delict;
- 23.11.2021, *Tapayeva and others v. Russia* (n. 24757/18), on the violation of the Convention for the lack of adequate measures by national authorities in order to return to his mother the child kidnapped by his paternal grandfather;
- 23.11.2021, *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia* (n. 37477/11), on the lack of protection of the followers of the Krishna religion with regard to hostility from regional authorities in an "anti-cult" brochure: according to the Court there was violation of the Convention;
- 18.11.2021, *M.H. and others v. Croatia* (n. 15670/18), on the violation of the Convention with regard to the detention of children in a center for foreigners very much like a prison for more than two months, in appropriate conditions for adults but not for children;
- 18.11.2021, *Ahmadova v. Azerbaijan* (n. 9437/12), on the order by domestic courts, not yet enforced, for the eviction of a mother and her daughter from their home and for its demolition on the ground that it was an unauthorized construction built on State-owned land assigned for petroleum operations: according to the Court the Convention was violated on grounds of no adequate possibility of review of the eviction's proportionality;
- 18.11.2021, *Čolić v. Croatia* (n. 49083/18), on the disproportionate costs of the order against the applicant in private civil proceedings amounting to double his compensation award: according to the Court there was violation of the Convention;
- 16.11.2021, *Särgava v. Estonia* (n. 698/19), on the lack of sufficient procedural safeguards to protect privileged data covered during the seizure and subsequent examination of a lawyer's laptop and mobile telephone: according to the Court there was violation of the Convention;
- 16.11.2021, *N. (n. 2) v. Romania* (n. 38048/18), according to the Court there was violation of the Convention for the impossibility of tailor-made response in deprivation of legal capacity proceedings;
- 16.11.2021, *Kovrov and others v. Russia* (n. 42296/09), according to which Russia must continue to adopt measures in order to solve the problem of the excessive length of pre-trial detentions and house arrests;

- 16.11.2021, *Assotsiatsiya NGO Golos and others v. Russia* (n. 41055/12), on the unjustified sanctioning of NGO for disseminating election-monitoring material on the basis of statutory ban on all election-related publications during pre-election "silence period": according to the Court there was violation of the Convention;
- 08.11.2022, *Dolińska-Ficek and Ozimek v. Poland* (n. 57511/19), on the violation concerning the procedure for appointing judges of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court, introduced by a recent law;
- 02.11.2022, *W.A. v. Switzerland* (n. 38958/16), on the lack of causal link between the conviction of the applicant for violent behavior and the new detention due to his health condition and the risk of recidivism: according to the Court there was violation of the Convention.

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

- the order of the *International Court of Justice* of 16.3.2022, case *Allegations of genocide under the Convention on the prevention and punishment of the crime of genocide (Ukraine v. Russian Federation)*, which ordered, as a temporary measure, that the Russian Federation suspends every military operation started on 24 February 2022 on the Ukrainian territory.

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

- **France:** the decision of the *Conseil d'Etat* of 28.1.2022, on the fine imposed on Google for the unfair use of *cookies*, which recalls the jurisprudence of the Court of Justice; and the decision of 17.12.2021, on the applicability of Union directives to the French army, which embraces supra-national legislation and the jurisprudence of the Court of Justice; and the decision of the *Cour de cassation* n. 186 of 10.2.2022, which, in the matter of right to total compensation of damages by a transport company, recalls Union legislation and the Warsaw Convention;
- **Germany:** the decision of the *Bundesverfassungsgericht* (Federal Constitutional Tribunal) of 9.12.2021, concerning a case of rehabilitation of a former national of the German Democratic Republic (DDR) accused of having tried to escape to the west in 1977, which recalls the jurisprudence of the Court of Strasbourg; and the decision of 7.12.2021, in the matter of transport/disposal of nuclear material, which recalls Union legislation;
- **Great Britain:** the decision of the *United Kingdom Supreme Court* of 23.2.2022 in the matter of extradition and the respect for private and family life; the decision of 16.2.2022, on the balance between the right to information and the protection of the right to privacy; the decision of 26.1.2022, in the matter of freedom of expression in a case in which the demonstrators had been convicted, pursuant to s13(1) of the Terrorism Act 2000, for having showed during a demonstration flags of the Kurdistan Workers Party ("the PKK"); and the decision of 20.12.2021, in which the Court does not find the violation of the right to freedom of expression due to the fine imposed following the disclosure to the public, by the applicant, of the result of a previous decision of the same Court during the so called embargo period established for the time necessary to write the reasons; the decision of the *England and Wales Court of Appeal* of 4.2.2022, in which the Court does not find any discrimination, pursuant to article 14 of the ECHR, in combination with article 1 of the First Additional Protocol to the Convention, in the exclusion from the fund destined to those who got HIV infection and hepatitis C through transfusions of persons who have in the same way got hepatitis B; the decision of 11.1.2022, in which the Court rejects the claim of the applicant, a man with serious disabilities, according to whom the suspension of the allowance for persons with disabilities after 28 days spent in hospital, amounts to a discrimination in contrast with article 14 of the ECHR, in combination with article 1 of the First Protocol to the ECHR; the decision of 20.12.2021, on the proof standard of hate-motivated crimes, as

established in the "Hate Crime Operational Guidance" for the registration by the police of the possible cases of hate crimes, and its compatibility with article 10 of the ECHR; and the decision 24.11.2021, in which the Court confirms that there is no direct discrimination based on gender in the criteria provided for the access to the Self-Employment Income Support Scheme, introduced in April 2020 to help self-employed workers during the pandemic; and the decision of the *England and Wales High Court* of 25.1.2022, in which the Court finds in contrast with the law the National Disability Strategy since the public consultation on the strategy did not include explanations of the strategy and it did not allow open answers, at the same time it did not find any violation of the so called public sector equality duty;

- **Italy:** the decision of the *Corte costituzionale* n. 67 of 11.3.2022, which finds the inadmissibility of the constitutional incident – after the Court of Justice has examined the preliminary referral – ordered after having ascertained the conditions for the disregarding of the national norm; the decision n. 54 of 4.3.2022, which finds the constitutional illegitimacy of the Italian legislation where it excludes from the so called "bonus bebè" and from the maternity allowance those who have the residence permit for working reasons, in the light of the jurisprudence of the Court of Justice, and which also recalls article 34 of the EU Charter of Rights and Union legislation; n. 34 of 17.2.2022, according to which the exclusion from the access to inclusion income for third country nationals with work permit is not in contrast with EU law and the norms of the EU Charter of Fundamental Rights; the decision n. 22 of 2.2.2022, which excludes the illegitimacy of the norms on the provisional enforcement of security measures, which recalls the jurisprudence of the Court of Strasbourg in such matter; the decision n. 19 of 26.1.2022, which excludes the constitutional illegitimacy (for violation of Union law and of EU Charter of Fundamental Rights) of the law on citizenship income, which requires a permit for long-term residents in order to have access to the benefit, excluding persons holding work permits; and the decision n. 2 of 13.1.2022, which excludes the violation of the norms of the ECHR with regard to the norm excluding the nullity of the *res iudicata* and its detection by the judge of the execution deriving from the violation of the competence of the juvenile court; the order of the *Corte di cassazione* n. 2878 of 31.1.2022, on the compensation for the violation of Union law (claim deemed inadmissible because submitted beyond the term), which recalls article 6 of the ECHR on the reasonable length of the trial; the decision n. 2849 of 31.1.2022, which excluded the lack of jurisdiction with regard to a trial lodged by a trade union for anti-union behaviour at the military Base of Sigonella, recalling article 6 of the ECHR; the decision n. 2062 of 16.1.2022, on the conventional legitimacy of life imprisonment with no possibility of reduction of the penalty or if such possibility is not certain, which recalls the jurisprudence of the Court of Strasbourg; and the order n. 676 of 12.1.2022, which, in the matter of international protection, examines the case of a Nigerian woman, mother of a school age child, who attended a traineeship at the reception centre, which recalls the jurisprudence of the two European Courts.

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

Articles:

[Gaetano De Amicis](#) "Competence" and functioning of the European Public Prosecutor within the court's knowledge"

[Gaetano De Amicis](#) "Rule of law, European guarantees of court's independence and judicial cooperation in criminal matters: pictures of a developing exposition"

[Vincenzo De Michele](#) "The 'constitutional' decision of the Court of Justice on the compatibility with the Treaties of the measures of cross-compliance of the European Commission in the event of violation of the rule of law"

[Sergio Galleano](#) "Fair trial and principle of self-sufficiency of the claim; ECtHR and the formalism of the Court of Cassation"

[Francesca Fieconi](#) "The Constitution as a tool for power restraint and enforcement of rights"

[Chiara Scissa](#) "Extreme poverty due to flooding: in(sufficient) condition for national standards of protection?"

Notes and comments:

[Maria Alessandra Iannicelli](#) "Assignment to the child (only) of the mother's surname (note to Court of Appeal of Potenza, civil section, order of 12 November 2021)"

[Group Area Court of Cassation](#) "The Parliament must resume the work of the ratification of Protocol n.16 to the ECHR"

[Tiziana Orrù](#) "Brief notes on the proposal of Directive concerning the improvement of working conditions thanks to digital platforms"

[Enzo Vincenti](#) "'Individual' effective contractual protection: the so-called nullity of protection"

Reports:

[Pietro Curzio](#) "Speech for the inauguration of the judicial year 2022 at the Court of Cassation"

[Giovanni Salvi](#) "Report for the inauguration of the judicial year 2022 at the Court of Cassation"

Documents:

[Pamphlet of Basic Income European Network \(BIEN\)](#) "Basic Income – Cornerstone of the Nordic Welfare State", of 2 March 2022

[Second part of the Sixth Assessment Report](#) by the Working Group II of the Intergovernmental Panel on Climate Change (IPCC) "Climate Change 2022: Impacts, Adaptation and Vulnerability", of 27 February 2022

[Corruption Perception Index \(CPI\)](#) 2021 by Transparency International, of 25 January 2022

[Annual Report by Human Rights Watch](#) "World Report 2022 – Events of 2021", of 13 January 2022

[Documents of the International Meeting organized by Fondazione Lelio e Lisli Basso](#) on "The new anti-fraud institutional and legislative landscape of the European Union", of 7 and 8 October 2021