



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 study of the European Parliament of 21.6.2023 "*Cross-Borders Legal Recognition of Parenthood in the EU*";
- the infographic of the European Parliament of 19.6.2023 "*Asylum in the EU: Facts and figures*";
- Directive (EU) 2023/977 of 10.5.2023 on the exchange of information between the law enforcement authorities of Member States.

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

- 13.07.2023, joined cases C-615/20 and C-671/20, *YP and others () and suspension d'un juge*, on the independence and impartiality of judges and on the right to an effective remedy;
- 13.07.2023, C-426/21, *Ocilion IPTV Technologies*, on copyright in the information society;
- 13.07.2023, joined cases C-363/21 and C-364/21, *Ferrovienord*, on national legislation which limits the jurisdiction of the fiscal judge and on the obligation for Member States to provide the remedies necessary to guarantee an effective remedy in the sectors ruled by Union law;
- 13.07.2023, C-265/22, *Banco Santander (Référence à un indice officiel)*, on unfair terms in consumer contracts and consumer protection;
- 13.07.2023, C-134/22, *G GmbH*, on collective dismissals;
- 13.07.2023, C-87/22, *TT (Déplacement illicite de l'enfant)*, on the jurisdiction in matters of parental responsibility and on the best interest of the child;
- 13.07.2023, C-35/22, *CAJASUR Banco*, on unfair terms in consumer contracts and consumer protection;
- 06.07.2023, C-663/21, *Bundesamt für Fremdenwesen und Asyl (Réfugié ayant commis un crime grave)*, on the possible withdrawal of a third-country national, convicted by a final judgment of a particularly serious crime, of the refugee status;
- 06.07.2023, C-593/22, *First Bank*, on unfair terms in consumer contracts and consumer protection;
- 06.07.2023, C-404/22, *Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou*, on the obligation of information and consultation of workers;
- 06.07.2023, C-402/22, *Staatssecretaris van Justitie en Veiligheid (Crime particulièrement grave)*, on the possible withdrawal of a third-country national, convicted by a final judgment of a particularly serious crime, of the refugee status;

- 06.07.2023, C-142/22, *Minister for Justice and Equality (Demande de consentement - Effets du mandat d'arrêt européen initial)*, on the European arrest warrant issued by the public prosecutor of a Member State which is not an issuing judicial authority and on the prosecution for an offence committed prior to the person's surrender other than that for which he or she was surrendered;
- 06.07.2023, C-8/22, *Commissaire général aux réfugiés and aux apatrides (Réfugié ayant commis un crime grave)*, on the possible withdrawal of a third-country national, convicted by a final judgment of a particularly serious crime, of the refugee status;
- 04.07.2023, C-252/21, *Meta Platforms and others (Conditions générales d'utilisation d'un réseau social)*, on social networks and on the protection of natural persons with regard to the processing of personal data;
- 29.06.2023, joined cases C-829/21 and C-129/22, *Stadt Frankfurt am Main (Renouvellement d'un permis de séjour dans le deuxième État membre)*, on the right of third-country nationals to the status of long-term residents and on the loss of such right;
- 29.06.2023, C-756/21, *International Protection Appeals Tribunal and others*, on minimum standards for granting the refugee status or subsidiary protection status;
- 29.06.2023, C-543/21, *Verband Sozialer Wettbewerb (Contenants consignés)*, on the indication of the prices of products and on consumer protection;
- 22.06.2023, C-823/21, *Commission/ Hungary (Déclaration d'intention préalable à une demande d'asile)*, on national legislation which provides for previous administrative practices outside the territory of the Member State in order to lodge a request for international protection;
- 22.06.2023, C-660/21, *K.B. and F.S. (Relevé d'office dans le domaine pénal)*, on the right to information in criminal proceedings;
- 22.06.2023, C-579/21, *Pankki S*, on the processing of personal data and the rights of the interested person;
- 22.06.2023, C-459/20, *Staatssecretaris van Justitie en Veiligheid (Mère thaïlandaise d'un enfant mineur néerlandais)*, regarding a decision of a Member State refusing residence to a third-country national parent of a minor child, who has the nationality of that Member State, and lives outside the territory of the European Union and never has resided in its territory, on the right to move and reside freely within the territory of the Member States;
- 15.06.2023, C-520/21, *Bank M. (Conséquences de l'annulation du contrat)*, on a mortgage loan with unfair terms and on consumer protection;
- 15.06.2023, C-499/21 P, *Silver and others v. Council*, C-501/21 P, *Shindler and others v. Council*, and C-502/21 P, *Price v. Council*, all on the loss, by British nationals, of the status on Union citizens and of the related rights;
- 15.06.2023, C-411/22, *Thermalhotel Fontana*, on freedom of movement of workers and on the prohibition of indirect discrimination of migrant workers;
- 15.06.2023, C-287/22, *Getin Noble Bank (Suspension de l'exécution d'un contrat de crédit)*, on a mortgage loan with unfair terms and on consumer protection;
- 15.06.2023, C-132/22, *Ministero dell'Istruzione, dell'Università e della Ricerca (Classements spéciaux)*, on freedom of movement of workers;
- 08.06.2023, C-570/21, *YYY. (Notion de consommateur)*, on consumers' protection;
- 08.06.2023, C-455/21, *Lyoness Europe*, on consumers protection;
- 08.06.2023, joined cases C-430/22 and C-468/22, *VB (Information du condamné par défaut)*, on proceedings *in absentia*;
- 06.06.2023, C-700/21, *O. G. (Mandat d'arrêt européen à l'encontre d'un ressortissant d'un État tiers)*, on the possibility to refuse the execution of a European arrest warrant also to third-country nationals who reside or live in the Member State of execution, and on the principle of equal treatment;
- 05.06.2023, C-204/21, *Commission/ Poland (Indépendance et vie privée des juges)*, on the Poland's violation of the rule of law and of judges' independence;
- 25.05.2023, C-575/21, *WertInvest Hotelbetrieb*, on the assessment of environmental impact of certain public and private projects;
- 25.05.2023, C-364/22, *Bundesrepublik Deutschland (Retour volontaire)*, on asylum policy and the repeated request of international protection;

- 17.05.2023, C-97/22, DC (*Rétractation après l'exécution du contrat*), on consumers protection in off-premises contracts;
- 17.05.2023, C-176/22, BK and ZhP (*Suspension partielle de la procédure au principal*), on the stay of the main proceedings by a national court which has submitted a request for a preliminary ruling to the Court of Justice;
- 11.05.2023, C-817/21, *Inspekția Judiciară*, on the independence of the judicial power.

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

- 05.09.2023, *Radio Broadcasting Company B92 AD v. Serbia* (n. 67369/16), according to which Serbian courts went too far in their criticism of broadcasting company's reporting on swine-flu-vaccine controversy;
- 31.08.2023, *C v. Italy* (n. 47196/21), according to which Italian courts failed to fulfil the positive obligation to take a swift decision to establish the applicant's legal relationship to the biological father, but, at the same time, Italy guaranteed her non biological mother (the so-called intended mother) to have the possibility of legally recognizing the child through adoption: according to the Court, there was violation of article 8 of the Convention only with regard to the first issue;
- 29.08.2023, *Verzilov and others v. Russia* (n. 25276/15), according to which the violent attack by Cossacks on members of a feminist punk band – Pussy Riot - during the 2014 Olympic Winter Games in Sochi amounted to the violation of articles 3 and 10 of the Convention;
- 29.08.2023, *Kovačević v. Bosnia and Herzegovina* (n. 43651/22), according to which the privileged position enjoyed by the main ethnical groups in Bosnia and Herzegovina violates the democratic nature of political elections;
- 18.07.2023, *Camara v. Belgium* (n. 49255/22), on the national authorities' refusal to enforce an immediately executive order: the Court recognized the violation of the right to a fair trial;
- 18.07.2023, *Osman and Altay v. Turkey* (n. 23782/20), concerning the prison authorities' withholding of four issues of a bi-weekly periodical sent to the prisoners, which violated the Convention and their right to freedom of expression;
- 11.07.2023, *Nemtsova v. Russia* (n. 43146/15), according to which investigations in the case Nemtsov were inadequate therefore in violation of the right to life;
- 11.07.2023, *Semenya v. Switzerland* (n. 10934/21), on the discrimination against an international-level athlete, who was not afforded sufficient procedural safeguards when challenging World Athletics regulations;
- 06.07.2023, *Tuleya v. Poland* (n. 21181/19 and 51751/20), which found multiple violations in a case concerning the disciplinary regime for judges in Poland;
- 06.07.2023, *Calvi and C.G. v. Italy* (n. 46412/21), on the violation of the right to respect for private life of and older person placed in legal protection and in complete isolation in a nursing home;
- 06.07.2023, *B.M. and others v. France* (n. 84187/17 and other 5), which established that the procedure of review was not an effective remedy to compensate the violation of article 3 in a detention case, and at the same time that full body searches of the applicants amounted to inhuman and degrading treatments;
- 04.07.2023, Grand Chamber judgement, *Hurbain v. Belgium* (n. 57292/16), on the non-violation of the right to freedom of expression of the publisher of the *Le Soir* newspaper, who was ordered to anonymize identity of a person who had been found responsible for a deadly road accident, pursuant to his right to be forgotten;
- 04.07.2023, *Tristan v. the Republic of Moldova* (n. 13451/15), according to which the conviction of a mayor on the basis of a new, more lenient, criminal law was not foreseeable and violated article 7 of the Convention;
- 04.07.2023, *Glukhin v. Russia* (n. 11519/20), according to which the use of facial-recognition technology breached the right to freedom of expression of a protestor in Moscow underground;
- 04.07.2023, *Thanza v. Albania* (n. 41047/19), according to which the vetting of a Supreme Court judge did not comply with fairness requirements of the procedure;

- 13.06.2023, *A.A. v. Sweden* (n. 4677/20), according to which the deportation from Sweden to Libya would not be in breach of the European Convention;
- 12.07.2023, Grand Chamber judgement, *G.I.E.M. S.r.l. and others v. Italy* (n. 1828/06, 34163/07 and 19029/11), concerning just satisfaction;
- 29.06.2023, *Bijan Balahan v. Sweden* (n. 9839/22), according to which the extradition to the USA for serious crimes would not breach the rights of the accused provided for by the Convention;
- 27.06.2023, *Bryan and others v. Russia* (n. 22515/14), on the violation of Greenpeace Arctic activists' rights to liberty and security and to freedom of expression after the protest at Russian offshore oil-drilling platform;
- 27.6.2023, *Zhablyanov v. Bulgaria* (n. 36658/18), according to which the deputy speaker's removal from post for speeches on communist "People's Court" did not violate the right to freedom of expression provided for by the Convention;
- 27.06.2023, *Nurcan Bayraktar v. Turkey* (n. 27094/20), on the violation of the right to private and family life from a discriminatory and unjustified statute prescribing waiting period for divorced women wishing to remarry;
- 22.06.2023, *Lorenzo Bragado and others v. Spain* (n. 53193/21, 53707/21, 53848/21, 54582/21, 54703/21 and 54731/21), on the violation of Spanish judges' rights in a case concerning the Parliament's failure to complete appointments process to governing body of judiciary;
- 22.06.2023, *X and others v. Ireland* (n. 23851/20 and 24360/20), on the eligibility of foreign mothers awaiting the decision on their immigration status to receive child benefit for lawfully resident children;
- 22.06.2023, *Giuliano Germano v. Italy* (n. 10794/12), on the inadequate legal protection in the issuing of a police caution against stalking: the Court found the violation of the right to private and family life;
- 22.06.2023, *Poklikayew v. Poland* (n. 1103/16), on proceedings in Poland which contravened the right to procedural safeguards in the expulsion to Belarus;
- 15.06.2023, *Fanouni v. France* (n. 31185/18), according to which the home curfew imposed on the applicant adopted in the context of the state of emergency did not infringe his freedom of movement;
- 13.06.2023, *Aktürk and others v. Turkey* (n. 16757/21), on the non-violation of the applicants' right of property in a case in which the authorities annulled the sale of a plot of land on public-interest grounds;
- 13.06.2023, *UAB AmberCore DC and UAB Arcus Novus v. Lithuania and UAB Braitin v. Lithuania* (n. 56774/18 and 13863/19), on the non-violation of the right to a fair trial after the decisions rejecting business projects on national security grounds;
- 13.06.2023, *Sperisen v. Switzerland* (n. 22060/20), on the violation of the applicant's right to a fair trial on account of the lack of impartiality of the President of the appeal-court bench, which sentenced him to 15 years' imprisonment;
- 06.06.2023, *Navalnyy v. Russia (n° 3)* (n. 36418/20), according to which the failure to carry out an effective investigation into Aleksey Navalnyy's alleged poisoning with a chemical nerve agent violated the Convention;
- 06.06.2023, *Sarisu Pehlivan v. Turkey* (n. 63029/19), according to which the penalty imposed on the applicant, a judge and secretary-general of the judges' trade union, following a public interview with a national newspaper, breached her freedom of expression;
- 05.06.2023, *Demirtaş and Yüksekdağ Şenoğlu v. Turkey* (n. 10207/21 and 10209/21), on the violation of the Convention for the failure to respect the confidentiality of meetings between the applicants and their lawyers;
- 01.06.2023, Grand Chamber judgement, *Grosam v. Czech Republic* (n. 19750/13), on the inadmissibility of the case concerning disciplinary proceedings against an enforcement officer;
- 01.06.2023, *FU QUAN, s.r.o. v. Czech Republic* (n. 24827/14), on the inadmissibility of a case concerning the seizure of the applicant's property;
- 01.06.2023, *Erik Adamčo v. Slovakia* (n. 19990/20), on the violation of the principle of fair trial in a case of homicide: the safeguards of a fair trial were not applied by using statements of eyewitnesses who were not heard during the proceeding;

- 01.06.2023, *Maymulakhin and Markiv v. Ukraine* (n. 75135/14), according to which the lack of legal recognition and protection for a same-sex couple violated the prohibition of discrimination and the right to private and family life;
- 30.05.2023, *Mesić v. Croatia (n° 2)* (n. 45066/17), on the non-violation of the former President of Croatia's rights to private and family life in an online news article alleging his possible involvement in bribery;
- 30.05.2023, *Azzaqui v. The Netherlands* (n. 8757/20), on the violation of the Convention by the decision revoking a Moroccan national's residence permit in the Netherlands for not having sufficiently taken into account his mental illness;
- 23.05.2023, *Buhuceanu and others v. Romania* (n. 20081/19), on the violation of article 8 of the Convention because of the failure to provide any legal recognition of same-sex relationships;
- 23.05.2023, *A.E. v. Bulgaria* (n. 53891/20), on insufficient protection of victims of domestic violence;

and the decisions:

- 31.08.2023, decision of admissibility, *M. A. and others v. France* (n. 63664/19), which declares admissible the applications from individuals lawfully engaged in prostitution and claiming to be victims of law criminalizing purchase of prostitution services;
- 31.08.2023, decision of inadmissibility, *Lenis v. Greece* (n. 47833/20), concerning a homophobic article by a senior official of the Greek Orthodox Church posted on his personal blog: according to the Court the application was incompatible with the norms of the Convention;
- 13.07.2023, *Carvajal Barrios v. Spain* (n. 13869/22), according to which the extradition towards the United States of the former leader of the Venezuelan counter-intelligence, accused of drug-trafficking, could be enforced;
- 12.07.2023, *Chennouf and others v. France* (n. 4704/19), which declared inadmissible the application lodged by relatives of the corporal leader A.C., assassinated by Mohamed Merah;
- 08.06.2023, decision of inadmissibility, *A.M. and others v. Poland* (n. 4188/21, 4957/21, 5014/21, 5523/21, 5876/21, 6114/21, 6217/21 and 8857/21), concerning a group of cases against Poland on the right to abortion;
- 08.06.2023, decision of inadmissibility, *Ferrara and others v. Italy* (n. 2394/22 and other 18), on the unjustified fragmentation of domestic enforcement proceedings of "Pinto" decisions and judgments, multiplying awards of legal fees to lawyer applicants and extending length of proceedings.

On 24 May 2023 the Court decided to revoke the interim measures ordered to the Belgian State pending the proceedings lodged by 1350 applicants – asylum seekers who reported they were not placed in any reception center - and to strike out such applications from their lists since they did not send the form in time.

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

- the decision of the South Carolina Supreme Court of 23.8.2023, which found the constitutional legitimacy of the "Fetal Heartbeat and Protection from Abortion Act 2023" which prohibits the interruption of pregnancy when the fetal heartbeat can be detected;
- the decision of the Montana First Judicial District Court, Lewis and Clark County of 14.8.2023, which found the constitutional illegitimacy of the "Limitation" provided for by the "Montana Environmental Policy Act" ("MEPA"), which prohibits the State and its agencies from taking into consideration the impact of greenhouse gas emissions or of climate change in their environmental assessments, for violation of the right to a clean and healthy environment;
- the decision of the Court of Appeal of Kenya of 7.7.2023, which found the constitutional illegitimacy of the norm providing for the compulsory life sentence, also recalling the

decision in the case *Vinter and others v. The United Kingdom* of the Court of Strasbourg;

- the decision of the Supreme Court of the United States of 30.6.2023, according to which the First Amendment (freedom of speech) prohibits the State from compelling a website designer the creation of design including messages he does not agree with, and in the specific case websites for the celebration of same-sex marriages; and the decision of 29.6.2023, which found the illegitimacy of "affirmative actions" based on racial grounds, provided for by the regulations of Harvard College and of the University of North Carolina (UNC), for violation of the Equal Protection Clause included in the Fourteenth Amendment;
- the decision of the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals of 31.5.2023, case *Prosecutor v. Jovica Stanišić, Franko Simatović*, which rejected the appeal against the decision of the Trial Chamber, which sentenced both the accused persons to 12 years' imprisonment for crimes against humanity and violations of laws or customs of wars committed by Serb forces after the conquest of the town of Bosanski Šamac in April 1992, also increasing the penalty to 15 years' imprisonment;
- the decision of the Supreme Court of the State of Oklahoma of 31.5.2023, which found the constitutional illegitimacy of two laws of the State in the matter of abortion: law SB. 1503, which prohibits the interruption of pregnancy when the heartbeat can be detected, and law H.B.4327, which introduces a complete prohibition of abortion except from the event it becomes necessary in order to save the mother's life or when the pregnancy is the result of rape, sexual violence or incest;
- the decision of the Inter-American Court of Human Rights of 23.5.2023, case *Tabares Toro y otros vs. Colombia*, which finds the responsibility of the State for the forced disappearance of a soldier, during the performance of his duties, and for the violation of the rights to life, to personal integrity, personal freedom and to an effective remedy; the decision of 22.5.2023, case *Boleso vs. Argentina*, on the violation of the right to property and to an effective remedy with regard to a labour judge, to whom was denied the execution of a sentence which recognized the violation of the principle of the intangibility of the salary because of hyperinflation; the decision of 17.5.2023, case *López Sosa vs. Paraguay*, which recognized the State responsible for the tortures suffered by a warrant officer of the police, following the attempted coup d'état in 2000 by members of the army and of the national police; and the decision of 10.3.2023, case *Scot Cochran vs. Costa Rica*, according to which the State is not internationally responsible for the violation of the rights to freedom and to an effective remedy towards an American national in virtue of the provisional detention suffered by him and of the sentence against him for sexual crimes against minors and violations of norms on drugs;
- the decision of the Supreme Court of Namibia of 16.5.2023, in the matter of recognition of marriage celebrated abroad, according to which the word "spouse", pursuant to section 2(1)(c) of the Immigration Control Act 7 of 1993 must be interpreted in order to include same sex spouses legally married in another State.

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

- **Belgium:** the decision of the Cour constitutionnelle n. 116/2023 of 20.7.2023, which annuls the law of 1^o June 2022 on European Parliament's elections, where it subjected the right to vote for youngsters of 16 or 17 years old to the registration on the electoral roll; the decision n. 111/2023 of 20.7.2023, which annulled some norms of the Flemish decree of 26 June 2020 on administrative cooperation in tax matters, of transposition of Directive (EU) 2018/822, for violation of the norms concerning lawyers' professional secrecy, suspending the proceeding on other issues pending the answer of the Court of Justice following the preliminary referral ordered by the Constitutional Court with the decision of 15 September 2022; the decision n. 92/2023 of 15.6.2023, which annuls certain norms of the Flemish decree of 9 July 2021, amending several decrees in the

matter of housing, in particular of social housing, also in the light of the norms of the General Data Protection Regulation (GDPR) and of the jurisprudence of the Courts of Strasbourg and Luxembourg; the decision n. 85/2023 of 1.6.2023, in the matter of integration of persons with disabilities in the compulsory education system, which partially annuls the decree of the French Community of 17 June 2021, aiming at creating regional Campus in charge of supporting ordinary schools, since it introduced an unjustified discrimination between students with physical disabilities and students with mental disabilities, also in violation of article 15 of the European Social Charter; and the decision n. 72/2023 of 27.4.2023, according to which article 19 of the law of 15 December 1980 on the entry in the territory, the stay, establishment and the removal of foreigners is in violation of the Constitution, of article 7 of the EU Charter of Fundamental Rights and of article 8 of the ECHR, where it provides for the possibility to refuse the return visa to a foreigner born in Belgium, or who arrived in the territory before he was 12 years old and who has, since then, principally and regularly resided there, in case such decision is equivalent to an end of stay decision; the decision of the Tribunal de première instance francophone de Bruxelles (French-speaking Tribunal of first instance of Brussels) of 29.6.2023, according to which the Belgian State violated its obligations deriving from the norms of Directives 2013/32/EU and 2013/33/EU and from article 6 of the ECHR to guarantee the effective right to lodge request for international protection and the reception conditions of international protection seekers, as well as give execution to judicial decisions in such matter; and the decision of 14.4.2023, which ordered the State to compensate a Congolese student with a valid visa for study purposes, whose entry in the territory was refused and who was detained for two weeks, also in the light of the norms of the Schengen Borders Code and of article 5 of the ECHR;

- **Bosnia and Herzegovina:** the decision of the Ustavni sud (Constitutional Court) of 23.3.2023, which found the legitimacy of the Constitutional Amendments and of the Electoral Law introduced by the decisions of 2 October 2022, also analysing the norms of article 3 of the First Additional Protocol to the ECHR and the jurisprudence of the Court of Strasbourg; the decision of 20.1.2023, which confirmed the decision of the lower Court concerning the expulsion of a Pakistani national, who received a fatwa in his Country, establishing the non-violation of articles 2 and 3 of the ECHR and of article 1 of Protocol n. 6; and the decision of 19.1.2023, which found the constitutional illegitimacy of "Law on Salaries and Other Compensations in Judicial and Prosecutorial Institutions at the Level of Bosnia and Herzegovina" for the lack of norms in the matter of stand-by allowance for judges and public prosecutors, also in the light of article 1 of Protocol n. 12 to the ECHR;
- **France:** the order of the Conseil d'État of 24.5.2023, which rejects the request of declaration of illegitimacy of norms allowing the use of drones for emergency public order reasons, deeming such use not in violation of the ECHR, nor of Union law; the order of 15.5.2023, which provides for the adoption of supplementary measures in prisoners' treatment with regard to a French prison and which recalls articles 2 and 3 of the ECHR; and the decision of 10.5.2023, which invites the Government to present a report before the end of the year on greenhouse gas emissions in order to assess the respect of the commitments made at an international and European Union level;
- **Germany:** the decision of the Bundesverfassungsgericht (Federal Constitutional Tribunal) of 20.6.2023, according to which the norms on the remuneration of prison labour in Bavaria and in North-Rhine-Westphalia are constitutionally illegitimate and which recalls a consolidated jurisprudence of the ECHR; the decision of the Landgericht Baden-Baden (Regional Tribunal of Baden-Baden) of 26.4.2023, which establishes that the access to the web site of a responsible for the processing for the only reason of generating request of compensation for the protection of personal data violates the principle of "good faith" of German law and therefore no compensation is possible pursuant to article 82 of the General Data Protection Regulation (GDPR); and the decision of the Arbeitsgericht Oldenburg (Labour Tribunal of Oldenburg) of 15.3.2023, which sentenced a company to pay 10.000 euros for moral damages to a former employee, since the responsible for the processing did not answer to a request of

access during a labour proceeding, and which recalls supra-national sources and jurisprudence;

- **Great Britain:** the decision of the United Kingdom Supreme Court of 19.4.2023, in which the Court finds compatible with articles 5 and 7 of the ECHR the norms of the Counter Terrorism and Sentencing Act 2021, where they provide for the possibility of parole for the convicted of terrorism only after they have served two thirds of the sentence; the decision of the England and Wales High Court of 9.5.2023, on the limit to freedom of assembly during Covid-19 pandemic; and the decision of the Northern Ireland High Court of 28.10.2022, in the matter of access to medically assisted procreation by same-sex couples, in the light of articles 8 and 14 of the ECHR;
- **Ireland:** the decision of the Supreme Court of 22.6.2023, on the balance between public interest in the carrying out of investigations, in particular with regard to the issue of a search warrant in order to collect proofs, and the journalistic privilege, in the light of the jurisprudence of the Court of Strasbourg on article 10 of the ECHR; and the decision of 9.5.2023, on the concept of "parent", pursuant to section 7(1) of the Irish Nationality and Citizenship Act 1956 in view of the recognition of Irish nationality, which recalls the jurisprudence of the Court of Strasbourg; the decision of the Court of Appeal of 9.6.2023, which annulled a surrender order of the High Court issued on the basis of an arrest warrant by Polish authorities and which sent back such issue to the same court for further considerations, in virtue of the decision of the Court of Justice of 23 March 2023 in the joined cases *LU* (514/21) & *PH* (C-515/21) on the European arrest warrant and the rights of the defence and consequence of the preliminary referral ordered by the same Court of Appeal; the decision of the High Court of 25.5.2023, which, applying the jurisprudence of the Court of Justice, annulled a decision of the International Protection Appeals Tribunal (IPAT) with which the international protection of the claimant was denied because of the alleged commission of a serious crime of common law, pursuant to the International Protection Act 2015, of transposition of Directive 2011/95/EU ("Qualification Directive"): according to the Court, the IPAT did not carry out the individualised assessment requested in such circumstances; the decision of 9.5.2023, concerning the refusal of a visa for the spouse to a Pakistani national because of the wrong interpretation of Pakistani law in the matter of legal status of the wedding certificate with regard to the legal status of the proxy marriage certificate, which recalls the norms of the ECHR and the jurisprudence of the Court of Strasbourg; and the decision of 21.4.2023, according to which the lack of material conditions for the reception of an Afghan national, who is an international protection seeker, pursuant to Directive 2013/33/EU, is unlawful and in violation of the rights provided for by article 1 of the EU Charter of Fundamental Rights;
- **Italy:** the decisions of the Corte costituzionale n. 177/2023 and n. 178/2023 of 28.7.2023, on the necessary respect for health conditions during the enforcement of European arrest warrants, which recalls the jurisprudence of the Court of Justice; and n. 88/2023 of 9.3.2023, on the constitutional illegitimacy of the automatic refusal of the renewal of the third-country worker's work permit, also for the violation of article 8 of the ECHR, which examines the jurisprudence of the Court of Strasbourg; the decision of the Corte di cassazione n. 23940/2023 of 31.5.2023, on the possibility to apply article 7 of the ECHR to the proceedings for the European arrest warrant or for cases of extradition, which recalls the jurisprudence of the Court of Strasbourg; and the decision n. 14836/2023 of 26.5.2023, which deems harassment on racial grounds any behaviour which violates human dignity and is potentially able to create an intimidating, hostile, degrading, humiliating and offensive environment against an ethnic group, regardless any personal reason, even if committed through *facebook*, and which recalls the jurisprudence of the two European Courts; the order n. 23088/2023 of 26.5.2023, which recalls the jurisprudence of the European Court of Human Rights considering that in the specific case the refusal of the request of probation and the possibility to choose the penitentiary regime were based on the ascertained dangerousness of the person and there were no serious medical reasons to exclude the detention with consequent non-violation of article 3 of the ECHR; and the order n. 18288/2023 of 3.5.2023, which explains the consequences of a decision of the Court of Strasbourg on compensation in a similar case; and the order n. 6769/2023 of 8.3.2023, which raises the question of

constitutional legitimacy on the legitimacy of the exclusion of third-country nationals with residence permit for working reasons from social allowance, recalling the jurisprudence of the Court of Justice; the preliminary referral order of the *Tribunale di Padova* of 22.6.2023, on the retroactivity of the Directive on fixed-term contracts also with regard to contracts prior to its entry into force; and the order of 18.5.2023, which raises question of constitutional legitimacy of the Veneto Region law on social housing for discrimination of third-country nationals, with regard to the requirement of seniority of residence, and which recalls article 34 of the EU Charter of Rights; the order of preliminary referral of the *Tribunale di Bologna* of 11.6.2023, on the issue of the suspension, automatic or not, of measures of rejection for manifestly unfounded request of international protection for persons coming from safe countries of origin, in cases of lack of correct application of the accelerated procedure; and the decision of the *Tribunale amministrativo regionale dell'Emilia Romagna* (Administrative Regional Tribunal of Emilia Romagna) of 17.5.2023, which recognizes the subordinate nature of fixed-term contracts of honorary judges, in the light of the jurisprudence of the Court of Justice, and demands to the Ministry of Justice the reconstitution of the relationship also with regard to the social security aspects;

- **Latvia:** the decision of the *Satversmes Tiesa* (Constitutional Court) of 17.2.2023, which found the constitutional illegitimacy of article 43(4) of the Civil Procedure Law, where it did not provide for the right for legal persons – unlike natural persons – to ask the Court the exemption from the payment of expenses for the submission of the claim, recalling the norms of the EU Charter of Fundamental Rights and of the ECHR and of the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Lithuania:** the decision of the *Konstitucinis Teismas* (Constitutional Court) of 7.6.2023, which found the illegitimacy of the Law on the Legal Status of Aliens, where it provided for that in the event of mass influx of foreigners during an emergency situation, all asylum seekers had to be put in specific centres – for a period of maximum six months – without the right of freedom of movement and in the absence of a decision from the competent authority, also recalling the EU legislation and the jurisprudence of the Courts of Strasbourg and Luxembourg;
- **Portugal:** the decision of the *Tribunal Constitucional* n. 240/2023 of 11.5.2023, which found the constitutional legitimacy of article 8(2) of law 5/2008, where it allows to take samples of DNA from persons sentenced to three or more years' imprisonment, even in case of substitutive punishments, also recalling the jurisprudence of the Court of Strasbourg;
- **Slovenia:** the decision of the *Ustavno Sodišče* (Constitutional Court) of 18.5.2023, in the matter of right to education and access to education, which finds the constitutional legitimacy, for non-violation of the principal of equality, of article 48 of the Primary School Act and article 11 of the Act on the Special Rights of the Italian and Hungarian National Communities in Education, also recalling the jurisprudence of the Court of Strasbourg;
- **Spain:** the decision of the *Tribunal Constitucional* n. 78/2023 of 3.7.2023, which admitted the claim against the rejection, for administrative silence, of the request of recognition of financial responsibility against the Servicio Murciano de Salud because of the health treatment applied during the pregnancy of the claimant, which ended with the voluntary interruption of the pregnancy for serious anomalies in the foetus, also recalling the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 44/2023 of 9.5.2023, which rejected the claim against certain norms of Organic Law n. 2/2010 on sexual and reproductive health and on voluntary interruption of pregnancy, also recalling article 7 of the EU Charter of Fundamental Rights, the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 34/2023 of 18.4.2023, which rejected the claim against Organic Law n. 3/2020, amending Organic Law n. 2/2006, in the matter of education, with particular reference to the norms on concerted teaching, special education, prohibition to organize different education on grounds of sex, teaching of religion, "gender ideology" (according to the words used by the claimants) and teaching of Castilian, also recalling the norms of the EU Charter of Fundamental Rights and of the ECHR and the jurisprudence of the Court of Strasbourg; the decision n. 32/2023 of 17.4.2023, on the violation of the right to liberty, for having kept the

claimant in precautionary detention without calculating the detention already suffered during the extradition proceeding, which recalls the jurisprudence of the Court of Strasbourg; and the decision n. 19/2023 of 22.3.2023, which rejects the claim against Organic Law n. 3/2021 regulating euthanasia, also in light of the jurisprudence of the Court of Strasbourg; the decision of the *Tribunal Supremo* of 24.7.2023, which rejected the claim lodged by several environmental organizations against the decision of the Council of Ministers of 16 March 2021 approving the "*Plan Nacional Integrado de Energía y Clima 2021-2030*", asking its amendment in accordance with the aims of the Paris Agreement and the recommendations of the *Intergovernmental Panel on Climate Change* (IPCC), also recalling the relevant EU legislation in such matter; the decision of 5.6.2023, which declared article 162-2º-e) of the Royal Decree n. 557/2011, approving Organic Law n. 4/2000 on rights and freedoms of foreigners in Spain and on social integration, null, where it provided for that the absence in the national territory of the foreigner with an authorization to temporary stay for a period of more than six months within one year would lead to the extinction of the said authorization, recalling the relevant EU legislation in such matter and the jurisprudence of the Court of Justice; and the decision of 16.5.2023, in the matter of filiation and recognition of the partner's paternity of the children, born through surrogate motherhood, also in the light of the ECHR and the jurisprudence of the Court of Strasbourg;

- **The Netherlands:** the decision of the *Hoge Raad* (Supreme Court) of 25.8.2023, which confirmed the decision of the lower Court, establishing its lack of competence with regard to the claim lodged by a Palestinian national for the declaration of the responsibility of Israeli officials for their involvement in the bombing of 2014 in the Gaza Strip during the *Operation Protective Edge*: according to the Court, the defendants enjoy functional immunity and such immunity does not amount to a disproportionate restrictions of the rights guaranteed by article 6 of the ECHR.

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

Articles:

[Giuseppe Bronzini](#) "New measures against poverty provided for by Law Decree n. 48 of 2023: which consistency with supra-national guidelines and with European Charters of Rights?"

[Massimo Ferro](#) "Corporate insolvency in Directive *Insolvency III*"

[Sergio Galleano](#) "Court of Justice 12 January 2023 (case C-356/21) discrimination based on sexual orientation in the self-employment"

[Pierpaolo Gori](#) "Declaration of admissibility of the claim and counter-claim before the Court of Cassation following the Cartabia reform of civil proceeding"

Notes and comments:

[Giuseppe Bronzini](#) "From protective jurisprudence of the Court of Justice to the new, necessary policies in matter of immigration"

[Francesco Buffa](#) "Decision J.A. v. Italy sentences Italy for the management of immigration"

[Remo Caponi](#) "Civil trial: European models, Cartabia reform, corporative interests, politics"

[Giuseppe De Marzo](#) "ECHR, First Section, *Rigolio v. Italy* of 9 March 2023, on the link between acquittal in a criminal proceeding and assessment of the same fact in a civil proceeding"

[Simone Pitto](#) "Independence of judges in Poland. The "tear in the sky of paper" of the rule of law and the identity issue"

[Sandra Recchione](#) "Comment to the decision of the ECHR, First Section, *Zaghini v. San Marino*, of 11 May 2023 in the matter of confiscation and breach of the right to property"

[Gianni Reynaud](#) "Comment to the decision of the ECHR, Grand Chamber, *Halet v. Luxembourg*, of 14 February 2023 in the matter of freedom of expression and criminal sanctions"

[Michela Spadaccino, Emma Zeppetella](#) "Coexistence between European and foreign nationals: the irrelevance of the legitimacy of their residence in view of the anagraphic enrolment"

Documents:

[General comment n. 26](#) of the UN Committee on the Rights of the Child "on children's rights and the environment, with a special focus on climate change", of 22 August 2023

[Report of the Conseil d'État](#) (Council of State) on its activity in 2022, with many references to the decisions in European matters and to studies carried out within EU judicial cooperation, of 1 June 2023